
(2016) 07 MP CK 0024
In the Madhya Pradesh High Court
Case No : W.P. No. 3435 of 2015

Jagrit Adivasi Dalit Sangathan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 23

Citation : (2016) 3 MPLJ 692

Hon'ble Judges : Mr. P.K. Jaiswal and Mr. Vivek Rusia, JJ.

Bench : Division Bench

Advocate : Mr. A.K. Chitale, learned Senior Counsel with Shri B.A. Chitale, Ms. Madhuri Krishnaswamy, is present in person on behalf of Jagrat Adivasi Dalit Sangathan, for the Petitioner; Mr. Rohit Mangal, learned Government Advocate, for the Respondents/State

Final Decision : Partly Allowed

Judgement

Mr. Vivek Rusia, J.—Present public interest litigation has been filed by the petitioners' association, which is claiming to be a voluntary organisation of Bhil-Barela Adivasis (Tribes). They are represented by Ms. Madhuri Krishnaswami, who claims herself to be an educated social activist. The petition has been filed with an affidavit of Ms. Madhuri Krishnaswami being associated with the petitioners' association. No registration and authorisation of the association has been filed by the petitioner along with the petition. Looking to the nature of the cause and issue raised in the writ petition, the writ petition was entertained and notices were issued to the respondents.

2. Petitioner approached this Court for the cause of tribes, who are affected due to construction of Kharak Reservoir (Dam) under taken by the Water Resource Department of Government of M.P. The project includes construction of a dam in which 218.014 hectares of land of various villages of Khargone and Barwani

districts would submerge. The names of the villages are; Juna Bilwa and Chaukhand in Dhulkot panchayat of Khargone district; and Kanipani of Kamod panchayat, Muvasi of Sirwel panchayat and Julwania in Barwani district. The submergence also includes 65.144 hectares of the forest land of district Barwani. In the second phase of project, canals would be constructed for the villages- Dhulkot, Ambakheda, Charipura, Naya Bilwa, Piplyavadi and Sukhpuri situated in Khargone districts.

3. Case of the petitioner is that hundreds of tribes are living and working in the affected area, who are forced to leave their homes, agricultural land and sources of their livelihood without their rehabilitation and resettlement under the Madhya Pradesh Adarsh Punarvas Niti 2002 and other policies framed by NVDA for the resettlement and rehabilitation (hereinafter referred as R&R).

4. As on filing of this petition, the construction of dam has already been completed by the respondents and the notices have been issued to the residents of various villages of district Barwani and district Khargone due to submergence of the land in possession in forthcoming monsoon.

5. That, according to the petitioner, the construction activities of Kharak Reservoir Project was started in the month of May, 2012 after issuance of notifications under Section 4 & 6 of the Land Acquisition Act, 1894. Therefore, Land Acquisition Officer passed a final award dated 15.07.2012 in respect of the private land measuring 55.108 hectares of district Khargone and on the same date, cheques for compensation were handed over to the owners of 40 lands. Some of the affected tribes started protest with the demand that alternative lands for their lands should be given to them and the compensation be also provided to them as they are affected due to project. They were told by the local administration that if they do not accept the compensation, the cheques would go back and they would not get anything, hence, they had no option but to accept the cheques. It was further stated that no copy of the award was made available to them by the Land Acquisition Officer and they, being illiterate and the tribes, were not aware about the proceeding of filing references under Section 18 of the Acquisition Act. No step has been taken to rehabilitate them under the Madhya Pradesh Adarsh Punarvas Niti 2002. Several adivasi families of villages-Junabilwa and Chaukhand in Khargone district; and Kanipani, Muvasi and Julwania in Barwani district are being displaced due to submergence of their lands including their irrigation facilities, homes, trees etc.. Almost forty families were occupying 55.108 hectares land but they were not paid any compensation on the ground that they are not Bhumiswamis and farming over the encroached lands.

6. However, later on, the Government realised that 55.898 hectares were under cultivation by the non-bhumi swamis/adivasi and they are being displaced due to submergence and hence, the report dated 16.08.2013 was prepared and the same was forwarded by the Collector, Khargone to the State Government for sanctioning some grant amount called "Anudan". Vide letter dated 12.09.2013,

the Government of Madhya Pradesh granted sanction to pay the compensation to 40 encroachers for the year 2012-13 (without solatium and interest) and thereafter, further sanctioned grant in respect of 8 encroachers vide letter dated 29.04.2014.

7. Petitioner being dissatisfied with this "Anudan" alleged that there are some more families affected in this project and are entitled to get compensation for assets like trees, irrigation facilities, houses etc. and the Anudan amount is meagre amount and they are not satisfied with this. There are other families in possession of the forest lands of district Barwani whose occupation was regularised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. They have not been offered adequate compensation under the Madhya Pradesh Adarsh Punarvas Niti 2002 and 2008; and under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short & the Act of 2013&). Despite several complaints, representations and agitations, nothing has been done by the Government.

8. That, in respect of Barwani district entire land, which was coming under submergence is a forest land and 28 persons were found holding the land on the basis of the identification by the GPS system. Physical verification was also done in the month of September, 2014 and 3 reports were submitted by Tehsildar in which private land in respect of 3 persons measuring 4.405 hectares was found under submergence. Vide letter dated 19.05.2015, the Collector sent notices for grant of compensation to the lease holders of forest land. Water Resource Department granted permission to grant compensation and accordingly, final award has been passed on 04.11.2015 under the Act of 2013.

9. According to the award dated 04.11.2015, Van Adhikar Pattadhari only will be entitled to receive compensation. The petitioners furnished list of 108 families, who are affected in Barwani district and claiming resettlement and rehabilitation for them along with the compensation hence in the writ petition, following reliefs have been sought by the petitioners.

"1. Issue a writ, order or direction in the nature of CERTIORARI or other appropriate writ calling for the records of the case from the respondents;

2. Issue a writ, direction or order in the nature of MANDAMUS or other appropriate writ, directing the respondents to resettle and rehabilitate the project affected persons after carrying out the detailed survey as per the Madhya Pradesh Adarsh Punarvas Niti 2002 and the Punarvas Niti (NVDA) 2008, within a period of four months.

3. Issue, a writ, order or direction in the nature of MANDAMUS or other appropriate writ restraining the respondents from filling up the dam to submerge the land of project affected persons without resettling and rehabilitating them as per the Madhya Pradesh Adarsh Punarvas Niti 2002, Punarvas Niti 2008 (NVDA) and/or any other relevant schemes and guidelines framed by the State or Central

Government.

4. Issue a writ directing in the nature of MANDAMUS or other appropriate writ directing the respondents to grant the benefits under the "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013), in the case of project affected persons who have not been awarded compensation under the LA Act 1894 till date.

5. Punitive action be ordered against the Respondents for violation of law, for casual and callous approach in denying poor adivasis their legal entitlement and for the harassment and suffering faced by these poor adivasis due to loss of land and other assets due to construction activity and submergence, without proper and timely rehabilitation.

6. Award the costs of the present petition to the petitioner and;

7. Grant such other relief or reliefs as this Hon"ble Court deems fit in the facts and circumstances of the case."

10. After notice, Government filed return in which locus standi of petitioner association to file the present petition (PIL) was challenged on the ground that the petitioner is an unregistered association, which do not fall under the definition of a "Person". There is no bye-laws of the society and no authorisation and resolution has been placed on record. It has been stated that respondent under the welfare scheme with an object to provide irrigation facilities to 1,900 hectares of the land in Rabi Season and 740 hectares of land in Kharif season situated in 7 villages of Khargone district by the project called Kharak Reservoir Project. By implementation of this project, thousands of families will be benefited and construction of dam will create employment for agricultural labourers. Due to establishment of dam, additional cultivation in 2640 hectares of the land, additional employment will be generated for at least 200 persons with fishing activities. In summer seasons, land can be utilised for other agricultural activities also over the submerged land of the catchment area, which is approximately 142 sq. kilometers. It is further submitted that this is a small size irrigation project and the dam was filled nearly at R.L. 401 meter as on 11.06.2015.

11. This irrigation project was introduced as welfare scheme for the benefit of tribes residing in Khargone and Barwani districts of Madhya Pradesh. Ministry of Environment of Forest initially granted sanction on 07.12.2010 for diversion of 65.44 of hectares of forest land situated in Barwani district coming under submergence and thereafter, vide order dated 23.08.2011, administrative sanction was also granted by the State Government for Rs. 49.13 crores. After taking administrative approvals, tenders were floated for construction of the dam and the same was allotted to M/s. Bhavya Sindhu Infra Projects Pvt. Ltd., Hyderabad for a sum of Rs. 21,54,62,852/- by issuing the construction order dated 06.06.2012 thereafter, the final approval of MoEF was also granted on 18.12.2013 under Section 2 of The Forest (Conservation) Act, 1980 and then forest land was diverted in favour of The Water Resources Department of

Government of Madhya Pradesh. Forest Department of State of M.P. has also granted its final sanction for implementation of the project vide order dated 31.01.2014.

12. Under the Kharak Reservoir Project, 55.108 hectares of private land of district Khargone has been acquired for which award dated 15.07.2012 has been passed under the provisions of Land Acquisition Act and the said land acquisition proceeding and the award have attained finality. Not a single affected person has sought reference to challenge the award under Section 18 of Land Acquisition Act. After passing of the award, it was brought to the knowledge of the Government of M.P. that there are some Adivasis, who have encroached the land for their social livelihood for which after detailed survey conducted in presence of Sarpanch of respective Gram Panchayat, Patwari in presence of petitioner and after verification, Panchnama was prepared. In said process, 49 persons were found in possession of the Government land of 37 surveys and Collector, Khargone vide letter dated 16.08.2013 recommended for grant of rehabilitation grant to those 49 persons. The Government accepted the said proposal and sanctioned amount of Rs. 76.32 lacs. Thereafter, 8 more persons were found as encroachers and they were also directed to be paid grant of Rs. 14,91,765/-. The Government has duly taken care of the entire project affected persons as welfare state and awarded the grant to all those persons, who were affected.

13. So far the land coming under the submergence in Barwani district, it is submitted that it is total forest land, therefore, no acquisition is necessary. The survey was conducted in the month of February, 2014 to verify the details of persons, who were holding the possession right of forest land under the licence (Van Adhikar Patta) under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. With the help of forest department and GPS system, 29 persons were found holding the land in forest area. Valuation was done with the help of Public Works Department and Public Health Engineering Department and Tehsildar and forwarded 13 cases of village-Kamod, 8 cases of village-Julwania and 9 cases of village-Sirwel for granting compensation to the respective land holders. After getting permission from the forest department, their cases were processed for grant of compensation. Meanwhile, new act called ‘‘Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013’’ came into force in which the Land Acquisition Act, 1898 was repealed, hence, final award was passed on 04.11.2015 under the Act of 2013.

14. According to the award dated 04.11.2015, compensation was assessed on the basis of guidelines of order dated 2015-16 @ Rs. 4,15,000/- per hectare for irrigated land and Rs. 2,25,000/- per hectare for unirrigated land. After considering the provisions of the Act, 2013, 100% solatium was decided to be paid and finally total amount was calculated to be Rs. 1,05,15,116/- to be paid to those 29 tribes, who were having forest rights for the total land 47.438 hectares.

15. It is further submitted by the respondent that submergence affected families

are less than 50 in Khargone district and less than 100 in Barwani district, hence, total affected families are not even 200 and no part of village or Basti came under the submergence, therefore, steps for rehabilitation is not required. Any single community, facilities like building, school, hospital, anganwadi, post office, panchayat bhavan, community hall, fair price shop and road etc. came into submergence partly or wholly in both the districts, therefore, petitioner and tribes are unregistered to rehabilitate and resettle by Government.

16. Land acquisition proceedings in Khargone district has been completed in the year 2013-14 as per the provisions of Land Acquisition Act, 1894 by passing the final award dated 15.07.2012. Thereafter, in Barwani district also, land acquisition proceeding has been completed and final award has been passed on 04.11.2015 but, no one has turned up to the office of the SDM, Sendhwa along with their ID proof, original Patta and Bank pass book, because, the amount is liable to be deposited in their bank account directly. Thereafter, second time notices were also issued on 24.11.2015 but, no one turned up hence, now entire amount is lying with the office of the Collector, Barwani.

17. In response to the return filed by the State Government, the petitioner filed a rejoinder and submitted that more than 200 families are affected and their right to livelihood has been taken away without payment of adequate compensation and the rehabilitation policy has also completely been given go by the respondents. As per the survey conducted from June 2014, total number of 29 persons from Khargone district and 108 persons of Barwani district were displaced and suffered loss of their livelihood. These include land holders, landless agriculture workers and eldest sons of those families, who comes under the definition of "Affected Persons" under the Madhya Pradesh Adarsh Punarvas Niti 2002. List of these persons are annexed as annexure P-22.

18. Thereafter, additional rejoinder to the additional return was also filed by the petitioners and it is alleged that this Court vide order dated 21.07.2015 directed to conduct a detailed survey of project affected persons by a team comprising Sarpanch, two members of the petitioner's association along with revenue authority. It is alleged that members of these team refused to record several inputs given by the Sarpanch and others for which a complaint was made to the Collector. They have alleged that there are several discrepancies in the survey conducted by the team. The landless labourers, who were issued job cards by the Panchayat have not been considered as projected affected persons by the team even the Madhya Pradesh Adarsh Punarvas Niti 2002 clearly indicates that encroachers of forest land are also entitled for rehabilitation.

19. On the basis of the above pleadings, chronological list of dates and events are reproduced below for ready reference.

Date

Description

2002

Adarsh Punarvas Niti, 2002 made by Government of Madhya Pradesh Punarvas for minimal provisions of rehabilitation.

2008

Latest Punarvas Niti, 2008 of Narmada Valley Development Authority, Bhopal

07/12/10

Stage-1 approval by Ministry of Environment and Forests (MoEF) (in-principle provisional clearance) subject to certain conditions including : 2 (xvi) "The State Government of Madhya Pradesh and the User agency shall undertake Rehabilitation and Resettlement (R&R) of the project affected persons, if any, in a time bound and transparent manner".

21.03.2011

MoEF Guidelines of Ministry of Environment and Forests regarding mandatory clearance under section 2 of Forest (Conservation) Act 1980 for work involving both forest and non-forest lands, before construction.

23.08.2011

Administrative sanction by State Government

06/06/12

Work sheet by Executive Engineer, Water Resources Division, Khargone

May-June, 2012

Work on Kharak Pariyojana started.

15.07.2012

Award under section 11 of Land Acquisition Act 1894 passed in respect of only Bhumiswamis in Khargone District.

Notice under section 12 issued for Khargone district.

05.03.2013

Joint Complaint by several tribals to Collector Khargone and other authorities regarding their displacement without rehabilitation.

15.08.2013

Panchnamas and resolution of village panchayat regarding land occupied by non-bhumiswamis [later used for grant of anudaan rashi as per R/10 and R/12.]

16.08.2013

Letter from Collector, Khargone to Principal Secretary Water Resources

Department (Also annexed as P/1, along with SDO's report, pages 25-34 recommending "anugrah rasshi" to 49 "encroachers" since they will lose their entire source of livelihood upon submergence.

12/09/13

Order passed by State of M.P. WRD, Bhopal with regard to payment of "anudaan rasshi" to 41 of these persons.

18.12.2013

Order of Stage 2 (final) clearance by Ministry of Environment and Forests upon certain conditions including rehabilitation and resettlement of affected persons in transparent and time bound manner

01.01.2014

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 comes into force.

08.01.2014

Petitioner's representation to concerned Minister for rehabilitation and compensation to displaced persons.

31.01.2014

Final sanction of State Government (Forest Department), Bhopal, upon certain conditions including rehabilitation and resettlement of affected persons in a transparent and time bound manner.

17.02.2014

Letter from Collector, Khargone to Principal Secretary Water Resources Department recommending "anudaan rasshi" for 8 persons who had earlier been denied.

29.04.2014

State Government sanction of anudaan rasshi to these 8 persons.

28.04.2016

Report of Tehsildar, Sendhwa (distt. Barwani) regarding affected persons allotted forest pattas.

13.05.2015

Notice from SDO, Water Resources, Seggaon, Barwani to oustees of Barwani district to vacate/remove property for filling the Dam, stating that "sanction of payment is in progress"

20.05.2015

Complaints of farmers regarding non-inclusion in surveys (Khargone District)

26.05.2015

Writ Petition No.3435/15 filed before High Court.

22.06.2015

Permission from the Govt of MP Deptt. of Water Resources, for compensation to vanpatta holders at par with private land.

21.07.2015

Interim Order Arguments regarding rehabilitation policies, applicability of Right to Fair Compensation Act; Wrongful exclusion of some categories of affected persons. Problems with "anudan" rashi. Violation of MoEF guidelines, Forest Conservation Act. Order: Those in possession of land for more than 3 years eligible for compensation. (i) Detailed survey of beneficiaries by a team including sarpanch patwari, two sangthan members, forest guard/ranger. (ii) Encroachers entitled to compensation as per rehabilitation scheme of respondent 2, as per prevailing Collector's guidelines. A detailed affidavit of both Collectors to be filed regarding compliance of Forest Conservation Act 1980, MoEF guidelines and dictum of Apex Court [in Godavarman Case]. (iii) DFO and Conservator of Forest to submit Report and file affidavit regarding violation of Guidelines of MoEF and dictum of Apex Court. The whole exercise be completed within a period of 10 weeks from today and a detailed report be submitted to the court for its perusal.

16.11.2015

Compensation Award passed for Barwani District under New Act of 2013 by Sub Divisional Officer, Water Resources Sub-Dn No.2.

17.11.2015

First notice from LAO and SDO

24.11.2015

Second notice from LAO and SDO

20. We have heard arguments of Shri A.K Chitale, learned Senior Counsel and Ms. Madhuri Krishnaswami for the petitioner and Shri Rohit Mangal, learned Government Advocate for the respondents/State.

21. Shri Chitale, learned Senior Counsel and Ms. Madhuri Krishnaswami argued that the State Government has enacted the law called "M.P. Pariyojana se Visthapit Vyakti (Punahsthan) Adhiniyam, 1985 in respect of rehabilitation of displaced persons in the project undertaken by the State Government and it is the responsibility of the Government to provide rehabilitation. Thereafter, Madhya Pradesh Adarsh Punarvas Niti 2002 came into force with the object to rehabilitate and resettlement of persons and to provide a livelihood at

the earliest with specific definition of displaced persons and the family. The policy also provides allotment for the land for land to all persons, who loses their more than 25% of their land and with special provisions for families of Scheduled Caste and Schedule Tribes and thereafter, Madhya Pradesh Adarsh Punarvas Niti 2008 came into force providing minimal condition to provide rehabilitation and resettlement for all project involved in land acquisition.

22. Narmada Valley Department Authority (NVDA) has also come up with their own Punarvas Niti, 2008 for the families affected in the projects undertaken by the NVDA. This Niti, 2008 also provides rehabilitation grant equivalent to 750 days of the minimum wages for agricultural workers and pension to the displaced persons apart from other facilities. Thereafter, after abolition of Land Acquisition Act, new Act the Act, 2013 came into force with a provision for formulating comprehensive scheme for rehabilitation and resettlement scheme before acquisition of the land. The Act provides market value of the land with the double rate along with 100% solatium and rehabilitation and resettlement and land for land, choice of employment etc.

23. It is further argued that Adivasi families of small farmers and landless labourers of Khargone districts and Barwani district, who have been forcibly displaced due to Kharak Reservoir Project undertaken by the Government of M.P. are entitled for fair compensation and rehabilitation. Bhumiswami and the holders of the forest land have been paid negligible amount of compensation under the head of "Anudan" but the majority of the affected cultivators do not come in the category of Bhumiswamis but their livelihood was dependent on agricultural and the Government has wrongly treated them as encroachers and denied them compensation and they have been forcibly evicted without rehabilitation. Majority of the families have been forced to migrate in search of work and agriculture for their livelihood. Gram Sabha of respective Gram Panchayat has not been consulted, which is a mandatory requirement under the provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996 or under the Act, 2013.

24. It is further argued that as per various laws and policies prevailing in the field, members of the petitioner association are entitled for adequate compensation for their land, dwelling house, trees etc. Rehabilitation package includes entitlement for land for land, rehabilitation, grant of house, building and grant of compensation and also resettlement at new sites along with land, house, plots and specific minimum facilities. These policies also specifically provide grant of relief to non-bhumiswamis and landless workers whose livelihood and dwelling have also been adversely affected.

25. The respondents have wrongly refused to grant resettlement and rehabilitation based upon the illogical and baseless reasons that they are not land owners and their houses are not coming under the submergence and less than 200 families are affected and project is minor irrigation project and finally, they would be benefited by the dam.

26. It is further submitted that there are various irregularities in payment of the compensation to those who have been held to be entitled for payment of compensation and they have not been paid adequately compensation. They have been paid 1.54 lac per hectare and 2.3 lac per hectare whereas, the prevailing market rate is 12-13 lacs per hectare. Land holders being illiterate persons were forced to accept the amount under the threat that their compensation would be lapsed.

27. Survey conducted in pursuant to the directions issued by this Court is only eye wash and major irregularities and discrepancies were ignored. Not a single person and family have been recognised as project affected and landless labourers and the persons identified by the surveyors have been rejected for want of job cards.

28. For lack of knowledge and proper advice, they could not seek reference under Section 18 of the Land Acquisition Act. No compensation was paid to non-bhumiswamis, who are in majority amongst them. Anudan Rashi has also been arbitrarily assessed which is only 40% of market rate guideline for the year 2013-14 in respect of affected persons of Khargone district. It is submitted that in respect of families affected in Barwani district, no award was passed before submergence. Affected families were issued notice just before the submergence for removal of their moveable and immoveable properties. The provision of right to fair compensation Act, 2013 has not been followed. Construction of the dam has been started without final approval of MoEF. First clearance was granted with certain conditions, which requires to be fulfilled before final clearance by MoEF but in the present case, the respondents have started construction of the dam without granting final clearance and without fulfilling the mandatory conditions of first clearance.

29. Finally, it is argued that by way of final relief, all the affected families be provided fair compensation and rehabilitation and resettlement under the provisions of the Act, 2013 and Madhya Pradesh Adarsh Punarvas Niti 2002 and 2008. Compensation be calculated at market value of land. All the persons in the list of the Collector vide letter dated 16.08.2013 be paid at the rate for irrigated land and punitive action against the erring officer be taken and finally, Rs. One Lakh be paid to the project affected persons, who have been forcibly displaced and deprived of their livelihood without due process of law be paid.

30. In reply to the arguments of the petitioner, Shri Rohit Mangal, learned Government Advocate submitted that the State Government has strictly followed all the provisions of M.P. Land Acquisition Act, 1894 and the Act, 2013. Kharak Reservoir Project is a minor irrigated project, therefore, Madhya Pradesh Adarsh Punarvas Niti 2002 and 2008 was not applicable because these were framed for rehabilitation and resettlement of the families affected in major project like Sardar Sarovar Pariyojana and Indra Sagar Pariyojana etc. under taken by the NVDA. It is submitted that the Government provides rehabilitation and resettlement in the projects where the land of 1000 acre were acquired and

local residents had to shift to the new areas, which is unknown to them. In the present case, not a single village, Basti, house, building and road came into the submergence, therefore, the persons, who were illegally occupying the area cannot be said to be affected persons and are not entitled for rehabilitation. They are using the Government land and they are not required to be shifted to any other place. Only at the time of submergence, they cannot utilise the land but in remaining period, they can cultivate these land which would be more fertile. They all are benefited by the construction of dam by way of irrigation, fishing and by way of employment. The Government has duly considered and adequately compensated them with the "Anudan" amount and compensation under the provisions of the Act, 2013. Others are not entitled for want of identity proof and the documents relating to their possession over the land. Since, this is not a major project like NVDA, therefore, rehabilitation is not required, hence, prayed for dismissal of the writ petition.

31. We have considered the rival submission of the parties.

32. That, at first, we will deal with the issue regarding adequacy of the compensation awarded by the Land Acquisition Officer in the award dated 15.07.2012 passed in respect of Khargone district and the award dated 04.11.2015 passed in respect of Barawani district. It is not disputed that the award dated 15.07.2012 was passed under the provisions of Land Acquisition Act, 1894 by the land acquisition officer. After passing of the award, who were not satisfied with the award could have sought reference under Section 18 of the Land Acquisition Act and after such reference the said matter could have been referred to the civil court for adjudication. The State Government has contended that no reference has been sought by any of the persons or even by the petitioner before the Collector, hence, in our opinion, award dated 15.07.2015 has attained finality.

33. So far as the award dated 04.11.2015 is concerned, same was passed under the provision of Act of 2013 during the pendency of this petition, therefore, it is presumed that the petitioner as well as the persons and members of the association is having knowledge of the award but it has been informed that no reference has been sought under the Act, 2013, therefore, this award dated 04.11.2015 has also attained finality under the provisions of Act of 2013.

34. It has been contended by the learned counsel for the petitioner that despite the award has been passed and reference not being sought, this Court, under Article 226 of the Constitution of India, in the interest of justice, can look into the award and enhance the amount of compensation. We are not ready to accept such contention. The Land Acquisition Act, 1894 is a complete code in it and the remedies are provided to challenge the award within the specific period of limitation therein. Thereafter, further remedy is provided by way of appeal before the High Court in which ad-velorem court fee is payable to the State Government. Since, both the Acts provide complete remedies and it is not disputed that both the awards passed were in the knowledge of petitioner and

the concerned had chosen not to seek reference or challenged the award, therefore, cannot pray before this Court to check the validity of the award in writ petition under Article 226 of Constitution of India.

35. Hon'ble the Supreme Court in the case of Steel Authority of India Limited v. SUTNI Sangam, reported in 2009 (16) SCC, 1, has considered these aspects in detail and held that the reference barred by limitation under Section 18 of the Land Acquisition Act, 1894 is not challengeable even under writ jurisdiction under Article 226 of the Constitution of India.

"As association can file a writ application representing its members. But, *stricto sensu*, it could not have filed any application for reference under Section 18. For making such a reference also the period of limitation provided for therein must be resorted to. The Association had not filed any application for reference under Section 18 before the Collector. Most awards were passed during the period 1972 and 1974. Only some awards were passed in the years 1970, 1975, 1976, 1977 and 1978. The State expressed its helplessness to specify exactly the number of the persons who had received the amount of award under protest of who had filed applications for reference.

When the status provides for a law limitation, compliance therewith is mandatory. A statute of limitation should receive strict construction. For the purpose of applying the statute of limitation, the courts should, however, be liberal in their approach. Section 18(2)(b), LA Act provides for the maximum period of six months from the date of the Collector's award. It was, therefore, impermissible to direct references to be made after along period particularly when the provisions of Section 5 of the Limitation Act, 1963 cannot be said to have any application.

Even assuming that the awardees were poor and illiterate and they were not aware of their rights, it is one thing to say that an association, like the first respondent, takes up its cause but it would be another thing to say that only due to the said reason the mandatory provisions of the statutes would not be necessary to be complied with."

36. It would not be possible for High Court to adjudicate individual claims about compensation because there are several factors which decide the quantum of compensation, which can only be done only when an individual seeks reference by adducing evidence before the civil court. Therefore, in the writ petition filed by the association, the case of individual regarding quantum of compensate cannot be adjudicated, hence, the prayer of the petitioner to grant of proper compensation under the Land Acquisition Act, 1894 and under the Act, 2013 cannot be considered, hence, declined.

37. The last and most important reason for declining the relief of the petitioner is that before filing of the petition, award dated 15.07.2012 has already been passed and during pendency of this petition, award dated 04.11.2015 has also been passed and the petitioner did not make specific prayer for setting aside

both the awards by way of amendment in writ petition, hence, this Court is of the considered opinion that no relief can be granted to the petitioner in respect of quantum of compensation granted by way of award dated 15.07.2012 and dated 04.11.2015.

38. That, the petitioner has also challenged that the State Government had started the project before final approval given by MoEF. First approval was granted with certain conditions and without complying with the said conditions, project ought not to have been started since, the project has been started without final approval in the year 2012, proceedings have been concluded under the Land Acquisition Act, 1894. Had the project been started after the final approval, the benefit of the Act, 2013 would have been granted to the projected affected persons.

39. In the present case, first clearance was granted by the MoEF in the year 2010 and thereafter, final permission was granted in the year 2013 and the Dam has been constructed. Petitioner approached this Court in the year 2015, hence, there is a delay in approaching this Court by the petitioner in respect to the challenge the acts of the respondents on the point of clearance and starting the work. Therefore, we are of considered opinion that at the instance of the petitioner, this Court cannot examine this issue specially in the writ petition filed in the nature of Public Interest Litigation, hence, we reject the contention of the petitioner. Now, only issue has to be decided regrading rehabilitation and resettlement of the villagers mainly tribes, who are affected by way of construction of dam and submergence of their lands.

40. The entire claim of the petitioner for rehabilitation and resettlement is based on Adarsh Punarvas Niti, 2002 framed by the Government of Madhya Pradesh and Adarsh Punarvas Niti 2008 framed for NVDA project. Petitioner has also placed reliance over the Act called â??Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013â?? and the contention of the petitioners is that they come under the category of "affected persons", therefore, they are entitled for rehabilitation and resettlement. We have gone through the entire Policies of the year 2002 and 2008 and also the provisions of the Act, 2013 and various judgments in relation to rehabilitation and resettlement given by the Supreme Court of India. It is true that the Policy 2002 has been framed by the Government of Madhya Pradesh to provide rehabilitation and resettlement to the persons, who are affected under the various projects of the Government in which lands were acquired by way of acquisition.

41. That, the entire claim of the petitioner is based upon this policy, therefore, this Court shall examine each and every provision of this policy while considering the claim of the petitioner. Under the Sub-clause 1.3 of Clause 3, it is provided that special attention would be provided to the members of Scheduled Castes and Scheduled Tribes of displaced families in case of rehabilitation. Clause 2 of the policy also deals with the definition of displaced persons, which is reproduced

below:

"Clause 2- (v) & foLFkkfir O;fDr& dksbZ O;fDr] tks ml {ks= esa ftldh LFkkbZ ;k vLFkkbZ :i ls ifj;kstuk ds dkj.k ty eXu gksus dh laHkkouk gS ;k fdldh ifj;kstuk ds fy, vko";drk gS] Hkw&vtZu vf/kfu;e dh /kkjk&4 ds v/khu vf/klwpuk izdk"ku dh rkjh[k ls de ls de ,d o"kZ iwoZ ls lk/kkj.kr;k jgrk gS] rFkk dskbZ O;kikj /kU/kk vkthfodk ds fy, dk;Z djrk gS&

de ls de rhu o"kZ iwoZ ls Hkwfe dh dk"r djrk jgk gSA

c & foLFkkfir ifjokj &

(i) mi;qZDr ifjHkkf"kr foLFkkfir O;fDr;ksa ls cuk ifjokj ftlesa ifr] iRuh vkSj ukckfyx cPps vkSj ifjokj ds eqf[k;k ij vkfJr vU; O;fDr mnkgj.kkFkZ&fo/kok ekWa] fo/kok cgu] vfookfgr cgu] vfookfgr iq=h ;k o`) firk "kkfey gSA

(ii) foLFkkfir ifjokj ds izR;sd ckfyx iq=@iq=h ,oa HkkbZ dks] tks Hkw&vtZu vf/kfu;e dh /kkjk&4 ds vUrxZr vf/klwpuk tkjh djus ds fnukad dks ckyhx gks x;k gS] ,d vyx ifjokj ds :i esa ekuk tkosxkA

2-2 v & Hkwfeghu O;fDr & og O;fDr tks vdsys ;k vius ifjokj ds lnL;ksa ds lkFk la;qDr :i ls dksbZ d`f"k Hkwfe /kkj.k ugha djrk gS ;k ftlds ikl d`f"k ds fy, dksbZ vU; Hkwfe ugha gSA ,sls O;fDr tks fdLh vU; O;fDr dh d`f"kd Hkwfe ij etnwjh djrs gksa mUgsa Hkh blh Js.kh esa j[kk tkosxkA

c & NksVk fdLku& ,slk fdLku ftlds ikl [kkrs dh vflapR ,d gsDVj ;k flapR 1@2 gsDVj ;k mlls de Hkwfe gksA

2-3- iquZokl esa iqu%LFkkku Hkh fufgr gSA iquokZI dh O;LFkk djrs le; d`f"k Hkwfe ls foLFkkfir ifjokjksa ,oa ou Hkwfe ls foLFkkfir ifjokjksa esa dksbZ foHksn ugha fd;k tkosxkA

-3-1- Hkwfe rFkk lEifRr dk vf/kxzg.k & foLFkkfir O;fDr;ksa dks i;kZIr eqvkoth rFkk u;s LFkku ij Hkwfe vkoaVu lqfuf"pr djus gsrq] lHkh lEc) Hkw&vfHkys[kksa dks vfr"kh?kz v|ru fd;k tkosxk vxj fdLh otg ls os iw.kZr% v|ru u gksaA vfrdze.k jktLo Hkwfe] ;k ouHkwfe ij gksA ;g Hkh "krZ gksxh fd mDr vfrdze.k ifj;kstuk dks jkT; ;k Hkkjr ljdkj }kjk Lohd`fr nsus ds de ls de rhu o"kZ iwoZ dk gksA

2-3-2- Mwc ls izHkkfor {ks=ksa esa tehu dh dhersa vusd o"kZ ls nch gqbZ gSA ifj;kstuk ds vUrxZr vf/kxzg.k gsrq izLrkfor d`f"k Hkwfe rFkk xzkeh.k vkcknh IyVksa dk eqvkoth fu/kkZfjr djrs le; lehiorhZ flapkbZ {ks= deKUMA dh tehu dh dherksa dks vk/kkj ekuk tkosxkA uxjh; vkcknh IyVksa o vU; Hkwfe dk eqvkoth fu/kkZfjr djus gsrq fudVorhZ Mwc {ks= ds ckgj ds mlh vkdkj ds uxj dh Hkwfe dh vkSlr fcdzh dh njksa dks vk/kkj ekuk tkosxkA

2-3-3- ,sls ekeyksa esa] tgkWa fdLh O;fDr dh 75 izfr"kr Hkwfe vf/kxzg.k dh xbZ gks ;k fdLh xzke dk vUr% {ks= ikuh ls f?kj tk;s] rks ,sls {ks=ksa dh iwjh Hkwfe xq.knks"k ds vk/kkj ij] lacaf/kr foHkkx vf/kxzfgR djus dk ijh{k.k djsaxsA

2-3-4- tc Hkh fdLh ;kstuk ds Mwc {ks= dh Hkwfe dk vtZu fd;k tkrk gS] rks bls lkFk gh deKUM ,fj;k dh Hkwfe Hkh vftZr dh tkuh pkgf,] ftldk vuqikr Mwc esa xbZ

Hkwfe dk de ls de vk/kk gks] rkfd bl Hkwfe esa Mwc ls izHkkfor ykxksa dks mudh vftZr Hkwfe ds vuqir esa vk/kh Hkwfe miyC/k djkbZ tk ldsA

2-3-5- Mwc ls foLFkkfir gksus okys ifjokjksa dks muds fuokl gsrq IyKV ;k edku dekUM {ks= esa fn;k tkuk pkfg,A blds fy, vko";d Hkwfe dk p;u foLFkku ds igys fd;k tkuk pkfg,A

2-3-6- ifj;kstuk fufeZr gksus ij Mwc {ks= dh ,slh tehu tks o"kkZ _rq mijkUr Lor% ikuh ls [kkyh gks tkrh gS] ml Hkwfe dks d`f"k dk;Z gsrq foLFkkfir O;fDr;ksa dks 10 o"kZ ds iV~Vs ij fn;k tkuk pkfg,A

2-3-7- Mwc {ks= ds ykxksa dks nh tk jgh tehu esa vxj ml ifj;kstuk dh ugjksa ls flapkbZ ugha dh tk ldrh gS] rks mudh Hkwfe dh flapkbZ ds fy, ;kstuk rS;kj dj flapkbZ dh O;oLFkk dh tk;sxhA

2-3-8- Hkwfeghu O;fDr;ksa dks Hkh ;Fkk laHko dekUM {ks= esa gh clk;k tkuk pkfg, rkfd os dekUM ,fj;k ds fodflr gksus ij viuk thou ;kiu dj ldsA

Under Clause 2.2., even the landless person has been considered and treated as a labourer and under Clause 2.3., it has been made clear that for the purpose of rehabilitation there shall be no distinction between displaced persons who are from agricultural land or from the forest land. Under Clause 2.3.1., encroachers are also held entitled for compensation irrespective of the fact that they are encroachers over the revenue land or forest land, if the encroachment is for minimum 3 years. The landless persons should be rehabilitated nearby command area. In Clause 4.3.1., it has been made clear that encroachers would not be entitled for allotment of land. Clause 4.3.1 reads as below:-

"Clause- 4.3.1. vfrdzkldks dks fdlh Hkh Hkwfe vkoaVu dh ik=rk ugha gksxhA"

But they are entitled for Punarwav Anudan in Clause 7, which reads as below:-

"Clause 7. iquokZI vuqnku

7-1 foLFkkfir ifjokj dks fuEukuqlkj iquoklZ vuqnku mfpr fd"rksa esa ,d o"kZ esa fn;k tkosxk%&

v

Hkwfeghu d`f"k etnwj ifjokj

11]000@& :0

c

vuqlwfpr tkfr ,oa vuq0 tutkfr ds Hkwfe Lokeh ;k vU; ifjokj

11]000@& :0

l

NksVs o lhekUr fdiku ifjokj

11]000@& :0

n

vU; Hkwfe Lokeh ;k xSj Hkwfe Lokeh ifjokj v ls vk/kk

5]500@& :0

"2- 11]000@& :0 dh jkf" k orZeku ewY;ksa rFkk Hkkjr "kklu dh xjhch js[kk ds uhps gksus dh vk; ds vuqlkj gSA vxj Hkkjr "kklu bls la" kksf/kr djrk gS rks vuqнку dh jkf" k Hkh (mij 7-1) esa rn~uqlkj la" kksf/kr dh tkosxhA"

Under Clause 8.2, displaced rural families would be compensated so that they can construct their house under the scheme of Indira Awas Yojna. Clause 8.2 reads as under:-

"Clause 8.2-foLFkkfir xzkeh.k ifjokjksa dks Hkou ds eqvkots ds vfrfjDr mruk vuqнку fn;k tkosxk] ftlls og orekZu bfUnjk vkokl ;kstuk ds vUrxZr ik=rk ds vuqlkj ubZ cLrh esa Hkou dh O;oLFkk dj ldsA"

Clause 9.6 deals with the encroachers that they shall not get compensation for the land but, they will get amount of compensation for the house constructed by them. Clause 9.6 reads as under:-

Clause 9.6 vfrdze.kdrkZ& vfrdzfer Hkwfe ij cus Hkou dk eqvкотk] Hkou fQj ls cukbZ gsrq yxus okyh dher ds vk/kkj ij r; fd;k tkosxkA vfrdzfer Hkwfe ds fy, dksbZ eqvкотk ugha fn;k tkosxkA"

Entire Clause 10 deals for the landless families. Under this clause, they are also entitled for their rehabilitation under the special efforts by way of development of their skill by the concerned department. Clause 10 reads as under:-

Clause 10 Hkwfeghu ifjokj

10-1 ifjokjksa ds izHkkoh iquokZI ds fy, fo"ks" k iz;kl fd;s tk;saxsA lacaf/kr foHkkx }kjk fojeku dkS"ky dks mUur djus rFkk u;s dkS"ky iznku djus dh iz;kZIr O;oLFkk dh tkosxhA ifj;kstuk ds dkj.k tks u;s volj miyC/k gksxs mudk foLFkkfirksa ds ykHk ds fy, iw.kZ :i ls Inqi;ksx fd;k tkosxkA fufonk ds nLrkostksa (yksdy dkEihfVfVOg fcfMax rFkk vU; QkeZ) esa foLFkkfirksa dks ifj;kstuk ds dk;Z ij yxkuk lqfuf"pr djus ds fy, mfpr izko/kku fd;k tkosxkA lacaf/kr foHkkx }kjk bl laca/k esa fu/kkZfjr le; esa mfpr O;oLFkk djus ds fy, vkns" k izlkfjr fd;s tkosxsA

10-2 varfje vof/k esa Hkwfeghu foLFkkfir ifjokjksa dh vkenuh dk Hkqxrku fo"ks" k vk/kkj ds :i esa /kujkf" k ds ?kVrs dze esa 3 o" kZ rd fd;k tkosxk] tks dafMdk 7-1 esa n"kkZ;s vuqнку ds vfrfjDr gksxkA 3 o" kZ dh bl vof/k dh x.kuk foLFkkfir ifjokj dks dafMdk 7-1 esa n"kkZ;s Hkqxrku djus ds o" kZ ds ckn vkjaHk dh tkosxhA rn~uqlkj ,d foLFkkfir ifjokj dks f}rh;] r`rh;] ,oa prqFkZ o" kZ dze" k% 4800@&] 3200@& vkSj 1600@& :i;sa dk Hkqxrku fo"ks" k vk/kkj ds :i esa fd;k tkosxkA blds vfrfjDr izR;sd Hkwfeghu ifjokj ds fy, 3200@& :i;sa dh /kujkf" k lqjf{kr j[kh tkosxh rFkk vkthfodk vftZr gsrq vkfFkZd :i ls ;ksX; Lora= ;kstuk ds fy, miyC/k dh tkosxh mDr fo"ks" k vk/kkj jkf" k] xjhch js[kk dh jkf" k dh dze" k% 75 izfr"kr] 50

izfr''kr] ,oa 25 izfr''kr gksxh ,oa lqjf{kr j[kh tkus okyh jkf''k xjhch js[kk dh jkf''k 50 izfr''kr gksxhA ;fn xjhch js[kk dh jkf''k esa o`f) gksxh rks fo''ks''k vk/kkj jkf''k o lqjf{kr jkf''k esa rn~uqlkj o`f) gksxhA fo''ks''k vk/kkj jkf''k o lqjf{kr jkf''k dsoy Hkwfeghu d`''kd etnwj ,oa Hkwfeghu vuqlwfr tkfr o vuqlwfr tutkfr ds ifjokjsa dks nh tkosxhA"

42. There is a special provision for resolution of the dispute in respect of members of scheduled caste and scheduled tribe by way of Clause 21, which reads as under:-

"21- fooknksa dk fuiVkj

21-1 NksVh ;kstukvksa esa tgkWa lacaf/kr yxsxksa] [kklrkSj ls vuqlwfr tkfr ,oa vuqlwfr tutkfr ds lnL;ksa esa ls ,d pkSFkbbZ dh muds fy, is''k dh x;h ;kstuk ls lgefr ugh gS rks bl ekeyksa ij ftyk laHkkxh; Lrj ij lfebr }kjk fopkj fd;k tk;sxx vkSj mldk Qslyk vafre gksxkA cM+h ;kstukvksa ds ckjs esa Hkh bl izdkj ds fookn ij fopkj ftyk@laHkkxh; Lrjh; lfebr }kjk fd;k tk;sxx vkSj mlds i''pkr~ Hkh ;fn ekeys esa lgefr ugha cu ikrh gS rks bl izdkj ds izdj.k esa jkT; Lrjh; lfebr }kjk fopkj fd;k tk;sxx vkSj mldk Qslyk vafre gksxkA

21-2 fdLh ifj;kstuk ds ekeys esa bl uhfr ds nk;js ls lacaf/kr ;k vU; dksbZ Hkh ekeyk] mlds fdz;kUo;u tSlS fgr/kkj O;fDr;ksa dh igpku] mudks feyus okys Qk;ns vkfn] ds ckjs esa fooknksa dk fuiVkj rFkk laHko ftyk@laHkkxh; Lrjh; lfebr }kjk fd;k tkosxkA ;fn vko''d gksxk rks ftyk@laHkkx Lrjh; lfebr] jkT; Lrjh; lfebr ls ekxZn''kZu izkIr dj ldsxhA"

43. That, though, Adarsh Punarvas Niti 2008 has been framed for the project under taken by NVDA, Bhopal but, fact remains that this policy is for rehabilitation of those families, who are affected due to falling under the submergence area, therefore, for the purpose of rehabilitation and resettlement the beneficiary provisions of this scheme can be adopted for grant of relief to the weaker section of the society. Under this policy also, landless persons have been given the due weightage.

44. Clause 6.8 of the Policy, 2008 deals with the rehabilitation and resettlement of Scheduled Caste and Scheduled Tribes families, which is reproduced below:-

"Clause 6.8

"Clause 6.8 vuqlwfr tutkfr ,oa vuqlwfr tkfr ds izHkkfor ifjokjsa ds fy, iquokZl ,oa iquZLFkkiu ykHk

d & ,slh ifj;kstuk ds ekeys esa ftlesa 200 ;k mlls vf/kd vuqlwfr tutkfr ds ifjokjsa dk vuSfPNd foLFkkiu gksrk gks] vyx ls tkjh fd, tkus okys dk;Zdkjh funsZ''kksa ds vuqlkj tutkrh; fodkl ;kstuk rS;kj dh tkosxhA

[k & vuqlwfr {ks= esa Hkwfe;ksa dk vtZu djus ds iwoZ lacaf/kr xzkelHkk vFkok iapk;rksa ls leqfpr Lrj ij ijke''kZ fd;k tk,xk] ftlds vyx ls dk;Zdkjh funsZ''k tkjh fd, tkosxsaA vuqlwfr {ks= ls nks lks ;k bls vf/kd vuqlwfr tutkfr;ksa ds ifjokjsa ds vuSfPNd foLFkkiu ds ekeys esa tutkrh; lykgdkj ifj''kn ls Hkh ijke''kZ fd;k tk,xkA

x & ;fn iquZLFkku {ks= esa ljdkjh catjHkwfe miyC/k gS rks Hkwfe ds vkcaVu esa vuqlwfrp tutkr ds izHkkfor izR;sd ifjokj dks vkSj rRi"pkr~ vuqlwfrp tkfr ds izHkkfor ifjokjksa dks izkFkfedrk nh tkosxA

?k & ,slh ifj;kstuk ds ekeys esa ftlesa vtZudkj fudk; dh vksj ls Hkwfe vtZu fd;k tkuk "kkfey gS izR;sd izHkkfor tutkr; ifjokj dks oumRiknksa ds laca/k esa ijEijkxr vf/kdkjksa vFkok mi;ksxksa ls oafpr gksus ds ,ot esa ikap lkS fnuksa dh U;wure d`f"k etwjh ds cjkj ,d ckj nh tkus okyh vfrfjDr foRrh; lgk;rk iznku dh tkosxA

M & ,slh ifj;kstuk ds ekeys esa ftlesa vtZudkj fudk; dh vksj ls Hkwfe dk vtZu djuk "kkfey gS ,sls izHkkfor vuqlwfrp tutkrh; ifjokj ftUgs ftys ds ckgj iquZLFkkr fd;k x;k gS df.Mdk 6-5] 6-6] 6-7 (d) 6-7 (M) ,oa 67 (p) esa fofufnZ"V enksa ds laca/k esa iquZokl rFkk iquZLFkku ykHk ekSfnzd :i esa iPhl izfr"kr vf/kd izkIr djsaxsA

p & Hkwfe varj.k ds laca/k esa ml le; izo`Rr fu;eksa rFkk fofu;eksa dk mYya?ku djds fd;s x;s tutkrh; yksxksa dh Hkwfe ds fdlh varj.k dks fu"izHkkoh ekuk tk;sxA ,slh Hkwfe ds ekeyksa esa iquZokl vkSj iquZLFkku ykHk dsoy Hkwfe ds ewy tutkrh; Hkw&Lokh dks gh fn;s tk,axsA

N & vuqlwfrp tutkr vkSj vuqlwfrp tkfr ds izHkkfor ifjokj ftUgsa izHkkfor {ks= esa vkj{k.k ,oa vU; lqfo/kkvksa dk ykHk fey jgk Fkk] iquZLFkku {ks= esa vkj{k.k ds ,sls ykHk ikus ds gdnkj gksaxsA

t & os izHkkfor vuqlwfrp tutkrh; ifjokj Hkh] ftuds dCts esa fnukad 13-12-2005 ds iwoZ ls ouHkwfe Hkh] bl uhfr ds varxZr iquZokl vkSj iquZLFkku ykHk izkIr djs ds gdnkj gksaxsA

6-9 bl v;/k; dh df.Mdk 6-1 ls yxk;r 6-6 u?kfoizk dh vc rd dh lHkh ifj;kstuvksa ds laca/k esa Hkh Hkwry{kH izHkko ls ykxw gksxA df.Mdk 6-7 ,oa 6-8 ds ykHk lHkh izHkkfor ifjokjksa ds fy;s ykxw ugha gksaxs vfirq dsoy okLrfod :i ls foLFkkr gksus okus izHkkfor ifjokjksa ds fy, lher gksaxsA

45. This policy provides compensation of Rs. 50,000/- to each family of rural area apart from other benefits. Therefore, we are of the considered opinion that State Government is bound to follow these policies for providing rehabilitation and resettlement to the families, who are affected under the Government Project.

46. On various occasions, Hon"ble the Supreme Court has also considered the issue of rehabilitation and resettlement. In the case of Narmada Bachao Andolan v. Union of India, reported in 2000 (10) SCC, 664, the Supreme Court has held that the displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new location they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress.

The Supreme Court has found that the role of grievance cell is important, they

have to look into the grievances of the displaced persons individually. Initially, their claim has to be verified by the Patwari, scrutinised by the Tehsildar and thereafter, by way of appeal before the Collector. Para 241 reads as under:-

"241. Displacement of people living on the proposed project sites and the areas to be submerged is an important issue. Most of the hydrology projects are located in remote and in-accessible areas, where local population is, like in the present case, either illiterate or having marginal means of employment and the per capita income of the families is low. It is a fact that people are displaced by projects from their ancestral homes. Displacement of these people would undoubtedly disconnect them from their past, culture, custom and traditions, but then it becomes necessary to harvest a river for the larger good. A natural river is not only meant for the people close by but it should be for the benefit of those who can make use of it, being away from it or near by. Realising the fact that displacement of these people would disconnect them from their past, culture, custom and traditions, the moment any village is earmarked for take over for dam or any other developmental activity, the project implementing authorities have to implement R&R programmes. The R&R plans are required to be specially drafted and implemented to mitigate problems whatsoever relating to all, whether rich or poor, land owner or encroacher, farmer or tenant, employee or employer, tribal or non-tribal. A properly drafted R&R plan would improve living standards of displaced persons after displacement."

By way of conclusion in Para No.283, the Supreme Court has directed Grievance Redressal Authority of the State of Madhya Pradesh that it shall ensure that those ousted by reason of the project are given relief and rehabilitation in due measure.

47. The issue of rehabilitation again came up before the Supreme Court in case of Narmada Bachao Andolan v. Union of India and others, reported in (2005) 4 SCC 32. In which, the Supreme Court has held that no distinction can be drawn between temporary and permanent affected people for grant of benefit of rehabilitation package. The Supreme Court has held that the Court cannot entertain applications of the land oustees because the factual issues are involved and for the said purpose authority like Grievance Redressal Authority is competent to consider and adjudicate the dispute.

This view has further been followed by the Supreme Court in the case of State of M.P. v. Narmada Bachao Andolan, reported in 2011 (7) SCC, 639. Para 58 reads as below:-

"58. The appellants have submitted that all the oustees have voluntarily accepted SRG and withdrawn the amount and they stand fully satisfied. In absence of appropriate pleadings and evidence on record, it is not possible for this Court to adjudicate upon the individual claims or issue a direction of sweeping nature. Thus, if an oustee feels aggrieved of what he has received, he may approach GRA. In case GRA after adjudication of facts, comes to the conclusion that a

particular oustee has not been granted the relief, he is entitled for, GRA itself would grant the appropriate relief taking into account the provisions of R & R Policy. In case, either of the parties is aggrieved, it may approach the High Court for appropriate directions."

Finally, the conclusion has been recorded in para 183 of the judgment, which is reproduced as below:-

"183. These appeals involved two issues namely, (i) allotment of land in lieu of land acquired; and (ii) entitlement of major son to get the allotment of land as a separate family. So far as the first issue is concerned, in respect of the same, we hold that in view of the provisions contained in the R&R Policy, the State Authorities are under an obligation to allot the land to the oustees "as far as possible". In case an oustee has not accepted the compensation/SRG or has any grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach the GRA and the GRA will adjudicate upon the issue and pass an appropriate order in individual cases after giving an opportunity of hearing to all the parties concerned. Needless to say, the person aggrieved by the order of GRA shall be entitled to approach the High Court for appropriate relief."

The oustees have been held entitled for allotment of land under the rehabilitation and resettlement policy as far as possible and the liberty has been granted to approach Grievances Redressal Authority, which shall adjudicate the issue and pass the adequate order in independent case after giving an opportunity. In case of private person, application would be in the name of that individual person duly supported by an affidavit. The major son has not been treated as a separate family for allotment of the land.

48. In the present case, in the districts-Khargone and Barwani, total land in submergence is 218.014 hectares out of which forest land is 65.144 hectare and private land is 138.66 hectares and the revenue land is 14.26 hectares. Since, the area is more than 100 hectares, therefore, this project is said to be a major project and all the affected persons are required to be rehabilitated and resettled by the respondents. We reject the arguments of the counsel for the Government that this is a minor irrigation project and they are not required to be displaced, therefore, there is no question of granting package of rehabilitation and resettlement. It is not disputed that in both the districts major families are belonging to community tribes. In Barwani district, the entire land, which is going into submergence is forest land in which also the tribals were given lease called "Van Adhikar Patta" by the Forest Department and the said fact has been accepted by the Collector in his letter dated 19.05.2015. They have also been paid the compensation as assessed by the Land Acquisition Officer in its award. As we have held in the aforesaid part of this judgment that we are not going to disturb the award passed by the Land Acquisition Officer but we are considering the issue of rehabilitation and resettlement. While passing the award dated 04.11.2015, only those tribes were considered, who had Van Adhikar Patta and

others have been denied the benefit of compensation. The Parliament has enacted a law called "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" with an intention to recognise and vest the forest right and occupation in forest land and forest dwelling Scheduled Tribes and other traditional forest dwellers, who have been residing in forest for generations but whose rights could not be recorded. They have been defined under Section 2 (c) of the Act, which is reproduced below:-

"2.(c)—"forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities."

They have been given forest rights under Section 3, which includes rehabilitation also under Section 4 notwithstanding any thing in other law for the time being in force. The Central Government has recognised the vested forest rights of forest dwelling Scheduled Tribes in the State and Subsection 5, which has been specially amended to the effect that they shall not be evicted from forest land under his occupation till the recognition and verification procedure is complete for which procedure has been provided in Subsection 6.

49. Vide letter dated 12.07.2012, Government of India, Ministry of Tribal Affairs has directed the Chief Secretaries of all the State Governments and Union Territories for implementation of the Act of 2006 with the guidelines. Under the said guidelines, the State Governments have been directed to ensure the verification of the claims of the tribes. Apart from the other right defined under the guidelines, procedure has been given to recognise the rights of the tribes dwelling in the forest land. Therefore, under this enactments of the tribes, who are residing in the forest area of Barwani district despite whether Bhu Adhikar Patta has been issued to them or not, are entitled for rehabilitation and resettlement by way of the award, therefore, remaining tribes, who have not been awarded the compensation under the Act, 2013 are required to be considered for compensation after due verification and awarding Patta along with rehabilitation and resettlement.

50. In view of the above discussion, we are accordingly inclined to hold that the tribal families, who were residing in villages-Juna Bilwa and Chaukhand in Dhulkot of Khargone district; and Kanipani of Kamod panchayat, Muvasi of Sirwel and Julwania in Barwani district either who were residing or cultivating the Government land/fores land for their survival are entitled for rehabilitation and resettlement under the Adarsh Punarvas Niti, 2002 of the State of M.P.. It is made clear that we are not disturbing the awards dated 15.07.2012 and 24.11.2015 passed under the Land Acquisition Act, 1894 and under the Act, 2013 respectively because remedies to challenge the awards and claim of compensation are provided under the Act itself. We have been informed that till today neither the claim nor any proceedings in respect of challenge of the award has been filed by the affected persons, therefore, both the awards have attained

finality.

51. For the purpose of implementation of Punarvas Niti, 2002, State Government has constituted various Grievances Redressal Authorities headed by retired District Judge in the State of M.P.. Therefore, in the present case also, we direct the State Government to constitute and notify the Grievances Redressal Authority to consider the cases of the project affected persons in Kharak Reservoir Project within a period of 15 days from the date of this order. Any project affected person whether he has accepted the award or not may raise grievance before the Grievances Redressal Authority for the purpose of rehabilitation and resettlement and the Grievances Redressal Authority shall adjudicate the issue and pass orders in individual cases after giving opportunity of hearing to the parties concerned. Any person aggrieved by the order passed by the Grievances Redressal Authority may approach the High Court for appropriate relief. The application/petition would be in the name of individual person duly supported by an affidavit and other documents.

52. That, the amount as awarded by the land acquisition officer is lying in the office of Collector be immediately disbursed to those persons in whose favour awards have been passed after verification of their identity.

53. The petitioner has filed a list of affected persons as well as photographs of 235 families of the tribes along with the writ petition in which the family members, their houses and names are visible. At present, we accept this list of affected families for consideration of their cases for the purpose of rehabilitation and resettlement, however, the Grievances Redressal Authority shall consider the applications of the persons from this list only and decide in accordance with law. Punarvas Niti, 2002 provides rehabilitation grant @ Rs. 11,000/- per family but, looking to passes of time and price index, the amount of Rs. 11,000/- is not adequate, therefore, we direct the State Government to provide rehabilitation grant @ Rs. 50,000/- per family for the project affected persons according to list of 235 families filed by the petitioner after due verification by the respondents. Adult son would be treated as separate family whether married or unmarried. Because due to monsoon season, they are not in a position to cultivate their land and earn livelihood, therefore, aforesaid amount of Rs. 50,000/- (Fifty Thousand) be paid within a period of 30 days from the date of order after due verification. Any amount paid by the State Government under any head to these families would be adjusted in the amount of Rs. 50,000/- and the balance amount would be paid.

54. With the aforesaid directions, the writ petition is allowed in part.