

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

WRIT PETITION NO. 585 OF 2022

Zubair Ahmad Zaheer Ahmad,
Aged about 35 years, Occ. NIL,
R/o. Bada Mohalla, Paras,
Tq. Balapur, Dist. Akola.

...PETITIONER

...VERSUS...

1. The Collector Akola,
Office of the Collector, Akola,
Dist. Akola.
2. The Deputy Collector Akola,
(Rehabilitation Officer),
Office of the Deputy Collector, Akola,
Dist. Akola.
3. The Sub-Divisional Officer,
(Land Acquisition Officer)
Office of the SDO Balapur,
Tq. Balapur, Dist. Akola.

...RESPONDENTS

Mr. A. A. Sayed, Advocate for Petitioner.
Mr. M. K. Pathan, A.G.P for Respondents 1 to 3/State.

CORAM: **ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.**

DATE: **24.03.2023**

JUDGMENT : (PER ROHIT B. DEO, J.)

1. Heard. **Rule.** Rule made returnable forthwith by
consent of the learned counsels for the parties.

2. The petitioner is assailing the order dated 26.11.2021
rendered by respondent 2 – the Deputy Collector, Akola whereby

the petitioner is held not entitled to certificate of Project Affected Person (PAP).

3. Perusal of the order impugned reveals that twin reasons are articulated to justify refusal of the PAP Certificate. The first reason is that the petitioner is a contractor, who purchased the subject land on 31.12.2012 whose family owns agricultural land elsewhere, and therefore, the petitioner is not a displaced person. The other reason given is that the agricultural land which is acquired is not the only source of livelihood for the petitioner, and therefore, the petitioner is not entitled to rehabilitation benefits under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013).

4. It is not in dispute that the petitioner was the owner of the land admeasuring 0.36 R situated at Mouza Paras assigned Gut 1185 having purchased the same in 2012. It is further not in dispute that the acquisition proceedings are initiated on 08.09.2015 since the said land was required for the project of construction of Railway siding for the Paras Thermal Power Station.

5. We have perused the affidavits in response which are on the lines of the reasons spelt out in the order impugned.

6. We have heard the learned Counsel for the petitioner Mr. A. A. Sayed and the learned Assistant Government Pleader Mr. M. K. Pathan, and with their able assistance the statutory scheme is examined.

7. Section 3(c) of the Act of 2013 defines “Affected Family” thus,

“3(c) “affected family” includes—

- (i) a family whose land or other immovable property has been acquired;*
- (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;*
- (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;*
- (iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and*

includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

- (v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;*
- (vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;”*

Sub-Section (k) defines “Displaced Family” thus,

“(k) “displaced family” means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area.”

8. Section 31 deals with Rehabilitation and Resettlement Award for **affected families** (emphasize supplied) and provides that the Collector shall pass rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.

9. Second Schedule spells out the elements of Rehabilitation and Resettlement Entitlements for all the **affected families** (both land owners and the families whose livelihood is primarily dependent on land acquired) in addition to those

provided in the First Schedule.

10. We have given anxious consideration to the reasons articulated by the concerned Authority for concluding that the petitioner is not entitled to PAP Certificate. In our considered view, the Authority has proceeded on an erroneous assumption, that the PAP Certificate cannot be issued unless the person whose land is acquired is displaced or the land acquired is the only source of livelihood. We have noted the definition of “Affected Family”. The statutory scheme makes no distinction between a person whose only land is acquired and a person whose one of the several lands, is acquired. Any person whose land is acquired is treated as an affected person or family. The latter part of the definition takes within its sweep the persons, who may not be the owner/s of the land acquired but who may be affected by the acquisition of the subject land. Such person may be an agricultural labour or tenant or may fall within the other categories referred to in Sub-Section (c) of Section 3 of the Act of 2013.

11. The learned Assistant Government Pleader Mr. M. K. Pathan has fairly invited our attention to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014

(Rules), and in particular to Rules 15 to 17. Conjoint reading of the Rules reveal that the emphasize is on the affected family.

12. We need not delve deeper in the Rules which are framed in exercise of powers conferred by Sub-Sections (1) and (2) of Section 109 of the Act of 2013, inasmuch as the grievance which we are required to consider is restricted to the refusal of the Authority to issue PAP Certificate. We have briefly referred to the Rules only in view of the stand of the respondents in the affidavit in response which relies on the Rules, and in particular on Rule 17. The Rules, like the substantive provisions, do not exclude an affected person from the benefits of rehabilitation on the grounds which are spelt out in the order impugned, apart from the fact that even otherwise Rules cannot dilute the substantive provisions, much less be inconsistent therewith. We, therefore, quash and set aside the order impugned and remit the matter to respondent 2 for passing appropriate order of issuance of PAP Certificate, which may be done within the next four weeks.

13. Rule is made absolute. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)