

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

WRIT PETITION NO.3612 of 2021

(Jeevak Aushadhi Arogya Shetki Sanshodan Sanstha, through its Secretary and another.
vs.

The State of Maharashtra, through its Principal Secretary, Department of Water
Conservation(Gosekhurd Project), Mantralaya, Mumbai-32 and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.C. Dharmadhikari, Advocate for petitioners.
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 1 to 4.
Ms M. V. Babulkar, Advocate h/f M.A.Kadu, Advocate for respondent nos. 5 and 6
Shri H.N.Verma, Advocate for respondent nos. 7 and 8.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 12th JULY, 2023

In the light of the notice for final disposal issued earlier we have
heard the learned counsel for the parties at length.

2. The petitioner no.1 is a Society registered under the
Maharashtra Public Trusts Act, 1950 and it is running the petitioner
no.2-Primary School at Salebardi, District Bhandara. According to the
petitioners, the said School is being conducted since the year 1987.
Village Salebardi was affected by the Gosekhurd project and hence it
was resolved to rehabilitate the said village by shifting the villagers to
Shahapur/Maregaon at District Bhandara. According to the
petitioners, steps were taken to rehabilitate the said Primary School at
Shahapur/Maregaon and hence there was a communication entered
into in that regard. On 09.09.2014 the Executive Engineer, Gosekhurd

Rehabilitation Division, recommended the grant of requisite permission under Section 10(3) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (for short, the Act of 1986) and the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short, the Act of 1999). Additional construction of rooms for the school at the village of rehabilitation was also proposed. According to the petitioners despite construction of the new school building, the same was not being handed over to the petitioners. Hence the present writ petition has been filed seeking a direction that the school building constructed at Mouza-Shahapur/Maregaon be handed over to the petitioners in lieu of rehabilitation of the Primary School that was being run at Salebardi. During pendency of the writ petition resolutions were passed by the Zilla Parishad proposing to run its own school at the newly constructed building and the resolutions in that regard dated 17.02.2023, 22.02.2023 and 24.02.2023 are also under challenge. In addition, the petitioners have also challenged the communication dated 30.03.2021 that has been issued by the Additional Collector (Rehabilitation) by which permission has been refused to start the said School on the principle of rehabilitation.

3. Shri A.C.Dharmadhikari, learned counsel for the petitioners referred to the Circular dated 02.02.1987 to submit that various civil facilities are required to be provided when a village is rehabilitated under the Act of 1986 and the Act of 1999. Since the petitioner no.2 - School was being run at Salebardi and the said village was required

to be rehabilitated, the petitioners were entitled to necessary permission to shift the said School at Shahapur/Maregaon and were also entitled to allotment of the new school building therein. The rights of the petitioners were recognized by the Executive Engineer, Gosekhurd Rehabilitation Divisional Squad-respondent no.6 vide communication 09.09.2014 in the context of Section 10(3) of the Act of 1986. The petitioners had made a request to the Education Officer (Primary), Zilla Parishad, Bhandara on 22.07.2020 but thereafter no cognizance of the same was being taken. The Executive Engineer had also communicated his no objection to grant of the new school building on rental basis to the petitioners vide communication dated 28.06.2022 and the petitioners by their communication dated 08.09.2022 had expressed their willingness to run the said School on rental basis. The resolutions passed by the Zilla Parishad being contrary to Section 10(3) of the Act of 1986, they were liable to be set aside. Since the Primary School from Classes 1st to 4th was being run at Salebardi, the petitioner no.2-School ought to be granted such permission to run the said School at Shahapur/Maregaon. It was thus submitted that the petitioners be granted relief as prayed for in the writ petition.

4. Shri H. N.Verma, learned counsel for the Zilla Parishad - respondent nos. 7 and 8 opposed the aforesaid submissions. He submitted that the property of the petitioners was not affected by the Gosekhurd project and hence there was no right in the petitioners to

seek rehabilitation. The school building at Salebardi had not been acquired pursuant to the award dated 01.07.2009 and hence there was no right in the petitioners to claim the aforesaid relief. It was further submitted that in view of the demand made and the resolutions passed by the Gram Panchayat objecting to handing over the school building to the petitioners, the Zilla Parishad resolved to run its school from the newly constructed building. In absence of any right in favour of the petitioners, they were not entitled for any relief whatsoever. The Government Resolution dated 28.07.2021 was not applicable in these facts.

Shri A.S.Fulzele, learned Additional Government Pleader for the respondent nos. 1 to 4 also opposed the prayers made in the writ petition. He referred to the affidavit in reply filed by the respondent nos. 3 and 4 to submit that the School building at Salebardi had not been acquired and hence it was not affected by the Gosekhurd project. The Primary School was found to be running in a rented house and this was another reason that the petitioners were not entitled to claim right to the school at village Shahapur/Maregoan.

In reply, it was submitted by the learned counsel for the petitioners that the petitioners were not seeking ownership over the newly constructed school building. They only desired to run a School on rental basis at village Shahapur/Maregaon.

5. We have heard the learned counsel for the parties and we have perused the documents on record. It is seen that the property where

the petitioners are running their Primary School at Salebardi has not been acquired by the Land Acquisition Officer. Hence in the final award dated 01.07.2009 there is no reference to the aforesaid property being acquired. Since the school building was not acquired nor was any amount of compensation received by it from the State Government, there does not appear any right with the petitioners to claim that the School is liable to be rehabilitated at village Shahapur/ Maregaon under the Act of 1986 and the Act of 1999. It is further seen that the communications issued by the Executive Engineer, Gosekhurd Rehabilitation are only by way of recommendations and there is no specific order passed recognizing the right of the petitioner no.2-School to be entitled to the benefit of rehabilitation under the Act of 1986 and the Act of 1999. Such right has to be recognised by the authorities under the Act of 1986 and 1999 which includes the Collector. We therefore do not find any legal right in favour of the petitioners to seek allotment of the newly constructed school building in its favour for running the Primary School on the premise that the Primary School being run at Salebardi was affected by the Gosekhurd project.

6. We further find from the material placed on record by the learned counsel for the Zilla Parishad that the Primary School run by the petitioner no.2 at Salebardi is still functioning and that the entire village has not been re-located from Salebardi. Out of about 205 families, only 60 families have been rehabilitated at Mouza-Shahapur/

Maregaon while 145 families continue to reside at village Salebardi-Pandhi. This would be another reason to hold that there is absence of any legal right in favour of the petitioners to relocate.

7. On the request made by the Gram Panchayat, the Zilla Parishad has resolved to start its own school at the newly constructed school building. We do not find that there is any illegality in the Zilla Parishad passing such resolution for starting its own school at Shahapur/Maregaon since it is one of the statutory duties of the Zilla Parishad to provide facilities for imparting education. It is informed that in the Academic Year 2023-24 the Zilla Parishad Primary School has started functioning and this would be another reason to hold absence of any case being made out by the petitioners for grant of the reliefs as prayed for in the writ petition.

8. Thus, in absence of there being any legal right with the petitioners to seek the prayer for rehabilitation as well as entitlement to allotment of the school building at Shahapur/Maregaon on rent, the prayers made in the writ petition cannot be granted. The writ petition is thus dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)