

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3112 OF 2017

SHAIKH VAJIR SHAIKH AHMED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.S.Thombre h/f Mr.M.S.Karad, Advocate for the petitioner.
Mrs.V.N.Patil-Jadhav, AGP for respondent Nos. 1 to 4.

(CORAM : DIPANKAR DATTA, CJ AND
RAVINDRA V. GHUGE, J.)

DATE : JUNE 16, 2021

PER COURT :

1. The petitioner's land was acquired by the respondents for the purpose of construction of a bridge over a '*nala*'. It is not in dispute that for such acquisition, the petitioner has duly been paid compensation in accordance with law.

2. Having received compensation, as awarded, the petitioner had applied on 12/08/2016 before the Collector, Beed for a "Project Affected Person" (hereafter "PAP", for short) Certificate. Provision for issuance of such a certificate, according to Mr.Thombre, learned advocate appearing for the petitioner, can be traced to a

Government Resolution dated 03/05/2010. The Collector, Beed, by his order dated 07/10/2016 [appearing at page 35 of the writ petition], spurned the application of the petitioner on the ground that the relevant Government Resolution does not provide for grant of PAP certificate if the land is acquired for construction of a "bridge". This order dated 07/10/2016 has been assailed in this writ petition.

3. A reply has been filed on behalf of the respondents 2 to 4. Paragraphs 3 to 5 of such affidavit are relevant for a decision on this writ petition and hence are reproduced hereunder :-

"3. The deponent says and submits that, the application submitted by the petitioner for grant of Certificate of Project Affected Person was rejected by this deponent since the resolutions which lay down the guidelines for grant of such certificate do not at all mentions the category i.e. land acquired for construction of Bridge.

4. The deponent says and submits that, there is no Resolution providing for grant of Certificate to the persons, whose land is acquired for construction of Bridge.

5. The deponent says and submits that, the decisions relied upon by the petitioner are in respect of the lands acquired for construction of Village Tank and as such are not applicable to the present case."

4. Mr.Thombre has invited our attention to Sections 2(10)(c) and 10 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereafter “the Act”, for short) for the purpose of buttressing his argument that persons whose lands are acquired for construction of a “bridge”, are entitled to claim adequate rehabilitation in terms of the provisions of the Act. He has also referred to the circumstance that despite monetary compensation being offered to an affected person, such person or his nominee is also entitled to certain benefits in respect of public employment under the State.

5. Although there is no provision in the Act with regard to issuance of PAP certificate, but as Mr.Thombre has submitted, the guiding principles for issuance of PAP certificate are now laid down in the Government Resolution dated 03/05/2010.

6. Appearing on behalf of the respondents, Mrs.V.N.Patil-Jadhav, AGP has opposed the writ petition. She has sought to defend the impugned order based on the ground mentioned therein.

7. We have heard the parties.

8. Sight cannot be lost of the fact that the Act has been introduced by the legislature for the benefit of “project affected persons”. The definition of “project” is in section 2(10) of the Act. In the light of clause (c) therein, a *“public utility project, that is to say, any work of construction, ... of public utility including roads ...”* is included in the definition of a “project”. The word ‘any’ before ‘work of construction’ is important. It is of wide amplitude. The learned AGP has not disputed before us that construction of a “bridge”, undertaken by a public authority for the benefit of the public at large, is certainly a public utility project. Such a construction would ordinarily include, *inter alia*, apart from construction of the “bridge” itself over a river or a *nala*, as in the present case, the approach roads on either side of the bridge. If for facilitating the purpose of construction of a bridge lands are acquired for building the approach roads on either side, we see no reason to hold that merely because the word “bridge” does not appear in the Government Resolution dated 03/05/2010, which lays down guiding principles for issuance of a PAP certificate, that *per se* would dis-entitle the petitioner to grant of such certificate. Once a person’s land(s), if in the ‘affected zone’, is/are acquired under section 14 of the Act for the purposes of a ‘project’, as defined in section 2(10) thereof, he would ordinarily

acquire the status of a “project affected person” unless anything to the contrary is proved. Incidentally, it has to be remembered that the petitioner has been awarded compensation in connection with acquisition of land for construction of the “bridge” over the *nala*. Since the Act does not provide for issuance of a PAP certificate but the Government Resolution dated 03/05/2010 read with previous Government Resolutions does, subject of course to fulfillment of the factors that are necessary for issuance of a certificate in this behalf in terms of such resolution dated 03/05/2010, the petitioner can validly claim a PAP certificate if such other conditions are fulfilled.

8. We have noticed from the decisions annexed to the writ petition that construction of "village tank", though not provided in the Government Resolution dated 03/05/2010 as a circumstance for issuance of PAP certificate, was regarded by co-ordinate Benches to entitle those persons who were affected by acquisition of lands for such construction, to be entitled to PAP certificates and, accordingly, orders passed by the district collectors refusing grant of PAP certificates were set aside and directions followed for issuance of such certificates in favour of such affected persons.

9. The distinction sought to be made in this behalf by the respondents 2 and 3 in their reply affidavit by contending that a 'village tank' is different from a 'bridge' and, therefore, the petitioner is not entitled to a PAP certificate, has failed to impress us. Construction of tanks, roads, bridges, culverts, canals, etc. are public utility projects and, therefore, cannot be treated differently.

10. In such view of the matter, we hold the order of the Collector, Beed dated 07/10/2016 to be indefensible and, consequently, set aside the same. The said collector is directed to issue a PAP Certificate in favour of the petitioner, if he fulfills the other conditions for issuance of such a certificate in terms of the Government Resolution dated 03/05/2010.

11. Let the process for issuance of requisite certificate in favour of the petitioner be initiated at once, and be completed within 4 weeks. If the petitioner is once again not found entitled, a reasoned order shall be passed and communicated to him.

12. This order shall be circulated to all the district collectors of the State of Maharashtra so that poor villagers, who lose lands in the

‘affected zone’ because of acquisition thereof under section 14 of the Act for the purpose of public utility projects, are not compelled to approach this Court for obtaining orders to set aside orders refusing PAP certificates (on the ground that the specific construction work for which their lands have been acquired are not mentioned in the relevant Government Resolution). So long the construction is part of a ‘public utility project’, answering the definition of a “project” as in section 2(10) of the Act, and subject of course to fulfillment of the other conditions in the relevant Government Resolution, issuance of PAP certificate shall not be casually refused.

(RAVINDRA V. GHUGE, J.)

(CHIEF JUSTICE)