

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

WRIT PETITION (WP) NO. 5748/2010

1. Kisan Mahadu Kanhekar,
aged 65 years,
 2. Vitthal Rama Kanhekar,
aged 56 years,

(No. 2 through his duly constituted
attorney Prakash Rama Kanhekar,
petitioner No. 2)
 3. Prakash Rama Kanhekar,
aged 45 years,
 4. Laxman Lobhaji Kanhekar, aged 50 years,
all agriculturists by profession,
residents of Isapur, tahsil Pusad,
district Yavatmal.
- PETITIONER(S)

// VERSUS //

1. State of Maharashtra,
through Secretary to the Govt.
of Maharashtra in the Deptt.
of Revenue and Forests, Mantralaya,
Mumbai – 400 032.
 2. The Collector, Yavatmal,
district Yavatmal.
 3. District Fisheries Development Officer,
near Collector Office/Administrative Bldg;
Yavatmal.
 4. District Rehabilitation Officer,
Yavatmal. Collector Compound,
Yavatmal.
- RESPONDENT(S)

Mr. S.T. Harkare, Advocate for the petitioners
Ms. Shamsi Haidar, AGP for the respondents

CORAM : A.S. KILOR, J.

DATED : 15/06/2023

ORAL JUDGMENT :

Heard the learned Counsel for the parties.

2. The District Rehabilitation Officer, Yavatmal vide order dated 30.10.2010 refused to grant certificate as Project Affected to the petitioners, hence, this petition.

3. The District Rehabilitation Officer while denying issuance of aforesaid certificate applied the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short the “Act of 1999”) and thereby held that as the lands of the petitioners were acquired for the project affecting fifty hectares whereas, as per the provisions of the Act of 1999 in case of more than two hundred hectares land, such certificate can be issued.

4. The other reason for the denial was that, the petitioners do not fall within the definition of displaced person or affected person.

5. Thus, whole controversy restricts only to following two questions, namely:-

(I) Whether the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 apply to this case ?

(II) Whether the petitioners fall in the category of projected affected/displaced person under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short the “Act of 1976”) ?

6. On perusal of the record, following admitted facts emerged, namely:

(a) The lands owned by the petitioners i.e. Field Survey Nos. 38/1-B, 38/K, 38/1 and 38/1-A were acquired for the purpose of the National Fish Seed Farm.

(b) The language of Notification dated 14.08.1980 issued under Section 4 of the Land Acquisition Act, 1894 (for short the “Act of 1894”) says that the said lands were needed for fish farm at Isapur that is for public purpose.

(c) Accordingly, the Award was passed on 31.01.1984.

(d) On the date of acquisition of the lands in question, the Maharashtra Resettlement of Project Displaced Persons Act, 1976 was in force and subsequently, it was repealed and the Maharashtra Project Affected Persons Rehabilitation Act, 1986 was enacted and thereafter, the Maharashtra Project Affected Persons Rehabilitation Act, 1999 was enacted.

From the above referred facts, the first question can be answered in negative that the provisions of the Act of 1999 will not apply to the present case in view of the saving clauses of Section 26(b) of the Act of 1986 and Section 28(b) of the Act of 1999. Hence, the condition of more than two hundred hectares land, will not apply to this case.

7. I am moving now to the question whether the petitioners fall under the definition of “displaced person”. For this purpose, the definition of the “displaced person” is relevant. The definitions of “displaced person” and “project” is given under Sections 2(7) and 2(12) respectively under the Act of 1976, which read thus:-

“2(7). “displaced person” means any occupant who, on account of the acquisition of his land in the affected zone [including land in the gaothan (hereinafter referred to as “the old gaothan”)] for the purposes of a Project has been displaced from such land, or any agricultural labourer.

“2(12). “Project” means the construction, extension or improvement of any work for the supply of water for the purposes of irrigation (hereinafter called an irrigation project) or for the production and supply of electricity or of any work conducive to electrical development (hereinafter called a power project), and includes any other work of public utility the construction, extension, improvement or development of which results in displacing persons from lands which may be use for such work.”

Bare perusal of the definition of “displaced person”, shows that the “displaced person” means any occupant who on account of the acquisition

of his land in the affected zone including the land in gavthan for the purposes of a project has been displaced from such land or any agricultural labourer.

8. Further, the “project” means the construction, extension or improvement of any work for the supply of water for the purposes of irrigation or for the production and supply of electricity of any work conducive to electrical development and includes any other work of public utility, the construction, extension, improvement or development of which results in displacing persons from land which may be used for such purpose.

9. In the present matter, the lands were acquired for the construction of fish farm. Therefore, it is necessary to see whether it will fall under the expression “other work of public utility” referred in Section 2(12) of the Act of 1976.

10. The Notification issued under Section 4 of the Land Acquisition Act, 1894 for acquisition of the lands in question categorically sufficiently shows that, the lands in question were needed for public purpose.

11. The Black’s Law Dictionary defines “public purpose” as under:

“public purpose. An action by or at the direction of a government for the benefit of the community as a whole”.

12. At the same time, it defines the meaning of word “public utility” as follows:

“public utility. 1. A company that provides necessary services to the public, such as telephone lines and service, electricity, and water. 2. A person, corporation, or other association that carries on an enterprise for the accommodation of the public, the members of which are entitled as a matter of right to use its facilities.”

Both the meanings of the words “public purpose” and “public utility” depict any project for public benefits.

13. In the present matter, the Notification of Section 4 of the Act of 1894 itself mentions that the lands in question were required to be acquired for public purpose and accordingly vide order dated 31.01.1984, it was acquired for the said purpose i.e. for the construction of fish farm.

14. In the circumstances, as the construction of fish farm falls under the definition of “public purpose” and “public utility” the findings recorded by the District Rehabilitation Officer that the petitioners are not “displaced persons” is erroneous and contrary to the law. Hence, I pass the following order:

(a) The writ petition is **allowed**.

(b) The order dated 30.10.2010 passed by the District Rehabilitation Officer is thereby is quashed and set aside and the respondents are directed to issue certificates of project affected to the petitioners within a period of one month from today.

15. Rule is made absolute in the aforesaid terms with no order as to costs.

(JUDGE)