

(2018) 07 MP CK 0300

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 9002 of 2018

Gram Panchayat Vishramganj

APPELLANT

Vs

Collector Panna

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 3(c), 4(1), 4(2), 5, 6, 7, 8, 11(2), 16

Citation : (2018) 07 MP CK 0300

Hon'ble Judges : Nandita Dubey, J

Bench : Single Bench

Advocate : Siddharth Gupta, Rahul Mishra

Judgement

The petitioner No.1-Gram Panchayat and three others have filed this petition challenging the validity and legality of land acquisition proceedings in

relation to the project of construction of dam â??Rundh Madhyam Sinchai Pariyojanaâ?? falling in village Vishramganj, Tehsil Ajaygarh, District

Panna, M.P.

The respondents have filed their return and raised a preliminary issue regarding maintainability of the writ petition on behalf of the petitioner No.1. It is

pleaded that petitioner No.1 Gram Panchayat has no locus standi to file the petition which is filed in the representative capacity on behalf of the

farmers/ land owners whose lands are acquired for the construction of the dam.

Shri Siddharth Gupta, learned counsel for the petitioners has submitted that the petitioner No.1 being a representative body of the people of the village

has a right to question the proceedings taken by the respondents-authorities and could not be non-suited by applying the narrow interpretation of the

term â??person aggrievedâ?. It is submitted that the petitioner No.1 is acting as

a body representing the people of the village, therefore, has a right and locus to challenge the proceedings as well as the notification and the subsequent action of the respondents in this regard.

Inviting the attention of this Court through the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013, particularly to Sections 4 (1), (2), 5, 6, 7, 8, 11 (2) and 16, the learned counsel has tried to impress that at every stage of

the acquisition proceedings, the authority/Government is required to consult the concerned Panchayat in preparation of social impact assessment study

and to give adequate representation to the representatives of the Panchayat in carrying out the functions. He further submits that it is mandatory that a

copy of the notification as well as the social impact assessment study is made available to the Panchayat. Meaning thereby, that the Panchayat has an

active role to play in the acquisition proceedings, and therefore entitled to file the petition on behalf and for the welfare of the affected villagers.

The object and scope of the Act of 2013 is to provide just and fair compensation to the affected families whose land has been acquired or proposed to

be acquired or are affected by such acquisition and to make adequate provision for such affected persons for their rehabilitation and resettlement with

least disturbance. The term "affected family" defined under Section 3 (c) of the Act includes:-

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of

tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of

the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes

gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood

is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.â??

Sub Clause (I) of Section 3 defines a person who shall be entitled to act on behalf of the affected person but does not mention the Gram Panchayat as

a person who can act on behalf of the affected families. The relevant definition of Clause (I) of Section 3 is extracted herein as under :

â??(I) â??entitled to actâ??, in relation to a person, shall be deemed to include the following persons, namely:â?

(i) trustees for other persons beneficially interested with reference to any such case, and that to the same extent as the person beneficially interested could have acted if free from disability;

(ii) the guardians of minors and the committees or managers of lunatics to the same extent as the minors, lunatics or other persons of unsound mind themselves, if free from disability, could have acted:

Provided that the provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, mutatis mutandis, apply in

the case of persons interested appearing before a Collector or Authority by a next friend, or by a guardian for the case, in proceedings under this Act.â??

From a perusal of the Act, the role or the participation of the Panchayat under the Act is restricted to consultation. The fact that copy of the report is

to be made available at the Panchayat, so that it can be gone into by the villagers /affected persons gives the petitioner no right to challenge the same.

No further role of Panchayat is prescribed under the Act.

Section 15 of the Act prescribed for hearing objections of any person interested in any land and Section 21 prescribed for issuance of notice to the

persons interested whose lands, the Government intends to take possession. It is thus clear that the affected person is the individual and not the Gram

Panchayat.

The legal character of the Panchayat is very much analogous to that of Municipality or such other local body and it cannot be denuded of the right to

move under Article 226 of the Constitution when any of its own legal right is infringed by any other authority including the Government but this right

cannot be extended or expanded to file a petition under Article 226 of the Constitution on behalf of land owners/ affected persons, as a right that can

be enforced under Article 226 of the Constitution shall ordinarily the personal or individual right of the petitioner himself.

In view of the aforesaid, the petitioner No.1 has no locus to file the present petition. The petitioner is therefore, directed to delete the name of

petitioner No.1 Gram Panchayat from the array of petitioners within a period of one week.