SUPREME COURT OF INDIA

Dhansingh Vitthalrao Bhoite

Vs.

State of Maharashtra

C.A.Nos.2553-2554 of 2004

(R.V.Raveendran and P.Sathasivam JJ.)

20.07.2008

ORDER

1. The appellant claims to be the owner of land bearing Gat No.24 admeasuring 1 hectare 8 ares situated at village Nanvij, Taluka Daud, District Pune. The said land was submerged in water on construction of K.T. Weir at Sonawadi area and his standing crop was destroyed. As no compensation was paid and as he was not rehabilitated, he filed Writ Petition No.4090 of 2000 seeking a direction for allotment of an alternative land (Survey No.50/1, Mauje) and for payment of compensation for loss of standing crop. The said petition was disposed of by order dated 18.12.2000 by directing the second respondent to either allot a suitable alternative land to the appellant within three months or declare an award for compensation for acquisition of land within six months. The Appellant however thereafter made an application dated 9.2.2001 to second Respondent to allot Gat No.197, Mauje - Daund instead of the land earlier suggested. The appellant again approached the High Court by filing another Writ Petition No.4021 of 2002 seeking a direction to respondents to forthwith allot Gat No.197 measuring 5 acres situated at Mauje Daund, Taluka Daund, District Pune, which he had identified as available alternative land and also pay Rs.32500/- as crop compensation. The second writ petition was disposed of by an order dated 20.8.2002 by the High Court, holding that the appellant was not entitled to alternative land. It however directed the respondents to declare the award and pay the compensation in regard to the submerged land.

> "Thereafter, the appellant filed Civil Application No.2094 of 2003 reiterating his prayer for allotment of the said five acres of land. The civil application which was in the nature of a petition for review of the order dated 20.8.2002, was rejected by order dated 23.2.2004. The orders dated 20.8.2002 and 23.2.2004 are challenged in these appeals by special leave."

2. We are informed that the order of the High Court has been complied with by the respondents by making an award in regard to the land that was submerged.

3. The appellant contends that he is an `affected person' entitled to rehabilitation under the provisions of *Maharashtra Project Affected Persons Rehabilitation Act, 1986* (hereinafter

referred to as `the Act') and the High Court erred in rejecting his claim. The appellant contends that the provisions of the said Act will apply wherever the affected zone in respect of an irrigation projects exceeds 50 hectares. According to him, the area affected by the project in question (K.T. Weir at Sonawadi) was 57 hectares and therefore relief ought to have been given to him by directing grant of alternative land as contemplated under section 10 of the Act. This contention has been expressly considered and rejected by the High Court.

4. It is true that section 1(4)(a) of the Act provides that the Act would apply to all irrigation projects of which the area of the affected zone exceeds 50 hectares. `Affected zone' is defined in section 2(1) of the Act as the area declared under section 13 to constitute the area of affected zone under that project. Section 13 requires the State Government by notification in the Official Gazette to declare the extent of area which shall constitute the area of affected zone under the project. The Appellant has not produced any such declaration. The respondents have stated that no declaration has been made under section 13 of the Act. In the absence of a declaration, there is no `affected zone' for the purposes of the Act and therefore, the appellant cannot be considered as an `affected person' entitled to relief under the provisions of the Act.

5. The appellant however relied upon a letter dated 14.12.2000 addressed to the Tehsildar, Daund wherein the Deputy Executive Engineer of Small Dams and Irrigation Division has stated that the area that is likely to be submerged with reference to the Sonwadi Tal is 57 hectares. The appellant contended that this showed that the affected area was more than 50 hectares and consequently the Act would apply. The respondents have explained that the letter dated 14.12.2000 merely mentioned the area that was proposed to be acquired as 57 hectares as an approximate area and that the said area was not submerged nor acquired; and that was evident from the non-publication of any notification under section 13 of the Act.

6. If the affected area was really more than 50 hectares and the State Government had failed to discharge its statutory duty by issuing declaration under section 13 of the Act, the appropriate remedy for the appellant was to seek a direction to the State to perform its statutory duty by making a declaration of the area affected. Having failed to do so, his remedy is only to pursue the remedy of compensation and seek reference for enhancement if he is aggrieved by the quantum. Be that as it may.

7. In so far as these appeals are concerned, the question is limited. As the State Government has not issued a declaration under section 13 of the Act, the appellant will not be entitled to seek benefit under the provisions of the said Act as rightly held by the High Court. We find no reason to interfere with the order of the High Court and the appeals are dismissed accordingly.