

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5258 OF 2022

Hitesh Raman Rathi and ors __ Vs. __ State of Maharashtra and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M.G.Sarda, Advocate for the petitioners
Mr. N.R.Patil, AGP for respondent Nos. 1 to 4

CORAM : AVINASH G. GHAROTE, J.
DATE : 30/08/2022

1] The order dated 29.8.2022 notes the following position:

“1. Heard Mr. Sarda, learned counsel for the petitioners.

2. The petition challenges the order dated 8.7.2022 (pg. 16) whereby the application under Section 93 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 filed by the petitioner has been rejected (pgs.18 and 19). The only ground urged by Mr. Sarda, learned counsel for the petitioners is that since the notification under Section 11(1)(A) was dated 13.12.2012 and the one under Section 13(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereinafter referred as “the Act of 1999”) was dated 13.7.2013, the sale deed dated 30.4.2014 in favour of the petitioners, would not be affected by Section 12(1) of the Act of 1999. Since, no action as contemplated by Section 13(3) of the Act of 1999 was taken and the acquisition was withdrawn by the order of the Collector dated 9.7.2018 (pg.87), stress is laid upon the language of Section 12(1) of the Act of 1999 which contemplates that no agricultural land in the villages or areas specified in the notification under Section 11 shall, after publication of the notification in the Official Gazette be transferred, would mean that the prohibition is related only to agricultural lands and since the land of the petitioner stood already

converted to non agricultural land as a Ginning and Pressing Factory was running therefrom the prohibition would not be attracted.

3. Mr. Patil, learned AGP for respondent nos.1 to 4, submits that the contention would be incorrect for the reason that the expression “no agricultural land or areas specified in the notification” cannot be restricted to the agricultural land but the word “areas” would mean all the areas irrespective of the holdings of the areas listed in the notification under Section 11 and therefore, whether the areas under the notification is agricultural, non-agricultural, Government, Abadai or any other class occupancy of land that would have no bearing whatsoever on the applicability of Section 12 of the aforesaid Act.

4. Mr. Sarda, learned counsel for the petitioners seeks a day's time to place judgments on record, considering which, list the matter tomorrow i.e. on 30.8.2022.”

2] Today, in continuation to the order dated 29.8.2022, Mr. Sarda, learned counsel for the petitioner has not been able to place on record any judgment elucidating on the question recorded above.

3] The entire controversy rests on the expression, “no agricultural lands in the villages or areas specified in the notification” as occurring in the Section 12(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (in short “Act of 1999”). For appreciating the aforesaid expression, it is necessary to consider the applicability of the Act of 1999. Section 1 (4), Section 2 (10), Section 11 (1) and Section 12 (1) of the Act of 1999, being material are reproduced as under.

“Section 1 (4)(a) - It shall apply to all irrigation projects of which the area of the affected zone exceeds 50 Hectares, or the area of the benefited zone exceeds 200 hectares or a gaathan is affected.

(b) It shall also apply to all projects, other than irrigation projects specified in Clause (a), such as industry including industrial estate, atomic energy, university, oil and natural gas, energy, chemical, roads, national park, sanctuary, mines, etc. However, the entire responsibility to execute them and to rehabilitate the project affected persons shall rest with the concerned department of the Government of Maharashtra by entering into an agreement with the concerned project authority or body.

.....

Section 2 (10) - “project” means,—

(a) an irrigation project, that is to say, the construction, extension, improvement or development or any work for the supply of water for the purpose of irrigation;

(b) atomic energy and power project, that is to say, construction, extension, improvement or development of any work for the production or supply of electricity or any work conducive to electrical development;

(c) a public utility project, that is to say, any work for construction, extension, improvement or development of public utility including roads, other than irrigation project and power project;

(d) National Park and Sanctuary declared under the provisions of the Wild Life Protection Act, 1972;

(e) an industrial project, that is to say, setting up of production, distribution or service industry of providing any service, in relation to them and includes an Industrial Estate;

(f) an university project, that is to say, setting up of any university or any teaching, training institution;

(g) a chemical project, that is to say, extraction, production and processing of chemicals;

(h) a mine project, that is to say, extraction of any mineral from the bed of the earth or river bed;

(i) any composite project of any of the two or more such projects;

and includes any work of construction, extension, improvement or development which is incidental or supplemental to the execution of a project, such as construction of pump house, lift irrigation scheme, colony, etc., and which results in rendering the holders or occupants of land, which may be used for such project, as affected persons and in respect of which a notification is issued under section 11;

Section 11(1) - In respect of a project to which this Act applies, the Commissioner of the revenue division, in which the entire or major part of the project lies, shall by notification in the Official Gazette—

(a) specify the village, or areas, if any, which are likely to be in the affected or benefited zone of such project;

(b) specify, provisionally the area of holding in such villages or areas if any, to which restriction specified in section 12 shall apply.”

Section 12 (1) Notwithstanding anything contained in any law for the time being in force, no agricultural land in the villages or areas specified in the notification under Section 11 shall, after publication of the notification in the Official Gazette, and until Collector makes a declaration to the effect that no further land in the benefited zone of any particular village or area therefrom is required for the purpose of this Act, be—

(a) transferred whether by way of sale (including sale in execution of a decree of Civil Court or of an award or order of any other competent authority) or by way of gift, exchange, lease or otherwise;

(b) sub-divided (including sub-division by a decree or order of any Court or any other competent authority); or

(c) partitioned (including partition by a decree or order of any Court or any other competent authority);

(d) converted to non-agricultural purpose; or

(e) improved by making substantial additions and alternations, except with the permission in writing of the Commissioner.

4] A perusal of Section 4 of the Act of 1999 would indicate that the Act is applicable not only to irrigation projects, but also to other projects as enumerated in Section 4 (b) of the Act of 1999. This is further fortified by Section 2 (10) of the Act of 1999, which defines what a “project” means. What is also material to note is that Section 11(1)(a) of the Act of 1999 requires the notification under Section 11(1) of the Act of 1999 to specify the villages or areas, if any, which are likely to be in the affected or benefited zone of such projects. Section 11(1)(a) of the Act of 1999 does not say that the notification would only include agricultural lands and no other lands. The provisions of Section 12(1) of the Act of 1999 have therefore to be read in consonance with the language of Section 11(1)(a) of the Act of 1999, for the reason that Section 12(1) of the Act of 1999 specifically refers to the villages or areas specified in the notification under Section 11 of the Act of 1999. Section 11 (1)(a) of the Act of 1999 does not restrict the notification, only to agricultural lands, but to any lands in the village or areas specified in the notification. Thus by necessary implication, when Section 12(1) of the Act

of 1999 speaks about the notification under Section 11 of the Act of 1999, the same has to be construed in light of what is mentioned in Section 11(1) of the Act of 1999, which does not restrict the notification to only agricultural lands. It is worthwhile to remember that the affected zone in relation to a project may not always include only agricultural land, but may also include non-agricultural or residential land, or lands of other categories also, as the Act does not contain any restrictions, regarding its provisions being not applicable to any non-agricultural, residential or other nature of lands. The restriction therefore as contained in Section 12(1)(a) to (e) of the Act of 1999 has to be given a meaningful expression so as to make it workable and when as indicated above, Section 12(1) of the Act of 1999 refers to the notification under Section 11 of the Act of 1999, which does not put any restriction regarding the affected area being only agricultural land, the language of Section 12(1) of the Act of 1999 as enumerated above, cannot be held to mean that the restrictions contained therein would only be applicable to agricultural lands in the notification under Section 11(1) of the Act of 1999. Putting such an interpretation on Section 12(1) of the Act of 1999 would well nigh render the implementation of the project itself unworkable or redundant, which cannot be held to be the intention of the legislature in enacting the restrictions as contained in Section 12(1)(a) to (e) of the Act of 1999, as they are

meant for workability and implementation of the project and not otherwise.

5] I am, therefore, unable to accede to the contention that Section 12 of the Act of 1999, lays an embargo only on the transfer of agricultural land and not on the entire land whatever be its category which is affected by the project, for taking such a view would render the prohibition under Section 12 (1) (a) to (e) of the said Act illusory. I therefore do not see any reason to interfere in the impugned order dated 8.7.2022. The petition is therefore without merits and is accordingly rejected.

JUDGE

Rvjalit