

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO.3511 OF 2023

LAXMAN GOVIND KAMBLE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS CONCERN SECRETARY
AND OTHERS

Mr.G.J.Karne, Advocate for the Petitioner.
Mr.S.B.Yawalkar, AGP for Respondent Nos. 1 to 5.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.)

DATE : AUGUST 17, 2023

PER COURT :

1. Leave to correct the age of the Petitioner as 53 years.
Correction be carried out forthwith.

2. The learned Advocate for the Petitioner points out that there is a tradition in the Rural areas, from which the Petitioner hails, that the grand father's name is given to the grand son so that the memory of the grand father continues to live on. That is how the son of the Petitioner is named as Govind and the father of the Petitioner is Laxman s/o Govind.

3. The learned Advocate for the Petitioner submits that though he has amended the Petition to challenge the legality and validity of the GR dated 17.04.2006, by which a person ought to lose 100 percent of his land in any public project for being entitled for the Project Affected Person (PAP) certificate, he is giving up the said challenge since he is relying upon the GR dated 03.05.2010. As such, we permit the Petitioner to withdraw his challenge to the extent of the GR dated 17.04.2006. If in future, an occasion arises and if he is desirous of challenging the same, the challenge would be considered as and when said occasion may arise. The Petitioner Laxman desirous to get a PAP certificate in favour of his son Govind.

4. It is undisputed that the GR dated 03.05.2020 leads to the withdrawal of the earlier condition that, a land owner must lose 100% of his land in a public project for obtaining a PAP certificate. This condition was introduced by the earlier GR dated 17.04.2006. Apparently the Government realized the hardships that were created for the land losers by the said condition and, hence, the GR dated 03.05.2010 was introduced so that those persons, who lose their lands

and are qualified by the GR dated 03.05.2010, for the PAP certificate.

5. The learned AGP has vehemently opposed this petition and prays that the petition be dismissed with heavy costs. His contention is that the Petitioner lost 1 Hectre and 40R land, which was jointly owned by the Petitioner Laxman and his biological brother Rama. Consequentially, both these brothers are left with 0 hectre 01R (around 1089 Sq.Ft.).

6. The learned Advocate for the Petitioner has stated on solemn affirmation that his brother Rama has given a No Objection to the Petitioner to receive the PAP certificate in favour of his son Govind, who is aged 23 years.

7. The learned AGP submits that since the land of the Petitioner was acquired much earlier and the award was pronounced on 06.12.2008, the new GR dated 03.05.2010 providing for a PAP certificate notwithstanding a person has not lost 100% land in the project, would not be applicable to his case.

8. In **Tukaram Waghmare Vs. The State of Maharashtra and others, WP No.1315/2020**, this Court has passed an order on 18.08.2021 directing the Respondents to consider the case of the Petitioner as per the GR dated 03.05.2010. The land to the extent of 17R was acquired in a public project in 2004 and the application filed by the land loser seeking PAP certificate was tendered on 18.03.2016. This Court held that the Petitioner was eligible to seek a PAP certificate for the land lost in 2004 and, hence, his case was directed to be considered.

9. In the instant case, the Petitioners moved an application for seeking the PAP certificate for the first time on 20.09.2019. On the date of application for his PAP certificate, the GR dated 03.05.2010 was applicable. The policy of the State Government is still not clear as to whether a candidate would be eligible for the PAP certificate, if he applies for the first time after the GR dated 03.05.2010 is introduced, notwithstanding that he lost his land prior to the introduction of the said GR.

10. The District Collector, Nanded had addressed the Deputy

Secretary, Revenue and Forest Department, Assistance and Rehabilitation, Mantralaya, in connection with the application of the Petitioner dated 20.09.2019. He had sought assistance from the said Authority as to whether the Petitioner could be granted a PAP certificate keeping in view that he has applied for the first time after the introduction of the GR dated 03.05.2010, on 20.09.2019. The Deputy Secretary has replied on 25.11.2022, concluding that the application cannot be entertained.

11. We have noticed the peculiar facts in this case. Out of the total 1 hectre 41 R land, the Petitioner and his brother have lost 1 hectre 40R land. 1R land is left jointly in the name of the 2 brothers. Around 500 Sq.Ft. of land is available to each of them. The Petitioner has specifically averred in the Petition that as that portion of the land could hardly be put to any agricultural use and as he has lost more than 99.99% of his land, it would be of no purpose worthy of cultivation. Now, he has left the said village and relocated himself elsewhere. Ever since, he has not indulged in agricultural activities in that 500 Sq.ft. land.

12. We are of the view that a pedantic approach in the peculiar

facts of this case cannot be taken. A pragmatic approach will have to be adopted. The Petitioner has lost more than 99.99% of his land. That 500 Sq.Ft of land is already given up by him and he is not residing in the said village Awarala (wrongly mentioned as Awara in the Petition) and is presently residing in village Akharga, Tal.Mukhed, Dist. Nanded. In the light of the above, we conclude that the Petitioner would have been eligible for the PAP certificate even as per the earlier GR dated 17.04.2006 and since he has made an application for the first time for seeking a PAP certificate on 20.09.2019, when the GR dated 03.05.2010 was in force, we are giving the benefit to the Petitioner in the peculiar facts and circumstances of this case.

13. In view of the above, this petition is partly allowed. The impugned communication dated 02.12.2022 is quashed and set aside. The Petitioner would tender an affidavit of his biological brother Ram Govind Kamble to the District Collector declaring that he has no objection if the PAP certificate is issued in favour of the Petitioner. After such affidavit is tendered, the PAP certificate shall be issued to the Petitioner by completing the requisite formalities.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)