

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12771 of 2015
With
SPECIAL CIVIL APPLICATION NO. 12772 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 12790 of 2015
With
SPECIAL CIVIL APPLICATION NO. 12879 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 12888 of 2015
With
SPECIAL CIVIL APPLICATION NO. 12890 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 12899 of 2015
With
SPECIAL CIVIL APPLICATION NO. 13295 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 13304 of 2015
With
SPECIAL CIVIL APPLICATION NO. 13306 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 13308 of 2015
With
SPECIAL CIVIL APPLICATION NO. 13310 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 13312 of 2015
With
SPECIAL CIVIL APPLICATION NO. 13314 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 13319 of 2015
With
SPECIAL CIVIL APPLICATION NO. 13426 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 13431 of 2015

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DHIRAJLAL MADHAVJIBHAI VARU....Petitioner(s)

Versus

STATE OF GUJARAT & 5....Respondent(s)

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Appearance:

MR VIJAY H NANGESH, ADVOCATE for the Petitioner(s) No. 1

MR NIRAJ ASHAR, AGP, MR. RONAK RAVAL, AGP AND MS. NISHA THAKORE,
 AGP for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE C.L. SONI

Date : 22/09/2015

COMMON ORAL ORDER

[1] In this group of matters common challenge made is against rejection of the applications of the petitioners for allotment of plots as per the scheme under Resolution dated 11.06.1979 by separate orders passed by the respondent no.5 – the Deputy Executive Engineer, Irrigation Scheme, Sub – Division No.6/4, Dhrol.

[2] It appears that by the said Resolution, the Government provided for allotment of plots to the affected persons for their rehabilitation on account of irrigation projects. Definition of affected persons is given in the said Resolution.

[3] The case of the petitioners is that though they fall within the definition of affected persons and made applications to allot them plots as affected persons under the said scheme, the respondent no.5 overlooked such definition and rejected the applications for the grounds not germane for taking decision for allotment of plots under the said scheme.

[4] Learned advocate Mr. Nangesh for the petitioners submitted

that the petitioners have given out details in their applications to show that they are entitled for the plots under the scheme, however, such details are not considered. Mr. Nangesh submitted that the petitioners as major member of the family have been deprived of right to get separate plots as affected persons. Mr. Nangesh submitted that definition of affected persons is wide enough to include even the case of those persons not only resided within the area affected by the project but also carried on business or other activities to earn livelihood. Mr. Nangesh submitted that all such aspects have not been considered by respondent no.5 while taking decision on the applications of the petitioners.

[5] Learned AGP Mr. Ronal Ravl, learned AGP Mr. Ashar and learned AGP Ms. Thakore appearing for State authorities submitted that respondent no.5 has considered the applications of the petitioners in the context of scheme for allotment of plots especially in the context of definition of affected persons and of family as mentioned in Resolution dated 11.06.1979. Learned AGPs submitted that families of the petitioners have already been allotted plots by treating them as affected persons under the scheme, however, so far as the petitioners are concerned, since they do not satisfy definition of affected persons, their applications are rejected by respondent no.5 by impugned orders. Learned AGPs submitted that irrigation project is of the year 2008 and

those persons who were found either residing in the affected areas or doing business or otherwise eligible have already been given benefit of allotment of plots under the scheme, whereas the petitioners made application recently in the year 2015 and on such applications when inquiry was made, it was found that the petitioners were not residing in the village as required by the definition of affected persons and therefore, they are not entitle to allotment of plots as affected persons.

[6] Having heard learned advocates for the parties, it appears that as per the scheme under Resolution dated 11.06.1979, a person becomes entitle to allotment of plots on his satisfying the criteria mentioned in the definition of affected persons for allotment of plots. It is the say of the authorities through learned AGPs that those persons whose lands were acquired or found residing in the submerge area before one year of the date of Notification under Section 4 of the Land Acquisition Act, 1894 (for short '**the old Act**') or cultivating the land or doing business or other activities for earning livelihood during that time, were considered as affected persons and given benefit of allotment of plots. It appears that by impugned orders, the applications of the petitioners were rejected mainly on the grounds that no land in their individual name were acquired nor they were given compensatory compensation, that on family survey conducted through Talati-cum-

Secretary of the village, it was found that their names did not figure as persons residing in the village, that land shown in the name of father if acquired, plots against such acquisition were already given to them.

[7] Learned advocate Mr. Nangesh for the petitioners, however, submitted that by impugned orders, it is not decided whether the petitioners were not residing in submerge within one year or doing business or cultivating land or doing any other activities for earning livelihood. It is generally stated in the impugned order that the petitioners are not residing in the village.

[8] Learned AGPs submitted that what is stated about the petitioners not residing in the village is in the context of definition of affected persons as per the scheme under Resolution dated 11.06.1979 and therefore, it is not correct to say that respondent no.5 has not properly decided the applications of the petitioners but in fact on verification through Talati-cum-Secretary, it was found that the petitioners were and are not residing in the village.

[9] The Court finds from the applications of the petitioners that the petitioners since have not provided exact particulars as regards period during which either they resided in the village or cultivated land

in the village or did business in the village or did any other activities for earning livelihood, it could not be said that being unmindful of definition of affected persons, the respondent no.5 has decided the applications of the petitioners by impugned orders. However, if the petitioners still have any material or evidence to establish that they would fall within the definition of affected persons, they may approach respondent no.4 and 5 with such material or evidence so as to claim that they would be entitle to plots as per the scheme under Resolution dated 11.06.1979. It will be on production of such material or evidence by the petitioners before respondent nos.4 and 5, respondent nos.4 and 5 may be required to consider the same to decide whether the petitioners would satisfy definition of affected persons or not without being influenced by the decision already taken by impugned orders.

[10] In view of above, the petitions are not entertained at this stage leaving it open to the petitioners to produce any material or evidence before respondent nos.4 and 5 in support of their applications to establish that they would fall within the definition of affected persons and will be entitle to allotment of plots under the scheme for such purpose.

[11] Learned advocate Mr. Nangesh at this stage states that the

petitioners will require sufficient long time to produce necessary and relevant materials before respondent nos.4 and 5 and therefore, the Court may grant two months' time to the petitioners to produce relevant material / evidence before respondent nos.4 and 5 and requests to direct the respondent nos.4 and 5 to decide the eligibility of the petitioners on such material.

[12] In view of above, it is directed that if the petitioners produce any material / evidence within a period of two months from today before respondent no.4 and 5 in support of their applications to establish that they would fall within the definition of affected person and thus would become entitle to allotment of plots as per the scheme under Resolution dated 11.06.1979, the respondent nos.4 and 5 shall consider such material / evidence produced by the petitioners and decide irrespective of and without being influenced by the decision taken by the impugned orders whether the petitioners would satisfy definition of affected persons or not and if it is found that the petitioners satisfy definition of affected persons, appropriate and necessary orders shall be made by respondent nos.4 and 5. However, such exercise shall be completed by respondent nos.4 and 5 within a period of three months from the date of receipt of materials / evidence from the petitioners.

[13] With above observations and directions, the petitions are disposed of. Direct service is permitted.

(C.L.SONI, J.)

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