

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

WRIT PETITION NO. 3075 OF 2022

Ku. Kamini Deepak Khadse, Aged 27
years, Occupation, Nil, R/o Wagholi,
Tah. Amravati, Dist.Amravati.

Petitioner

-Vs.-

1. The Collector, Amravati, Dist.
Amravati.
2. The Deputy Collector
(Land Acquisition Officer), Amravati,
Dist.Amravati.
3. The Deputy Collector, (Rehabilitation
Officer,), Amravati, Dist.Amravati.
4. The Divisional Commissioner,
Amravati.
5. Joint Director of Health Services, (Non
Communicable decease), Mumbai.
6. The Divisional Officer, Maharashtra
Industrial Development Corporation,
Udyog Bhavan, 5th Floor, Civil Lines,
Nagpur -01.

Respondents

Mr.Prashant Shende, counsel for the petitioner
Mr.M.K.Pathan, AGP for respondent Nos.1 to 5.
Mr. Parth L.Sagdeo, counsel for respondent No.6.

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

DATE : 16 MARCH, 2023

ORAL JUDGMENT (Per : Vrushali V.Joshi, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The petitioner claims a certificate from respondent No.1 as Project Affected Person in terms of Maharashtra Project Affected Persons Rehabilitation Act, 1999.

4. The land owned by the grandfather of the petitioner admeasuring 1.62 Hectares of survey No.80, of Mouja Wagholi, tq. and district Amravati was acquired for Maharashtra Industrial Development Corporation Nandgaon Peth, District Amravati vide award dated 20.03.1997 the land was acquired under Section 32 of Maharashtra Industrial Development Act, 1961 (hereinafter referred to as the MIDC Act, 1961), Shri. Deepak Sukhdev Khadse being son of original landholder i.e. Sukhdev Raiban Khadse applied for obtaining Project Affected Certificate in the name of

his daughter Ku.Kamini Deepak Khadse. As per prevailing conditions of Government Resolution, the petitioner was eligible for obtaining certificate of Project Affected Person under Section 4 of the Land Acquisition Act, 1894. (hereinafter referred to as the Acquisition Act, 1894).

5. Being member of Project Affected Family and since no benefit was received, the petitioner applied for post notified by respondent 5 for Project Affected Person for SC category and has been selected for the said post. The respondent 5 asked the petitioner to submit Project Affected Person certificate therefore, father of the petitioner applied on 20.04.2021 before the Deputy Collector (Rehabilitation), Amravati for issuing certificate of Project Affected Person in name of his daughter Kamini Deepak Khadse.

6. The Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereinafter referred to the said Rehabilitation Act, 1999) was enacted for the rehabilitation of person affected by certain project in the State of Maharashtra. According to respondent No.1 said Rehabilitation Act, 1986 was

repealed and Ceiling provisions of Section 28 of the said Rehabilitation Act, 1999. The notification under the provisions of said Rehabilitation Act, 1999 has not been issued regarding affected and benefited zones. Therefore, the present petitioner is not a beneficiary in relation to a project and he is not entitled for benefits of rehabilitation under the provisions of said Rehabilitation Act, 1999.

7. It is admitted fact that the land mentioned in the petition is acquired for Maharashtra Industrial Development Corporation Nandgaon Peth and preferential certificate issued by the Maharashtra Industrial Development Corporation, Nandgaon Peth vide dated 21.07.2011 to the father of the petitioner that is Deepak Sukhdeorao Khadse.

8. The Divisional Commissioner, Amravati Division, by letter dated 20.05.2021 submitted proposal before the Government and thereby sought guidance. The Government by letter dated 20.09.2021 had informed to the Divisional Commissioner, Amravati that the land of late Sukhdeo Khadse was acquired for Maharashtra Industrial Development Corporation as

per the provisions of said Rehabilitation Act, 1986. The person is eligible for obtaining certificate of project affected person as per prevailing terms and conditions of the Government Resolution at the time of issuance of notification under the provisions of Section 4 of the said Acquisition Act, 1894. The land of late Sukhdeo Raibhan Khadse was acquired by adopting procedure of the said M.I.D. Act 1961 by considering this fact, appropriate procedure, would be adopted as per directions issued by Hon'ble High Court vide order dated 16.04.2016 in Writ Petition No.1531 of 2016. However, the land of late Sukhdeo Raibhan Khadse was acquired for Maharashtra Industrial Development Corporation hence, provisions of said Rehabilitation Act, 1984 would not be applicable and as per the guidelines issued by the Government vide resolution dated 21.01.1980, 17.04.2006 and 03.05.2010, the applicant and his other members/heirs /nominees are not permissible to obtain any benefit on subject of service.

9. The petitioner has made submission that the case of the petitioner is covered by the judgment passed by this Court in Writ Petition No.1531 of 2015, wherein the Court has observed in paragraph No. 5,6,7,8 as follows :-

“5. Learned A.G.P appearing for respondent nos. 1 to 3 and Shri Agnihotri, learned counsel appearing for respondent no.4 point out that the acquisition here is in terms of provisions of Maharashtra Industrial Development Corporation Act, 1968. The MIDC which has to develop industrial area has got its own Rules and Policy, which provide for grant of preference to dependents of persons whose lands are acquired for establishment of an industrial area. He states that there is no agreement between the State Government and MIDC as contemplated by Section 1[4][b] of the 1999 Act, and hence, provisions of 1999 Act are not attracted. Learned A.G.P. also points out that if the provisions are attracted, a notification that land falls either under affected zone or then in benefit zone under section 11 or 13 as the case may be, has to be issued. No such notification has been issued. She invites our attention to later part of the Section 1[4][b] to urge that in such a situation, the responsibility to rehabilitate the persons whose lands are acquired rests solely on respondent no.4 and State Government is not concerned with it”.

“6. The provisions of 1999 Act vide its Section 1 state that it applies to all irrigation project if the area of affected zone there in exceeds 50 hectares or the the area of benefited zone exceeds 200 hectares or a Gauthan is affected. It is not in dispute that this is not an irrigation project. Sub-clause[b] however, speaks of all projects. It excludes the irrigation projects which are specified in Section 1[4][a]. Thus, all projects not covered under Section 1[4][a] are subjected to arrangement stipulated in Section 1[4][b], it includes Industrial society also. Therefore, it is apparent that the acquisition by the respondent no.1 for respondent no.4 MIDC is covered under Section 1[4][b] of 1999 Act, and it is a project as stipulated therein”.

7. The fact that land of petitioner is acquired, is not in dispute. It is therefore, not relevant to find out whether the land falls under affected zone or benefit zone. The concepts are relevant when land is acquired for irrigation project and is actually submerged. Those, whose lands are acquired and are submerged, are required to be rehabilitated and for that certain reservation is provided in benefit zone, therefore, under Section 12 there is a restriction to transfer of land when project is under construction. Here as the land of petitioner is acquired for MIDC, it was for the respondents to point out whether those whose lands were acquired are to be rehabilitated in adjacent portions and hence, there was a provision of benefit zone. Admittedly in State of Maharashtra, when lands are acquired for MIDC no such arrangement for rehabilitation is made in adjacent area, and therefore, there is no notification declaring lands as falling in benefit zone. Consequently, one does not get declarations under Section 11 declaring land to be acquired for MIDC, as falling in affected zone or then under Section 13, as falling in benefit zone.

8. However, petitioner is not concerned with all these niceties. The moment it is shown that his land is acquired, he is entitled to grant of certificate as project affected person, and reasons put forth for not issuing that certificate are irrelevant. Whether there exists agreement between the State Government and MIDC or whether the responsibility is cast on the shoulders of MIDC to rehabilitate or to provide employment to petitioner is again an irrelevant aspect at this stage. Once the petitioner is given a certificate as Project Affected Person, the petitioner has to apply to the competent authority for grant of benefit in accordance with law, and at that juncture all these factors can be looked into”.

7. As the case of the petitioner is squarely covered and in view of the observations made by this Court, in the writ petition supra, this writ petition is allowed as per the prayer clauses (a)(b) and (c).

8. Rule is made absolute in the above terms. No order as to costs.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)