

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

WRIT PETITION NO. 14819 OF 2019

Maroti S/o Kondji Kshirsagar (Died)
Through his legal Representative
Gajanan Digambar Kshirsagar,
Age 28 years, Occ. Education,
R/o. At Post Kalhal, Tq. & Dist. Nanded. .. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Divisional Commissioner Office,
Revenue, Aurangabad.
3. The Collector, Dist – Nanded,
Office at – Collector Office,
Vazirabad, Nanded.
4. The Deputy Collector, [Project Affected]
Dist – Nanded, Office at – Collector Office,
Vazirabad, Nanded. .. **Respondents**

...
Mr. Ashutosh Kulkarni, Advocate for the Petitioner.
Mr. A.R. Kale, AGP for the respondent-State.
...

**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.**
DATE : 10th October, 2022

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final disposal at admission stage.

2. The petitioner is challenging the order passed by the learned Deputy Collector (Rehabilitation), Nanded dated 21.06.2019 thereby refusing issuance of certificate to the petitioner as project affected persons.

3. The petitioner is claiming such certificate through his grand father - Maroti Kondji Kshirsagar.

4. It can be seen that it is an admitted fact that Maroti Kondji Kshirsagar was the owner of 0.12 R land from Gut No.136 situated at Village Kalhal, Taluka and District Nanded and it was acquired by the Government for Vishnupuri Project in the year 1984.

5. The petitioner has come with a case that his grand-father can be said to be the project affected persons but had not applied for getting the certificate under Section 5(c) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short the 'Act') which is generally issued by the Collector. In fact, in the family of the petitioner, no other person was educated and qualified and there was no occasion for the grand-father to

claim the certificate. However, now the grandson i.e. present petitioner became graduate and thereby qualified for being employed against the quota reserved for the nominees for the project affected persons and therefore an application was filed on 14.03.2019 to respondent no.3 seeking certificate, however it has been turned down by the order dated 21.06.2019 stating that it cannot be issued after a delay of more than 30 years. Hence this petition.

6. Heard learned advocate Shri Kulkarni for the petitioner and Shri Kale learned AGP for the State.

7. Learned advocate appearing for the petitioner submits that in fact it is the duty of the Collector to issue certificate under Section 5(c) of the Act. Such duty was not performed by the then Collector and further as per Section 6(b) of the said Act, it shall be the duty of the Project Authority to take measures for the speedy rehabilitation of the affected persons under the overall supervision and guidance of the Collector. The said duty and function has also not been done by the respondent no.3. Under this circumstance, the said application could not have been rejected by the respondent no.3 only on the count of delay. Reliance has been placed on the decision of this Court in **Champavati s/o. Lobhaji Dhokale V/s. The State of Maharashtra and Ors.** (Writ Petition No.11253/2010) decided on 15.12.2010, wherein even after a

gap of 18 years when such certificate was prayed, the writ was issued directing the Collector to issue such certificate. Similar view was taken in **Madhusudhan S/o Madhavrao Bhosle V/s. The State of Maharashtra and Ors.** (Writ Petition No.4051/2018) decided on 23.04.2018. On the basis of these decisions as well as the position of law the learned advocate appearing for the petitioner has prayed for allowing the writ petition.

8. Per contra, the learned AGP strongly opposed the petition and submits that at no earlier point of time either Maroti Kondji Kshirsagar or the present petitioner had approached the respondent no.3 for the issuance of the certificate. In the order dated 21.06.2019 respondent no.3 has referred to certain Government Resolutions, wherein directions have been given that such certificate cannot be issued after 18 years to a grandson and therefore the reasons stated and the explanation that has been given in the affidavit in reply by the Sub-Divisional Officer, Mr. Mahesh Ajabrao Wadadkar of Sub-Division Hadgaon, District Nanded as well as the impugned order is legal and correct and it does not require any interference.

9. At the outset, perusal of the impugned order dated 21.06.2019 gives only one reason for rejection i.e. delay. It is stated that since the certificate has been demanded after about 30 to 40 years it cannot be issued.

We find substance in the submission on behalf of the petitioner that when Section 5 of the Act describes the duties and functions of the Collector and thereby making it mandatory for the Collector to issue certificate to a person who is nominated by the project affected persons in view of Sub-section (c) of Section 5 of the said Act, then there ought to have been reasons in the affidavit in reply on behalf of respondent no.4 as to why such certificate was not issued immediately after acquisition of the land belonging to Maroti Kondji Kshirsagar. If the State Authority is not doing its duty then the question of limitation cannot run against that Authority. The said enactment does not make it mandatory for a project affected person to make an application to the Collector or to any other authority for such issuance of certificate. The further procedure has been laid down in Section 6 of the said Act which prescribes for duty and functions of the Project Authority. Now at this stage the petition is restricted to the certificate to be issued under Section 5(c) of the said Act. After the certificate is issued then the further procedure would come into play.

11. The impugned order refers to certain Government Resolutions which are of the year 1988 and 2007, definitely those government resolutions would have been pointed out to this Court when the earlier two referred decisions were given by this Court, when the respondents are the same

authorities. When similar reason was given i.e. the delay, this Court therefore observed that *“the reason recorded in the order is wholly irrelevant. The issuance of certificate cannot have any bearing with the date of acquisition of the property and merely because the property has been acquired 18 years back, cannot be a ground for rejection of request for issuance of the certificate”*. Further it can be seen that in facts of Writ Petition No.4051/2018 it appears that the grandson was seeking such certificate similar to the present petitioner and then this Court has observed that *“the application tendered by the petitioner for issuance of certificate of project affected persons category has been turned down by the respondent, only on the ground that the application is tendered after 18 years from the date of execution of the land. The application is by the grandson of the person whose land is acquired. The policy prescribed by the State Government does not prohibit issuance of certificate for the benefits of the grandson”*. Thus, taking into consideration all the aspects involved, this Court in those earlier two writ petitions also rejected the contention on behalf of the State that the delay cannot be a ground for rejecting issuance of certificate. We are also of similar view, hence the following order is passed:

ORDER:

- I) The Writ Petition is allowed.

- II) The impugned order dated 21.06.2019 passed by the respondent no.3 refusing to issue certificate of project affected persons to the petitioner is quashed and set aside.
- III) The respondent no.3 is directed to issue certificate in the prescribed form certifying that the petitioner is a project affected persons within a period of four weeks from today.
- IV) Rule is made accordingly absolute.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]