

# SUPREME COURT OF INDIA

Chandrakant Adinath Utture

Vs.

State of Maharashtra & Ors.

C.A.No.1346 of 2016

(Kurian Joseph and R.F.Nariman,JJ.)

15.02.2016

## JUDGMENT

**Kurian Joseph,J.**

(Arising from S.L.P. (C) No.20678/2010)

1. Leave granted.

2. The Maharashtra Project Affected Persons Rehabilitation Act, 1986 (hereinafter referred to as "the Act") is a piece of legislation intended for rehabilitation of persons affected on implementation of certain projects in the State of Maharashtra on the lands acquired from the zones benefitted by the projects. The Act is applicable to all irrigation projects of which the area of the affected zone exceeds 50 Hectares or the area of the benefitted zone exceeds 200 Hectares or where a gaathan is affected. The State Government is also entitled to make the Act applicable to other projects as well to which the Act is applicable. The affected zone is defined as the area declared under Section 13 of the Act to constitute the extent of the area affected under a particular project. Benefitted zone means the area declared under Section 13 of the Act to constitute the area of the benefitted zone under the project. Rehabilitation under the scheme of the Act of the affected persons is done mainly by acquiring lands coming under the benefitted zone. In the present case, it is the Chikotra project.

3. Under Section 13 of the Act, the State Government has to make a declaration of areas in affected and benefitted zones and also the extent of land to be acquired in the benefitted zone is as per the slabs mentioned in Part II of the Schedule. As far as extent of area constituting the affected zone under the project and the extent of area constituting the benefitted zone is concerned, it is clearly provided under Section 13(2) of the Act that a public notice inviting objections or suggestions is to be issued. After considering the objections and suggestions only, a notification under Section 13 (1) of the Act could be published in the official gazette and by other modes of publication as provided under the Act.

4. In the instant case, there is no dispute on that procedure. The dispute is in a narrow compass. In the gazette notification originally published, the slab under Part II was Slab III whereunder there is no acquisition in case the holding in the benefitted zone is not more than 3 Hectares and 23 Ares. Under all slabs, larger the holding, proportionately larger is the acquisition. After publishing the notification under Section 13 with Slab III on 04.03.1994, another notification was published on 26.07.1995 changing the slab under Part II from Slab III to Slab I wherein the exemption from acquisition is only where the size of holding is not more than 1 Hectare and 61 Ares. Under Slab I (if the size of the benefitted holding is more than 1 Hectare and 61 Ares but not more than 2 Hectares and 42 Ares, the area to be acquired is that in excess of 1 Hectare and 61 Ares (the exempted area under Slab I) but not more than 40 Ares). If the size of the holding is more than 2 Hectares and 42 Ares and not more than 3 Hectares and 23 Ares (the exempted size of the holding under Slab III), the area to be acquired is the area in excess of 2 Hectares and 2 Ares but not more than 80 Ares.

5. The simple question is, in case there is a change in slab or area to be acquired, after the publication of the first notification, should there be a notice to those whose lands will be acquired on account of the change in the slab.

6. The High Court in the impugned judgment dated 07.06.2010, has taken the view that the public notice for hearing under Section 13 of the Act need only be in respect of the lands in the affected zone and benefitted zone and there is no requirement under the Act or under law, for notice when there is a change in the slab, and hence, the appeals.

7. Being a pure question of law, it is not necessary to delve deep into the facts and yet we shall refer to a few dates.

8. Notices under Section 13(2) of the Act inviting objections with respect to lands in the affected and benefitted zones were published on 20.09.1993, 22.11.1993 and 03.12.1993. After considering the objections, the notification under Section 13(1) of the Act was issued and published in the gazette on 04.03.1994. There were around 500 project affected khatedars and the land estimated for the rehabilitation was around 653 Hectares. As per the notified Slab III, exempted size of holding being up to the extent of 3.43 Hectares, the land available for acquisition was only around 179 Hectares, as per the respondent. However, if the slab was changed from Slab III to Slab I, the land available for acquisition would be around 548 Hectares. It was hence and in that context, another notification was published on 26.07.1995 changing the slab from Slab III to Slab I. According to the appellants, though there is no requirement under Section 13 of the Act for a notice and hearing while issuing a notification for the first time under Section 13(1) of the Act, when there is a change in the slab reducing the exempted area, the affected persons are entitled to notice.

9. In order to appreciate the contention, we have to analyse the scheme of the Act under Sections 13 and 14 of the Act dealing with the declaration of areas in the affected and benefitted zones and the Schedule. Sections 13 and 14 read as follows:

**“Section 13: Declaration of areas in affected or benefitted zones**

(1) The State Government shall, by notification in the Official Gazette and also by publication of such notification in the manner provided in sub-section (2) of section 11, declare-

(a) the extent of area which shall constitute the area of affected zone under the project;

(b) if the project is an irrigation project, the extent of area which shall constitute the area of benefitted zone under the project;

(c) which of the slabs mentioned in Part II of the Schedule shall apply to such project for the purpose of acquisition of land in the benefitted zone.”

(2) Before publishing a notification under sub-section (1), the Collector shall give a public notice inviting objections or suggestions in respect of the lands falling under clauses (a) and (b) of sub-section (1), by publishing in the manner specified in sub-section (2) of section 11 and also in the Official Gazette and in one daily newspaper in the Marathi language circulating in the local area comprising such villages and areas of affected and benefitted zone. Any person interested in the land in such areas may make, objections or suggestions, if any, to the Collector within 30 days from the date on which such public notice is published by beat of drum in the village or area concerned or the date on which it is published in the newspaper as aforesaid, whichever is later; and the Collector shall, with all reasonable dispatch, forward any objections or suggestions so made together with his report in respect thereof to the State Government and on considering the report and the objections and suggestions, if any, the State Government may pass such order as it deems fit.

(3) If at any time during the course of execution of a project, the project authority is satisfied that any change in the areas mentioned in the notification under subsection (1) is necessary, it shall communicate such change with reasons and the plans and particulars relating to the change to the State Government through the Collector.

(4) On receipt of the communication under sub-section (3) and the report of the Collector, if any, the State Government may after considering the reasons given by the project authority and in the report, if any, of the Collector and making such enquiry, if any, as it thinks fit, make such change in the manner laid down in sub-sections (1) and (2).

#### **Section 14: Power to acquire land for purposes of this Act**

(1) The State Government or the Collector authorised by it by general or special order in this behalf may enter into an agreement with any person for the purchase or exchange of any land required for carrying out the purposes of this Act: Provided that, the amount paid under an agreement under this sub-section shall not be less than the

amount of compensation payable for the land, had it been acquired in accordance with the provisions of sub-section (2).

(2) Subject to the provisions of this section, the State Government may for carrying out the purposes of this Act, also compulsorily acquire land under the Land Acquisition Act, 1894 (I of 1894); and the acquisition of any land for any of the said purposes shall be deemed to be a public purpose within the meaning of that Act.

(3) The State Government may also acquire lands included in a gaothan in the affected zone as far as practicable according to the provisions of Part I of the Schedule.

(4) For the purpose of rehabilitating affected persons from the affected zone under an irrigation project, including those under any irrigation project who have remained to be rehabilitated, on land, the State Government may acquire land from holdings in the benefitted zone of the project according to the slab declared in the notification under sub-section (1) of section 13 and may also acquire, where necessary, land from any other villages or areas, as it may deem fit.

(5) All lands acquired under this section shall form part of the land pool."

10. Slab I and Slab III in Part II under the Schedule, to the extent relevant, read as follows:

"Size of holding (1)	Area to be acquired (2)
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### **Slab I**

- |  |   |
|--|---|
| (a) Not more than 1 Hectare                        | (a) NIL and 61 Ares.  |
| (b) More than 1 Hectare and 21 Hectare and 61 Ares | (b) The area in excess of 61 Ares and not more than 42 Ares . but not more than 40 Ares.                              |
| (c) More than 2 Hectares and 2 Ares                | (c) The area in excess of 42 Ares and not more than 3 2 Hectares and 23 Ares. but not more than 80 Ares.              |
| (d) More than 3 Hectares and 42 Ares               | (d) The area in excess of 23 Ares and not more than 3 2 Hectares and 4 Ares. but not more than 1 Hectare and 21 Ares. |

Xxx

### **Slab III**

xxx

- |   |  |
|---|--|
| (a) Not more than 3 Hectares                          | (a) NIL and 23 Ares.   |
| (b) More than 3 Hectares and 4 3 Hectares and 23 Ares | (b) The area in excess of 23 Ares and not more than 4 Ares. but not more than 40 ares. |

11. Under Section 13 of the Act, before the State Government makes a notification in the official gazette declaring the extent of area constituting affected and benefitted zones and the slab under Part II of the Schedule, the Collector has to give a public notice under Section 13(2) of the Act inviting objections or suggestions in respect of the lands falling under the affected zone and benefitted zone. The mode of publication is gazette and daily newspaper in Marathi having circulation in the respective areas. The Collector has to forward a report on the objections or suggestions made by the persons interested in the lands coming under the affected or benefitted zone and the State Government has to pass appropriate orders on the report on the objections and suggestions. Only after completing the process as above under sub-Section (2) of Section 13 of the Act, a notification of the affected and benefitted zones and the slab under Part II of the Schedule can be published. Under sub-Section (3), if, at any time, during the course of execution of a project, in case, any change in the areas mentioned in the notification under sub-Section (1) becomes necessary, such change can be made only in the manner laid down in sub-Sections (1) and (2). As per the first notification under Section 13(1) of the Act published on 04.03.1994, since the slab was Slab III, there was no acquisition where the size of the holding in the benefitted zone is not more than 3 Hectares and 23 Ares; however, as per the subsequent notification dated 26.07.1995 published under Section 13(1), since there is a change of slab from Slab III to Slab I, there is acquisition from those who hold land more than 1 Hectare and 61 Ares. It is certainly a change as perceived under sub-Section (3) and such a change can be brought out during the course of execution of a project only in the manner laid down in sub-Sections (1) and (2) of Section 13 of the Act. The reason is that any adverse change in the slab would have its impact on the extent on the lands in benefitted zone. That zone in the process gets reduced. In the instant case, while publishing the second notification on 26.07.1995, the procedure under sub-Section (2), admittedly, has not been followed.

12. It may be seen that the whole purpose of notice under sub-Section (2) of Section 13 of the Act is to invite objections or suggestions in respect of the lands falling under the affected or benefitted zone. By change of slab, as noted above, there is change in the area of the benefitted zone and that change can be brought out only on following the procedure under sub-Section (2) after considering the objections and suggestions.

13. Sub-Section (4) of Section 14 of the Act is also another indicator on the requirement of notice. The Government is permitted to acquire land even from any other villages or areas for the purpose of rehabilitating the affected persons from the affected zone or for rehabilitating those under any project who have remained to be rehabilitated. Once there is a change in the notification on the slab reducing the size of exempted holding, the people thus affected should get a chance to make their objections and suggestions, so that the Government may consider the report of the Collector on those objections and suggestions, before issuing a revised notification under Section 13(1) of the Act.

14. Learned Counsel for the respondent-State submits that pursuant to the notifications issued under the Act, further steps, as noted below, have been taken for acquisition of the land:

<b>Sl.No.</b>	<b>Date</b>	<b>Particular</b>
1.	21.09.2000	Notification under Section 4 of Land Acquisition Act was published in Government Gazette.
2.		Notice u/s. 4(1) of the Land Acquisition Act was given to the petitioner.
3.	28.11.2000	Objections raised by the petitioner u/s.5(1) of the Land Acquisition Act were heard.
4.	14.12.2000	Declaration u/s. 6 of Land Acquisition Act was published in Government Gazette.
5.	15.01.2002	The notice u/s.9(3)(4) of the Land Acquisition Act was issued to the petitioner.
6.	21.01.2004	Final Award has been declared"

15. Passing of the award by itself does not mean that any illegality should not be addressed. In the instant case, the writ petitions were filed when the declaration under Section 6 of the Act was published, and in any case, it is submitted by the appellants that they have not been dispossessed so far and no compensation also has been paid.

16. Therefore, the High Court is not right in holding that the requirement of notice on objections and suggestions need only be in respect of the lands coming under Section 13(1)(a) of the Act (the affected zones) and Section 13(1)(b) of the Act (the benefitted zones). The High Court is right, however, in holding that no notice is required in respect of the lands belonging to the slab under Section 13(1)(c) of the Act, when it is issued for the first time. However, in case there is a change in the slab reducing the area of exemption from acquisition in the benefitted zone, the procedure under Section 13 (2) of the Act is required to be followed.

17. For the above reasons, these appeals are disposed of permitting the appellants to prefer their objections or submit their suggestions on the change of slab from Slab III to Slab I before the Collector within one month from today. The Collector shall make appropriate inquiry on the objections or suggestions and forward his report to the State Government within another two months. The State Government shall pass appropriate orders on the report within another two months. Depending on the orders thus passed by the Government, the Collector shall revise the awards already passed, if required. The appeals are allowed to the above extent.

18. There shall be no order as to costs.

