

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

WRIT PETITION NO. 6945 OF 2023

Dhondiram s/o Bhikaji Sonawane, ... **Petitioner**
Age 53 years, Occu: Agri.
R/o At Post -Chikatgaon, Tq. Vaijapur
Dist. Aurangabad

VERSUS

1. The State of Maharashtra,
Through-Secretary, Ordinary
Administration Department, Mantralay,
Mumbai 32
2. Under Secretary, ... **Respondents**
Forest and Revenue Department,
Maharashtra, State, Mantralaya,
Mumbai- 32
3. The Collector,
Collectorate Office, Aurangabad
4. The Deputy Collector or Special Land
Acquisition Officer, Special Land
Acquisition Office, Collectorate,
Aurangabad
5. The District Rehabilitation Officer,
Rehabilitation Office, Aurangabad

Mr. Kalyan E. Shinde, Advocate for the petitioner
Mr. P. K. Lakhotiya, AGP for respondent-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 3rd July, 2023

PRONOUNCED ON : 12th July, 2023

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

1. Rule. Rule made returnable forthwith. With consent of both parties, the petition is heard finally at the stage of admission.

2. By the present petition, the petitioner, claiming to be a project affected person, is seeking directions for issuance of project affected persons certificate and prays to quash and set aside the order dated 16.12.2020 whereby respondent No.5 rejected his application for issuance of such certificate.

3. Heard Mr. Kalyan E. Shinde, the learned Counsel appearing for the petitioner and Mr. P. K. Lakhotiya, the learned AGP for respondents-State.

4. The learned counsel for the Petitioner canvassed that the Petitioner's land bearing Gat No. 49 admeasuring 1 H 84 R is acquired by the respondents authorities for public project i.e., construction of percolation tank in pursuance of the notification dated 06.08.2003 published under section 4 of the Land Acquisition Act, 1894. Respondent No.4 passed final award dated 20.01.2005 and determined appropriate compensation, which has been duly paid to the petitioner in accordance with law. Therefore, the petitioner falls within the ambit of project affected person defined under Sec. 2 (10) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short 'the PAP Act').

5. On 19.10.2018, the petitioner submitted an application with Respondent No.5 along with necessary documents including dependency certificate, certificates about acquisition of land, residence certificate, consent letter, report of Talathi, 7/12 extract, certificate of total land in form-8 and prayed for issuance of Project Affected Persons Certificate for education and Government job in favour of his son Kamlesh Dhondiram Sonawane. However, no such certificate was granted till December, 2022. Therefore, the petitioner submitted an application with Respondent No.5 for issuance of certified copy of the application and order, if any, passed on his application. However, in the month of January, 2023, he was served with impugned order dated 16.12.2020 refusing to issue PAP Certificate stating that the Government Resolution dated 21.01.1980 and Circular dated 12.09.2002 does not provide to grant of PAP certificate, if the land is acquired for construction of percolation tank.

6. The learned Advocate appearing for the petitioner canvassed that, provisions of the PAP Act does not exclude the petitioner from the definition of Project Affected Person, if the land is acquired for construction of percolation/Village Tank. Clause (C) of the Government Resolution dated 21.01.1980 provides that, if the land acquired partly or fully for irrigation, electricity or any other project by the Central or State Government, the person whose land has been acquired is said to

be a project affected person. The Government Circular dated 12.09.2002 provides for issuance of PAP Certificate in favour of a person whose land acquired for percolation tank. However, on 16.12.2020, Respondent No.5 passed the impugned order contrary to G.R. dated 21.01.1980 and Circular dated 19.09.2002.

7. In support of his submission, the learned counsel for the petitioner placed reliance on the decision of this Court in **Writ Petition No. 3112/2017 dated 16.06.2021 (Shaikh Vajir Shaikh Ahmed Vs. The State of Maharashtra and others)**, order dated 05.02.2010 passed in **Writ Petition No 303 of 2010 and Judgment dt. 22.03.2020 in Writ Petition No.2338 of 2010 (Balbhim Bapurao Dhoble Vs. State of Maharashtra)**. In these matters it has been held that for entitlement of PAP certificate, a land is necessarily to be acquired for the public purpose.

8. In the case of **Shaikh Vajir Shaikh Ahmed (Supra)**, this Court has observed in paragraph Nos. 8, 9 and 10 as under:

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 *anala*, 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 disentitle 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 any thing 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."

9. In the case in hand, Respondent Nos. 3 to 5 have not disputed about acquisition of Petitioner's agricultural land Gut No.49 admeasuring 1.89 H R village Chikatgaon for construction of percolation tank under notification dated 06.08.2003 published under section 4 of the Land Acquisition Act,1894. The Special Land Acquisition Officer passed an Award on 20.01.2005 and determined compensation. On 19.10.2018, the petitioner applied for issuance of PAP certificate with accompanying required documents, however, under impugned order dated 16.12.2020, Respondent No.5 declined to issue PAP certificate because the land of the petitioner is acquired for percolation tank, which is not covered under G. R. dated 21.01.1980 and Circular dated 12.09.2002 for issuance of PAP certificate.

10. Section 2(10) (a) of Maharashtra Project Affected Persons Rehabilitation Act,1999 provides that, "project" means 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. Section 5 of the Act casts duty upon Respondent No.3 - Collector to co-ordinate and supervise the work of rehabilitation of affected person in his district and shall ensure for speedy rehabilitation of the affected persons, so also, to issue a certificate to a person who is nominated by the project affected person for being employed against the quota reserved for the same. The Village/Percolation Tank certainly falls within the meaning of project under section 2 (10) of the PAP Act. It is needless to mention here that, any G. R. or Circular which may be issued by the State Government will not have overriding effect contrary to the provisions of the Act. Clause (C) of the Government Resolution dated 21.01.1980 clearly speaks that, if Central or State Government acquires land either partly or fully for irrigation, electricity or any other project, the person whose land is acquired is a project affected person. The Government Circular dated 12.09.2002 provides for issuance of PAP Certificate in favour of the persons whose land is acquired for percolation Tank. The said GR and Circular does not preclude any person from getting a PAP Certificate, if his land is acquired for construction of percolation tank. In cited judgments/order passed, this Court has time and again concluded that for entitlement of issuance of PAP certificate, a land is necessarily to be acquired for the public

purpose. Since the land of the petitioner is acquired for construction of public project, which is for a public purpose, the petitioner is certainly entitled for getting PAP certificate for education and employment of his son. However, Respondent No.5 misconstrued the provisions of the Act as well as G. R. dated 21.01.1980 and Circular dated 12.09.2002 and passed the impugned order, which is illegal, bad in law and deserve to be quashed and set aside.

11. In view of above discussion, this petition is allowed with the following directions :-

ORDER

- (1) The impugned order dated 16.12.2020 passed by respondent No.5 is hereby quashed and set aside.
- (2) The Respondents/Competent Authority are hereby directed to issue Project Affected Persons Certificate in favour of the son of the petitioner within a period of four weeks from today.
- (3) Rule is made absolute accordingly.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan