

(1997) 11 BOM CK 0066

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 2176 of 1997

Shri Kisan Paraji Nimase and
another

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: Nov. 13, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 4
- Maharashtra Project Affected Persons Rehabilitation Act, 1986 - Section 2(10), 2(2)

Citation: (1998) 3 ALLMR 27 : (1998) 2 BomCR 816

Hon'ble Judges: B.H. Marlapalle, J; A.D. Mane, J

Bench: Division Bench

Advocate: K.G. Gawali, for the Appellant; S.V. Chillarge, A.G.P. and S.T. Shelke, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.D. Mane, J.

This petition arises out of rejection of petitioner's request to issue a certificate as Project Affected person.

2. The petitioner is an agriculturist and he possesses lands situated at village Karjune Khare, Taluka Nagar. The petitioner submits that total 5 acres and 27 gunthas lands out of Survey Nos. 241/3, 241/5, 241/7, 237/2 and 258/14 were acquired for the defence project. The Special Land Acquisition Officer No. 1, Ahmednagar, issued a certificate on 2-6-1997 stating that the petitioner's land was acquired for K.K. Ranges Project. The petitioner, relying upon the said certificate, Exhibit "A" annexed with the petition, submits that the respondent No. 3 -District Rehabilitation Officer - is empowered to issue the certificate as Project Affected

person. Petitioner's application, however, was rejected for issuance of certificate as Project Affected person by communication received by him from the Tahsildar on 14-8-1994 informing that in the record of rights the entry in the name of "Defence Department" was entered into.

3. The petitioner applied to the respondent No. 3 the District Rehabilitation Officer, Ahmednagar on 4th June 1997 for issuance of certificate as Project Affected person but his application came to be rejected by communication received by him on 12-6-1997 from the respondent No. 2 Collector and the Deputy Director of Rehabilitation (Lands), Ahmednagar. The respondent No. 2 rejected application for such certificate on the ground that such certificate cannot be issued as the acquisition was made for the purpose of ranges and the same is not covered by the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986.

4. The question, therefore, arises whether acquisition of land for defence project of the Union of India is covered under the definition of "project within the meaning of section 2(10) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (for short, "the Act").

5. The affidavit filed on behalf of respondents No. 1 to 3 is on the same line on the basis of reasons assigned for rejection of issuance of certificate to the petitioner by the Collector.

6. The definition of "project" in sub-section (10) of section 2 of the Act reads as under :-

" "project" means,---

(a) an irrigation project, that is to say, the construction, extension, improvement or development of any work for the supply of water for the purpose of irrigation,

(b) a power project, that is to say, construction, extension, improvement or development of any work for the supply of electricity or any work conducive to electrical development;

(c) a public utility project, that is to say, any work of the construction, extension, improvement or development of public utility other than irrigation project and power project; or

(d) any composite project of any of the two or more such projects;

and includes any work of construction, extension, improvement or development which is incidental or supplemental to the execution of a project; and which may be used for such project, as affected person and in respect of which a notification is issued u/s 11."

"Affected Person" is also defined in sub-section (2) of section 2 of the Act and that reads as under :---

"Affected Person" means,---

(a) an occupant whose land in the affected zone (including land in the gaothan) is acquired u/s 14 for the purpose of a project;

Explanation:---For the purposes of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a Karta or Manager of a Hindu Joint family then every brother (or son or sons of any deceased brother all together as one unit) who has a share in the land whether his name is recorded in such village record or not, shall be treated as affected person;

(b) a person who is a tenant in actual possession of land under the relevant tenancy bye-law in the affected zone at the time of acquisition of land;

(c) an occupant whose land in the benefited zone is acquired for construction, extension, improvement or development of canals and their banks under major or medium irrigation project, or for establishment of a new gaothan for rehabilitation of persons from affected zone, and whose---

(i) residual cultivable holding is reduced to less than 1 hectare after acquisition; or

(ii) residual holding stands divided into fragments which are rendered unprofitable for cultivation; or

(iii) residual holding is rendered uncultivable;

Explanation:---For the purposes of this sub-clause the expression "occupant" includes a tenant in actual possession of land under the relevant tenancy law in the benefited zone at the time of acquisition of land;

(d) a person who is an agricultural labourer;

(e) a person, not being an occupant or a person referred to in sub-clauses (a), (b), (c) and (d), who for continuous period of not less than 5 years immediately before the date of publication of the notification u/s 4 of the Land Acquisition Act, 1894, has been ordinarily residing or carrying on any trade, occupation or calling or working for gain in a gaothan in the affected zone."

7. It is clear from the definition of "project" that the definition is not inclusive but extensive and, therefore, on the principle of interpretation it can safely be said that even the land acquired for defence project such acquisition will have to be deemed to be the acquisition for project within the meaning of sub-section (10) of section 2 of the Act. In this context, Mr. Gawali, learned Counsel for petitioner, is right in submitting that similar view is taken by this Court in the case of [Nagesh alias Satish Nagorao Pande Vs. The State of Maharashtra and Another](#), . We respectfully agree with this view.

8. There is no contrary decision which could be pointed out on behalf of the respondents.

9. We, therefore, allow the petition, make Rule absolute and direct the respondents No. 2 and 3 to issue certificate to the petitioner or his son, as the case may be, as Project Affected person under the said Act. There shall be no order as to costs.

10. Petition allowed.