

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3027 OF 2022

1. Balaji s/o Nivruti Surnar
Age: 62 years, Occu. Agri.,
R/o Andaga, tq. Loha, Dist. Nanded
 2. Gangadhar s/o Giridhar Surnar
Age: 20 years, Occu. Agri.,
R/o Andaga, tq. Loha, Dist. Nanded
- ... Petitioners**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
 2. The District Rehabilitation Officer,
Collector Office, Nanded,
Dist. Nanded
- ... Respondents**

....

Mr. Panditrao S. Anerao, Advocate for petitioners

Mr. A. R. Kale, AGP for respondents

....

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATED : 29 NOVEMBER 2022

JUDGMENT (Per Y. G. Khobragade, J.) :-

Heard. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, the petition is taken up for final disposal at the stage of admission.

2. By the present petition under Article 226 of the Constitution of India, the petitioners pray to quash and set aside impugned order dated 10.12.2021, passed by respondent No.2, whereby the application of petitioner No.1 for transfer of project affected certificate in favour of the petitioner No.2 has been turned down.

3. The learned counsel for the petitioners submits that the petitioner No.1 was holding land bearing Gat No.28 admeasuring 2 *Hectare* 60 *Are* at village Andaga, Taluka Kandhar, District Nanded, however, on 30.08.1991 the said land was acquired by the State for Limbati Upper Manar Dam. Thereafter, petitioner No.1 applied for issuance of project affected certificate. Accordingly, respondent No.2 issued the said certificate in the name of Shri Giridhar Balaji Surnar the son of the petitioner No.1. However, on 06.10.2021, petitioner No.1 applied with respondent No.2 for transfer of the certificate of project affected person in the name of petitioner No.2 i.e. his grandson Shri Gangadhar Giridhar Surnar, but, on 10.12.2021, the respondent No.2 rejected the application mainly on the ground that there is specific bar for transfer of certificate of project affected person after eighteen years.

4. The learned counsel for the petitioners submits that as per the provisions of Section 5 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, it is the duty of the Collector to issue certificate of project affected person in favour of the person whose name is nominated by the project affected person for the purpose of employment against the reserved quota and there is no legal impediment under Section 5 or 6 of the said Act for transfer of certificate of project affected person if he has not secured job under reserved quota. Therefore, respondent No.2 could have transferred the certificate dated 07.07.1985, which was granted in the name of son of petitioner No.1 in favour of petitioner No.2. However, respondent No.2 arbitrarily rejected the application of petitioner No.1 which is illegal. Hence they pray to quash and set aside it.

5. In support of the submissions, the learned counsel appearing for the petitioners relies on the judgment of this Court dated 15.03.2016 in Writ Petition No.12254 of 2015 (*Bhanudas Vajjanath Shinde and another vs. The State of Maharashtra and others*) and the judgment dated 04.02.2016 passed by this Court in Writ Petition No.10912 of 2015 (*Pralhad Kishanrao Ghogre and others vs. The State of Maharashtra and another*).

6. Per contra, the learned AGP appearing for the respondents vehemently canvasses that, the land of the petitioner No.1 was acquired by the State for Limboti Upper Manar Dam and subsequently on his request, a certificate of project affected person was issued by respondent No.2 in the name of Giridhar Balaji Surnar i.e. the son of petitioner No.1. However, the petitioner No.1 submitted an application for transfer of said certificate in the name of his grandson Shri Gangadhar Giridhar Surnar i.e. petitioner No.2 after lapse of 30 to 40 years and as per the Government Resolution dated 19.09.1988 and 06.07.2009, the said certificate is not transferable. The respondent No.2 rejected the application vide its order dated 10.12.2021, which is in adherence to the Government Resolutions, Circulars and guidelines issued by the State Government from time to time. Therefore, there is no illegality on the part of respondent No.2 while passing the impugned order. Hence, he prays for dismissal of the petition.

7. It is not in dispute that, the land of the petitioner No.1 admeasuring 2 *Hectare* 60 *Are* of village Andaga, Taluka Kandhar, District Nanded was acquired by the respondents for public project, namely, Upper Manar Dam. No doubt, on 07.07.1985, the certificate

under Section 5 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, was initially issued in the name of Giridhar Balaji Surnar, son of petitioner No.1 on the request of petitioner No.1. However, the nominee of petitioner No.1 did not secure Government job against the quota reserved for project affected person. The petitioner No.1 submitted application dated 06.10.2021 and prayed for transfer of certificate of project affected person in the name of his grandson i.e. petitioner No.2 with necessary certificates i.e. no objection certificate, notice under Section 4(1), 12(2), notice under Section 9(3) and (4) of the Land Acquisition Act, 1894 as well as an undertaking. However, on 10.12.2021, the respondent No.2 passed the impugned order and turned down the request of the petitioner No.1 for transfer of said certificate mainly on the ground that as per circulars dated 04.12.2007 and 19.09.1988, the request of the petitioner No.1 could not be considered after 30 to 40 years.

8. Section 5 and 6 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, does not create embargo for transfer of project affected person's certificate from one nominee to another at the request of project affected person, so also, no time limit has been prescribed for issuance of the certificate. It is not the case of

respondents that, the nominee of petitioner No.1 had already secured employment with the Government against the reserved quota for project affected persons. The statute does not prohibit for transfer of said certificate if the nominee of project affected person does not get public employment under the reserved quota.

9. In the case of *Bhanudas Vaijanath Shinde*, cited supra, the Division Bench of this Court considered the issue involved in the present case and observed in para 5 as under:-

“5) The issue raised in this matter is no more res integra and is observed by the decision rendered by the Division Bench of this Court in the matter of Pralhad Kishanrao Ghogre and Ors. Vs. State of Maharashtra and Anr. (Writ Petition No.10912/2015 decided on 4th February, 2016). The Division Bench of this Court, while considering the issue raised therein, has, in para 7 of the said judgment, observed thus, -

“7. In the present matter it is not in dispute that, petitioner No.1 is the project affected person. Initially he had nominated petitioner No. 2 for the issuance of Project Affected Person Certificate. Thereafter, petitioner No. 1 applied for transfer of the said certificate in name of petitioner No. 3. The same was permitted. However, petitioner No. 3 could not get any employment because of lack of educational qualification, as such, now petitioner No. 1 again wants the said certificate to be given in the name of original nominee i.e. petitioner No. 2. The statute nowhere creates a bar in this regard. The Circular only lays down that second transfer would not be permissible. The said Circular cannot override the

avowed object of the statute. The apprehension of the respondent as is spelled out by the learned A.G.P that there would not be any record if the certificates are transferred, does not stand to any reason. The Rules, more particularly, Rule 16 sub-Rule 4 of the Right to Fare Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014, lays down that, when the appointment of project affected person in priority quota is made his original Project Affected Person Certificate shall be send for confirmation to the issuing Authority. The appointment of such person shall be confirmed only after receiving the confirmation letter from the issuing Authority. The certificate is required to be verified and the original certificate is to be retained by them by affixing cancelled. The rules in that regard which are framed under the Right to Fare Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014, takes the necessary safeguard in that regard.”

10. In view of the decision referred above, the claim of the present petitioner also deserves to be considered favourably and the impugned order dated 10.12.2021 passed by respondent No.2 refusing the request of petitioner No.1 for transfer of the project affected person certificate in the name of petitioner No.2 is liable to be quashed and set aside. So also, it is necessary to direct the respondent No.2 to issue such certificate on the request of petitioner No.1 in favour of petitioner No.2 in order to facilitate the petitioner

No.2 to secure employment against reserved quota of project affected person. Accordingly, we are inclined to allow the writ petition and proceed to pass following order:-

- (a) The impugned order dated 10.12.2021 passed by respondent No.2 is hereby quashed and set aside.
- (b) Respondent No.2 is held entitled to transfer/issue certificate of project affected on the request of petitioner No.1.
- (c) The petitioner No.1 shall produce all original certificates and surrender it with respondent No.2 which are standing in the name of Giridhar Balaji Surnar and then the respondent No.2 shall issue the project affected person certificate in the name of petitioner No.2.

11. Rule is accordingly made absolute in above terms. No order as to costs.

[Y. G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]

SMS