

(2017) 01 MP CK 0151
In the Madhya Pradesh High Court
Case No : 3586 of 2014

B.L. Dhuvkariya

APPELLANT

Vs

State of M.P. & Ors.

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Constitution of India, Article 21, Article 300A - Amendment of the Schedule - Persons not to be deprived of property save by authority of law
Land Acquisition Act, 1894

Citation : (2017) 01 MP CK 0151

Hon'ble Judges : S.C. Sharma

Bench : Single Bench

Judgement

1. Parties through their counsel. Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.3586/2014 are narrated hereunder.

2. The petitioner No.1 before this Court State of Madhya Pradesh and one another have filed this present petition being aggrieved by order dated 16/03/2012 passed by President, Grievance Redressal Authority, Sardar Sarovar Project whereby the benefits of Rehabilitation and Resettlement (R&R) have been awarded to Khatedars/land holders including the major married daughter.

3. The contention of petitioners is that major married daughter does not fall under the definition of an oustee as she has not been displaced due to project and therefore, the impugned order is contrary to the provisions of NWDT award and the Rehabilitation and Resettlement Policy framed by the State Government.

4. The facts of the case reveal that the respondent Hirubai's father namely Keriya was having land admeasuring 1.77 hectares in Village Dehdala and it came under submergence. The name of Hirubai was recorded as Bhumiswami in the land records and thereafter, a notification was issued under Section 4 of the

Land Acquisition Act on 07/09/2001 and an award was passed in the name of Hirubai.

5. Hirubai filed an application before the Grievance Redressal Authority stating that she is a Bhumiswami / Khatedars as her father expired prior to notification dated 07/09/2001 and by virtue of being a tenure holder (Bhumiswami/ Khatedars), she is entitled for two hectares of land. The revenue records were placed before the Grievance Redressal Authority and record of rights (Khasras) reflects that the deceased Keriya was having three sons and daughters and the name of the daughter namely Hirubai finds place in the record of rights (Khasras).

6. Thus, it establishes that prior to issuance of notice under Section 4 of the Land Acquisition Act on 07/09/2001, Hirubai was recorded in the record of rights (Khasras). The Grievance Redressal Authority, as the name of Hirubai was recorded prior to 07/09/2001 in the record of rights (Khasras) has arrived at a conclusion that she is entitled for two hectares of land, keeping in view the Rehabilitation and Resettlement Policy.

7. Heard learned counsel for the parties and perused the record.

8. The definitions of "oustee" and "family" given in Clause XI(1) of the NWDT Award as under:- "Oustee" "An" "oustee" shall mean any person who since at least one year prior to the date of publication of the notification under section 4 of the Act, has been ordinarily residing or cultivating land or carrying on any trade, occupation, or calling or working for gain in the area likely to be submerged permanently or temporarily."

I(3) "Family" "(i) A family shall include husband, wife and minor children and other persons dependent on the head of the family, e.g., widowed mother. (ii) Every major son will be treated as a separate family."

9. The relevant part of Clause XI(IV)(7) is as follows:- "IV(7) Allotment of Agricultural lands: Every displaced family from whom more than 25% of its landholding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to a minimum of 2 hectares (five acres) per family."

10. In the Rehabilitation Policy of the State also the definitions of "displaced person" and of "family" and the Clause providing for allotment of agricultural land are as under:- "VERNACULAR MATTER OMITTED"

11. The "major son" as envisaged in Clause 1(3)(ii) is the major son simpliciter who himself is not a tenure holder or a Bhumiswami and he has no rights of his own in the land which is the subject matter of acquisition. In NBA Vs. State of M. P. reported in AIR 2011 SC 1989=(2011) 7 SCC 639 the Supreme Court in para 82 has clarified the legal position in the following words:- "In case, the view taken by the High Court is upheld, it would have very serious repercussions for the reason that no land had been acquired wherein a major son can independently claim compensation as a matter of right."

Again in para 84 the conclusion has been drawn which is as under:- "84. In effect, the major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fictional definition as stated in the impugned judgment. The major son would, however, be entitled to his share in the area which is to be allotted to the tenure holder on rehabilitation in case he is entitled to such a share in the law applicable to the particular State."

12. From the above mentioned law laid down by the Supreme Court there can be no doubt that the "major son" used in Clause XI(1)(3)(ii) is the one who has no rights of his own in the land which has been acquired. He is not a tenure holder (Bhumiswami) either joint or separate.

13. The same view has been reiterated in State of M. P. Vs. Bherusingh reported in (2012) 3 SCC 287 in which the apex Court in paragraph No.58 has held as under:- "Even at the risk of repetition it needs to be highlighted that when there has been no acquisition from each major son of the family, the question of allotment of land to all major sons of the family would be contrary to the provisions of the R&R Policy."

14. Thus, the test is whether there has been "acquisition" of rights in the land of the persons who is claiming rehabilitation. As the major son envisaged in the definition of "family" has no right of his own in the land he is not entitled to separate allotment of land.

15. Once that is the position of "major son" in the definition of "family" the "minor children" envisaged in Clause XI(1)(3)(1) would not stand on a better footing. They are also the persons who have no rights of their own in the land. That would also be the case of "wife". It is crystal clear that during the life time of the father (head of the family) his children whether major or minor or his wife and other dependents have no rights in the land which is the subject matter of acquisition. That is the general law also. It is only the father who is generally the head of the family is tenure holder or Bhumiswami. It is from him there is acquisition of land. In case the wife is the tenure holder she, her husband and her children would come within the ambit of the "family".

16. The object is obvious. The definition of family has been introduced so that the spouse and the children of the tenure holder and persons dependent upon him are not able to lay their own separate claim for compensation and rehabilitation. If the definition of "family" had not been inserted in the Award and the allotment of land had not been limited to the "displaced family", then on the basis of definition of "oustees" the spouse, children and other dependents who have no rights of their own in the land could have claimed rehabilitation benefits as they would have definitely fallen within the definition of "oustees". To avoid such a situation the Award has provided that the allotment of land is to be made to the displaced family so that spouse, children and dependents who themselves are not tenure holders go with the head of the family in the matter of allotment

of agricultural land and residential plot.

17. The persons recorded as joint holders whether male or female, major or minor are not deprived of their legal rights to compensation and rehabilitation when their rights in the land are acquired. The provision for rehabilitation is made in such cases of acquisition as compensation alone is not considered as adequate recompense. The tenure holder is entitled to compensation and rehabilitation both. As observed by the Hon"ble Supreme Court in the case of NBA Vs. State of M. P. (supra): "Rehabilitation is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves."

Again in para 84 it is observed:- "The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the Act 1894."

Earlier in para 29 it is stated:- "It is evident that acquisition of land does not violate any constitutional/fundamental rights of "displaced persons". However, they are entitled to resettlement and rehabilitation."

18. The petitioners are extending benefits of rehabilitation to the majors sons (and their families) who are joint tenure holders. The major son who is a tenure holder is entitled to rehabilitation benefits because he is a tenure holder and therefore, the same benefits cannot be denied to other joint holders of the land whose legal rights have been acquired. The other joint holders are normally daughters, widows and minor children. There is greater need for their rehabilitation so as to enable them to sustain themselves. They have been rendered destitute and have to be assured a permanent source of basic livelihood. If they are not rehabilitated they would be left high and dry. It is no solace to them that the major male joint holders and their families have been given rehabilitation benefits. They stand on equal footing so far as their rights are concerned and they have a right to equality with the major male joint holders. The plea of the petitioners that "major sons" and their families are being given two hectares of land each because major sons constitute separate family, is not sustainable. As already stated major son used in the definition of family is that major son who is not a joint holder.

19. The plea of the petitioners is that it is only "displaced family" as per Clause XI(IV)(7) which is entitled to allotment of agricultural land and that "family" is defined in Clause 1(3) and unless such a family is formed or has come into existence on the date of the notification under section 4 of the Land Acquisition

Act, the joint holder alone is not entitled to land for land. This plea is not acceptable. The definition of family is "inclusive". The family includes "wife and minor children" or "husband and minor children" of the head of the family and the persons dependent on him and, as already stated, it has been incorporated for the purpose that the persons included in the definition of the family may not be able to lay their own separate claim on the ground that they are oustees. It is the head of the family alone who would be recognised for the purpose of the allotment of land and not his family members. But that would happen if such family members do not have the rights of their own in the land which is being acquired. If each joint holder has his or her own legal rights in the land it cannot be said that he or she would not be entitled for rehabilitation benefit of land for land unless he or she has been able to form or constitute his or her own family by marriage and by having children. He or she alone before marriage would be recognised as "family" when his or her share in the land has been acquired.

20. It is found on a careful reading of Clause XI(IV)(7) read with Clause 1(3) that even if the family as envisaged in Clause 1(3) is "constituted" or is in "existence" the acquisition of land is from the head of the family who is tenure - holder of Bhumiswami and not from the "displaced family". The family is in the back ground. Acquisition from "displaced family" is a deeming fiction. These family members have no rights of their own in the land. The marginal heading of Clause XI(IV)(7) is "allotment of land" (that is the focal point) and then it lays emphasis on the fact that the allotment of minimum two hectares of land is "per family". That means that the family as a whole is entitled to the benefit of allotment of land and the allotment is to be made in the name of the tenure holder from whom there is acquisition of land. The "family" is the beneficiary if such a family is there. It does not mean that the tenure-holder or Bhumiswami is not entitled to rehabilitation benefit of land for land if he has no family. In such a case tenure holder himself or herself would be treated as family and the allotment of land would be done to him. According to the petitioners the claimants must "constitute" or "form" a family as per Clause 1(3) before there can be claim for rehabilitation. What is the meaning of the words "constitute" or "form" in such a plea? Does it mean that the whole body as envisaged in the definition in Clause 1(3) should be there so as to enable it to claim rehabilitation. If the argument of the petitioners is accepted for a moment it would mean "husband, wife, minor children and other dependents" must be there before they can claim rehabilitation. It would mean that husband and wife would not form or constitute a family and would not be able to claim rehabilitation. They must have "children" and other "dependents" to constitute a "family" as per Clause 1(3) and then alone such a family would be able to claim rehabilitation. The arguments that there must be a "family" as per Clause 1(3) before rehabilitation can be claimed is a misconception. The only meaning that can be attributed to the words "displaced family" and "per family" used in Clause XI (IV)(7) is that the "allotment of land" (minimum two hectares) would be for the whole family represented by the head of the family and such family consisting of husband,

wife, children and other dependents would have the benefit of the allotment of land. The allotment would ensure to the benefit of whole family.

21. There is no difficulty in applying the definition of "family" as it is found in Clause 1(3) when there is a single tenure holder, (the head of the family) in respect of the land under acquisition as he himself, his wife and his minor children would constitute one family and would be entitled to one unit i.e. two hectares of land, the minimum, which has been guaranteed by the Award, and the State Policy. In case the single holder (Bhumiswami) is unmarried and has no dependents can it be contended even remotely that he would not get the rehabilitation benefits because he has no "family". He is entitled to rehabilitation benefits of land for land and is being given such rehabilitation benefits by the NVDA without any murmur. The difficulty crops up when the tenure holders are more in number on the date of notification. They are joint holders having equal rights in the land. The petitioners are treating each major male "joint holder" as one unit and applying the definition of family to his case, and are allotting agricultural lands to them even if their number is somewhere between two or twelve but it is not extending the same benefit to minor joint holders and sometimes to the widows and daughters.

22. In the case of NBA Vs. State of M. P. AIR 2011 SC 1989 a chart has been given in para 81 of the judgment. In column No.3 Mr. C. (single Khatedar) is shown to have been allotted two hectares of land and in his case the definition of family as given in Clause 1(3) completely fits in. Mr. C, his wife and his children (all including) would get one unit. If Mr. C is alone without any family member then also he would admittedly get one unit i.e. two hectares of land. Now comes column No.5, E-1, E-2 and E-3 are joint Khatedars and they get six hectares i.e. two hectares each. Here also there is no difficulty in applying the definition of family if it is applied to each Khatedar. That is being done by the NVDA as a routine measure as according to it each major male joint holder constitutes a separate family even if he is alone. The same principle would equally apply if the joint holder is female. She, her husband and children would constitute family by invoking the definition of family in Clause 1(3). If there is an adult unmarried joint holder he or she would constitute a family by himself or herself. Here again the petitioners are allotting two hectares of land to each male joint holder even if he is unmarried and not having wife or minor children. Learned counsel for petitioner has argued that major son constitutes a separate family and, therefore, land is being allotted to him. The approach is not correct as the "major son" referred to in Clause 1(3) is that major son who is not a joint holder and whose father or mother who is the head of the family is alive and the land stands in his or her name alone. It was the contention of the petitioners before the Supreme Court in NBA Vs. State of M. P. AIR 2011 SC 1989 that the "major son" envisaged in the definition of "family" in Clause I (3)(ii) has no rights of his own in the land under acquisition and that has been accepted by the Supreme Court and it has been ruled that such a "major son" cannot claim compensation and rehabilitation. Therefore, it is difficult to comprehend how the petitioners can use

the words "major son" in the definition of family as that son who is joint holder. Therefore, the unmarried adult male member is being given separate land as he is "joint holder" in recognition of his own right. The practice of giving two hectares of land to each unmarried male joint holder is being followed by the petitioners for a number of years and it is well known that every such practice which has been followed for long has the sanction of law behind it. There is a Circular dated 21/07/1993 produced by the learned counsel for the respondent. In this circular detailed instructions have been given by the State Government. Para 3(6) of this Circular provides: "VERNACULAR MATTER OMITTED"

According to the clear language of this Circular each major co-sharer (co-Bhumiswami) recorded in the Khasra is to be treated as "separate Bhumiswami" and the land would be allotted accordingly. It does not make any distinction between male or female co-sharer or married or unmarried co-sharers. The decision of the State Government incorporated in para 3(6) of this Circular appears to be the basis for the statement made before the Supreme Court in *NBA Vs. Union of India* (Supra) (Para 180)- that the rehabilitation benefit of land for land is to be extended to all joint holders. Therefore, the claim of the respondent married daughter is that each Khatedar (coBhumiswami) is entitled to two hectares of land cannot be opposed by the petitioners. Earlier in para 3(1) of the circular it is stated - "VERNACULAR MATTER OMITTED" If Paras 3(1) and 3(6) are read together it would be clear that the "family" of each co-sharer (co-sharer-himself, his wife, his children and other dependents) is to be allotted land for land (one unit). This Circular gave relief to each adult co-sharer. Later by the Circular dated 09/06/1997 it was clarified on the instructions of the VideChairmain that the benefit of allotment of land is to be extended to minor joint holders also.

23. The aforesaid principle of allotment of land to each joint holder would apply to the case of minors and each of them would get one unit because he or she had equal rights in the acquired land as the major male joint holder. In case of widow she cannot be said to be dependent on any one when she has equal rights of her own in the land and is recorded as Bhumiswami. She claims as a widow and not as "mother". Thus, the definition of "family" in Clause 1(3) of the Award is qua each joint holder. It is not possible to club the joint holders (brothers and sisters in the present case) to work out their rights. Brothers and sisters who are themselves Bhumiswamis are not covered by the definition of "family" in Clause 1(3). Each one of them is entitled to rehabilitation benefits as conferred by the Award and the State Policy. According to Clause 1(3): "Every major son will be treated as a separate family." Similarly, as per State Policy even major unmarried daughter is treated as separate "family". That is an indication in the direction that a "single person" can constitute a family. There is inbuilt intrinsic evidence to that effect. The point which is clear is that legally a single person can form a family in the context of "displaced family" used in Clause XI(IV)(7) of the Award. The only other ingredient that would be required to be satisfied is that he or she is covered within the ambit of "oustee" or "displaced person".

24. In the two judgments of the Supreme Court NBA Vs. State of M.P. AIR 2011 SC 1989 and State of M. P. Vs. Bherusingh (2012) 3 SCC 287 it has been clearly held that a "major son" from whom no land has been acquired is not entitled to compensation or rehabilitation. Therefore, in an inverse situation it follows as a corollary that a joint holder whether major or minor, male or female from whom the land or his or her share in the land has been indisputably acquired is entitled to allotment of two hectares of land, the minimum guaranteed by the N.W.D.T. Award and R & R Policy of the State. This minimum guarantee of two hectares to each joint holder irrespective of the area of land acquired from him or her is causing problems for the State and it has its impact on the State ex-chequer but the promise made to oustees or displaced persons by the Award and R&R Policy of the State and reiterated before the Supreme Court has to be fulfilled. In case the land of the minor oustee had not been acquired he or she would have continued to cultivate his or her share of land jointly or got the partition effected to carve out his or her share and pull on his or her livelihood from the yield of his or her share in the land. Now that land having been acquired there is need to compensate and rehabilitate such oustees failing which their sustenance would not be possible. Compensation is being given to such minor joint holders and they are also being given the benefit of old SRP but there is denial of allotment of two hectares of land to each or new SRP in lieu thereof without any convincing reasons. It is because of the acquisition of land from such minor he or she is more in need of rehabilitation benefits to sustain himself or herself - more than a major joint holder. There is no substance in the argument that such a minor cannot be

granted rehabilitation benefits because he or she does not constitute a family. The stage of marrying and having children has not yet arrived and before that the State exercising the power of eminent domain has divested the minor of his or her rights in the land and, therefore, the rehabilitation benefits ensuing from the Award and R.R. Policy of the State cannot be denied to him or her. Such a minor himself or herself would constitute "family" to come within the ambit of "displaced family" used in Clause XI(IV)(7) of the Award. A "major son" by himself who is not a tenure holder constitutes a family and continues to be entitled to a plot of land for construction of house within Clause XI (IV)(3)(10). In this clause also the words used are "oustee family" and a major son whose father is alive is recognised as a separate "family" for the allotment of residential plot to him even after the judgment of the Supreme Court in NBA Vs. State of M.P. AIR 2011 SC 1989. If such a major son or major unmarried daughter alone can be covered by the word "family" then naturally it follows that a minor joint holder alone can also fall within the meaning of "family".

25. In a similar case decided by Grievance Redressal Authority i.e. Shivkumar widow of Ramesh and others Vs. NVDA GRA/41/2011 by order dated 18/6/2012, the GRA has recorded the legal position and the reasons therefor as under :- "The date of notification under section 4 of the Land Acquisition Act 1894 is very crucial. If on that date the holder of the land (Bhumiswami) is alive and his

family has his wife, minor children and other dependents the holder would get one unit only as per definition of "family", given in Clause XI sub-clause I(3)(i) of the Award and Clause 1.1(b)(1) of the R.R. Policy of the State. In case the holder of the land died before the date of the notification, as in the present case, he ceases to be the head of the family and tenure holder "Bhumiswami". In that case his legal heirs become the holders of the land. The family of the original holder is no longer there. Each heir becomes the joint holder of the land left by the original holder. As a joint holder each becomes entitled to one unit. Now each joint holder's family becomes entitled to one unit. Such joint holder may have his wife and minor children. They would constitute one unit. In case of minors each minor holder would be entitled to one unit because he is a joint holder and can claim land in his own right. So would be the case of the widow of the original holder, she would also be entitled to one unit being the joint holder. These heirs cannot be treated as "one family" as each of them has equal share in the lands left by the original holder."

26. In *NBA Vs. Union of India* (2005) 4 SCC 32 it has been held on the basis of the earlier judgment *NBA Vs. Union of India* (2000) 10 SCC 664, as under:- "The Court noticed that the State Governments have liberalized the policy with regard to resettlement and have offered packages more than what was provided for in the Award of the Tribunal. Such liberalized policy included those PAFs who were even encroachers, landless / displaced persons, joint holders, tapu land (island) holders and major sons (18 years old). (Para 180 of the *NBA Vs. Union of India* AIR 2000 SC 3751 is more clear in these respect: "The State Governments have liberalized the policies with regard to resettlement and have offered packages more than what was provided for in the Award eg., the Governments of Madhya Pradesh, Maharashtra and Gujarat have extended the R&R benefits through their liberalized policies even to the encroachers, landless / displaced persons, joint holders, Tapu land (island) holders and major sons (18 years old) of all categories of affected persons". It has been further noticed that "the rehabilitation even in Madhya Pradesh is to be at the expense of Gujarat".

"Each of 8 applicants were thus, in reality a landholder in their own right since their fathers Athya and Khatriya died even prior to issuance of the notification under Section 4 of the Act".

There can be legally no distinction between major and minor joint holder. The minor joint holder is also legally entitled to equal share being Class I heir under Hindu Succession Act, 1956, and is fully covered within the ambit of the "joint holder". As the State has made concession or commitment to give the benefit of rehabilitation to each joint-holder it has to honour its commitment. The tribals have mostly adopted Hindu Law and are governed by the same. Even as per customary law of inheritance there is no distinction between major and minor heirs and each of them has equal share in the property left by their father or ancestors. Petitioners - Narmada Valley Development Authority of its own is allotting two hectares of land to each major joint holder (son, daughter and

widow) without any demur but is not extending the same benefit to minor joint holders and also at time to the widows. This discrimination is not permissible in law. There is no rationale to keep the major joint holders in one category and the minor joint holders in another category, as both the sets of joint holders in the absence of their father need more succour and protective hand. As back as in the year 1997 Circular No.76/NVDA/Rehabilitation/SSP/97/219 dated 9/6/1997 was issued by Shri H. N. Tiwari, Director (Rehabilitation) Narmada Valley Development Authority, Bhopal in which he had accepted the position as per directions of the Vice Chairman that even the minor joint holders are separately entitled to the benefits of rehabilitation. Para (2) of the Circular is as under:- "VERNACULAR MATTER OMITTED"

27. In short it can be concluded that the rule which emerges from a close reading of Clause XI(IV)(7) and Clause 1(3) of the Award is that a holder or joint holder (Bhumiswami or co-Bhumiswami) claiming rehabilitation benefit of land for land need not "constitute" or bring into existence a "family" as per Clause 1(3) as a mandatory requirement but if he has a "family" according to clause 1(3) the "allotment of land" to him and his family consisting of wife, children and other dependents would enure to the benefit of the whole family.

28. There is no scope or relevance for going in the past to ascertain how the lands devolved upon and recorded in the names of the applicants as joint holders. They have their own rights and undivided share in these lands which have been acquired and each one of them is entitled to two hectares of land as their major male counterparts. There can be no discrimination on the ground that they are females in this era of gender equality in all spheres and especially in the matter of inheritance and succession. Each of the applicants is covered within the ambit of "displaced family", as used in Clause XI (IV) (7).

29. In NBA Vs. Union of India (2005) 4 SCC 32 the Supreme Court while dealing with the case of major son has observed (see page 302 of 212 (3) SCC 289): "If a person was land holder he in his own right would be entitled to the benefit of rehabilitation scheme."

That also indicates that each joint tenure holder is entitled to rehabilitation benefits in his or her own right.

30. It is pertinent to note that the costs of land to be allotted to each joint holder (displaced person) is to be recovered from him in the manner given in the Award and the State Policy, ie 50% of compensation money and the rest of the amount in twenty years. Each joint holder is to be given two hectares of land as that is a viable unit for proper and economic cultivator as recognized in the MP Land Revenue Code, 1959 also and that is also for betterment of the conditions of the displaced families. This allotment of two hectares land to each joint holder is not free. Its cost is to be paid by the allottee in 20 years. After the construction of the Sardar Sarovar dam there would be tremendous and remarkable improvement in the irrigation facilities leading to higher production. The land

would become cultivable and more fertile ("VERNACULAR MATTER OMITTED"). There would be hydro-electric power generation to a considerable extent and all this would off-set the cost of compensation and rehabilitation which are to be given to the oustees or displaced persons. They are sacrificing the land owned by them in national interest and, therefore, justice requires that they should be compensated and rehabilitated. Their legal rights are not to be taken away lightly. It is their pain and suffering which would be translated in economic advantage to the future generations in the form of irrigation and power. That has been the guiding factor in the passing of N.W.D.T. Award taking special care of the oustees or displaced persons and in the formulation of the State Policy by the Council of Ministers and with the same spirit the officers and authorities of the NVDA should deal with the oustees or displaced persons who have been uprooted. These authorities should for a moment step into their shoes or go in their arm chair (especially the minor joint holders) to realise their agony and suffering and then there would be further realisation that the rights given by the Award and the State Policy should not be denied to them by adopting specious and artificial ingenuities. The Award and the State Policy must be properly interpreted and fully respected and implemented by those who have been entrusted with this work. The cases of minor joint holders/joint holders are not many. They are those persons whose fathers have met untimely death (in the present case the father expired before the notification under Section 4 of Land Acquisition Act was issued) and, therefore, the authorities

should not in all fairness, resist their claim for rehabilitation and should have qualm of conscience for them. The authorities need not be charitable to them. They should, however, not be unmindful or oblivious of their legal rights.

31. A similar problem arose in respect of Orissa Land Reforms Act, 1960 and the Hon"ble Supreme Court in the case of State of Orissa & Ors. Vs. K. Srinivasa Rao (Dead) thourhg LRs reported in (2001) 4 SCC 743 in paragraphs No.9 and 10 has held as under:- "9. In this background, we would consider the meaning of the term family in relation to a married daughter as per the definition. Married woman is an individual and as per the definition of word family, her family would consist of her-self, her husband and their children whether major or minor. This would also be in consonance with general understanding of the word family as well as status of a married woman in the society. If she is holding land, she would be regarded as a separate unit who will have to file a separate declaration in respect of her holding and that of her family under the Act.

10. Secondly, for the purpose of the Act, definition clause Section 2(21) inter alia provides that person under disability means

"a widow or an unmarried woman or a woman who is divorced or separated from her husband by a decree or order of a Court or any custom or usage having the force of law."

This definition would indicate that a woman is considered to be a separate entity

having her own individuality and after marriage there is no question of clubbing her holdings with the family of her parents. Further, considering the aforesaid definition even if a married woman who has separated from her husband by a decree or order of a court or under any custom or usage having the force of law and staying along with her parents, it would be difficult to hold that she is a member of her parents family. After marriage, she loses the status of being member of her parents family. As against this, a major son after marriage would not automatically cease to be a member of his parents family. Therefore, the phrase children, whether major or minor as mentioned in the definition of the word family is required to be given reasonable meaning as understood in popular sense of the word. That appears to be the reason why the Legislature has not made any provision either excluding or including married daughters land holdings in her parents family, otherwise the definition of the word family would not be workable. For the married son, the Legislature has provided that his holdings of the land would not be clubbed if he is a major married son who had separated by partition or otherwise before 26th September, 1970. This also appears to be normal phenomenon with regard to the family in the society. It is to be stated that prior to the substitution of Section 37 and introduction of Sections 37-A and 37-B by Act 29 of 1976, person included a company or any other corporate body or a joint Hindu Mitakshara family. The legislative intent for this amendment appears not only to include the family which is known as joint Hindu Mitakshara family, but also to include other families which may not be covered by the concept of Hindu Mitakshara family and non-Hindu families. But, it would be difficult to presume that Legislature ever intended to cover married daughter, whose family is that of her husband, for the purpose of clubbing her land holdings with that of her parents. If the contention of the learned counsel for the appellant is accepted, holdings of a married daughter would be required to be included in her parents family as well as in the holdings of her husband and her children and this would lead to absurdity and unintended injustice to a woman. The object and reason for substituting Section 37 and incorporating Sections 37-A and 37-B is with a view to imposing a ceiling on the aggregate area of land held by all the members of a family. For achieving that object, it is not necessary to include married daughters holdings in the holdings of her parents by stating that she is major child of her parents. For the purpose of family she becomes part and parcel of her husbands family and that is the common notion and understanding. Hence, in our view, the interpretation given by the High Court is just and reasonable. It is also established rule of interpretation of a statute that court will interpret a statute as far as possible, agreeable to justice and reason, and avoid imputing to the legislature, an intention to enact a provision which flouts notions of justice and norms of fair play unless a contrary intention is manifest from the words plain and unambiguous (*Madhav Rao Scindia v. Union of India*, AIR 1971 SC 530).

32. In light of the aforesaid judgment it can be safely gathered that the definition of family is an inclusive definition and in the aforesaid case, a married woman

under the Act is treated as a separate unit. Not only this, the general property laws in force in country and the personal laws applicable to Hindus, Muslims and other religions, grant equal rights to a daughter in their father's property. The rights vested to any woman are not denuded only because she gets married or grows old. If the arguments advanced by the petitioner are accepted, it will result in violating the equality between men and women. The right of women on the property of their father is an established right and merely because the girl gets married, she cannot be deprived of the rehabilitation package as she is recorded as a Khatedars in the record of rights (Khasras).

33. In the considered opinion of this Court, the present petition and the other writ petitions filed by the State of Madhya Pradesh deserves to be dismissed and order passed by the Grievance Redressal Authority is hereby upheld.

34. With the aforesaid, all the writ petitions stand dismissed. Certified Copy as per rules.