
(2012) 09 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition C No. 692 of 2012

Kumar Ban Goswami and Others	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Land Acquisition Act, 1894 — Section 17, 17(1), 18, 23, 4

Citation : (2012) 4 CGBCLJ 400

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sarafranj Khan and Mr. Sudeep Agrawal Advocates, for the Appellant; Kishore Bhaduri Addl Advocate General for the State Shri Rajendra Tiwari and Dr N.K. Shukla Sr Advocates with Shri B.D., for the Respondent

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—By this petition, the petitioners seek to quash the notice dated 03.12.2011 (Annexure - P/1), notification dated August, 2009 (according to the return of the respondent No. 4, notification dated 25.9.2009) (Annexure - P/3) issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act, 1894"), notification dated 04.12.2009 (Annexure - P/5) issued u/s 6 of the Act, 1894 and the notification dated 30.01.2010 (Annexure - P/6) issued u/s 9 of the Act, 1894. The petitioners also seek a direction to the respondents not to acquire the land of the petitioners. The indisputable facts, in short, as projected by the petitioners, are that the petitioners are the owners of land admeasuring 41 acres containing dwelling house, trees, ponds etc. The petitioners are living in the joint family. The land is situated at village - Ghorapat, Patwari Halka No. 27, Tehsil - Katghora, District - Korba (for brevity "the land in dispute"). In the month of August, 2009 (Annexure - P/3), the Collector issued a notification u/s 4(1) read with Section 17(1) of the Act, 1894 for acquiring the lands admeasuring 38.866 hectares for construction of Ash Dyke of the respondent No. 4/NTPC Limited.

2. On 07.11.2009 (Annexure - P/4), the petitioners submitted an objection

before the respondent authorities. However, according to the petitioners, without deciding the objection raised by them and without conducting the public hearing the respondent authorities issued notification u/s 6 of the Act, 1894 on 04.12.2009 without complying with the provisions of Section 6(2), as the notification has not been published in the daily newspaper circulating in the locality in which the land in dispute is situated. Again on 30.01.2010, the respondent authorities issued a notification u/s 9 of the Act, 1894 stating that the Government intends to take possession of the lands and invited objections to be made on or before 17.02.2010 at about 11.00 am.

3. On 17.02.2010 all the affected farmers including the petitioners filed their objections before the respondent No. 3 and the petitioners requested the respondent authorities to acquire the adjoining Government land for construction of Ash Dyke of the respondent No. 4.

4. According to the petitioners, when their objections have not been considered and decided by the respondent authorities, the petitioners preferred a petition before this Court, being W.P.(C) No. 2525 of 2010, challenging the notifications issued under Sections 4 & 6 of the Act, 1894. The said petition was disposed of by this Court on 13.07.2010 (Annexure - P/9). Thereafter, the petitioners preferred an application before this Court, being M.C.C. No. 580 of 2010, for modification of the order dated 13.07.2010 passed in W.P. (C) No. 2525 of 2010. The said M.C.C. was dismissed as withdrawn by order dated 22.10.2010 (Annexure - P/10) with liberty to take recourse to appropriate remedy, that may be available to the applicants therein under the provisions of law. Thereafter, the petitioners preferred review petition, being review petition No. 129 of 2010, which was also dismissed by order dated 05.01.2011 (Annexure - P/11). Subsequently, the petitioners preferred writ appeal, being W.A. No. 60 of 2011, against the order dated 13.07.2010. The said writ appeal was dismissed by learned Division Bench vide order dated 25.03.2011 (Annexure - P/12). Thereagainst, the petitioners preferred a SLP before Supreme Court, being SLP (C) No. 15888 of 2011.

5. According to the petitioners, during pendency of the SLP before the Supreme Court the respondent authorities issued the notice dated 03.12.2011 (Annexure - P/1), calling upon the petitioners to collect the compensation amount and vacate the land in dispute. Even the respondent No. 4 started dumping the Ash on the lands of the petitioners and also disconnected the electricity supply of the dwelling house of the petitioners in an illegal manner.

6. Being aggrieved, the petitioners preferred a contempt petition, being Contempt Case (C) No. 57 of 2012, which was disposed of by order dated 16.02.2012 (Annexure - P/13) in the following terms :

Learned counsel for the petitioners submitted that the petitioners have approached the Supreme Court by filing Special Leave Petition, aggrieved by the order passed by the High Court in writ petition, non-compliance of which, has

been alleged in this contempt petition.

In that view of the matter, I am not inclined to initiate contempt proceedings at this stage. The petitioners would be at liberty to revive at appropriate stage.

Accordingly, the petition is finally disposed off.

7. In the meantime, by order dated 19.03.2012 (Annexure - P/14), the Supreme Court dismissed the Special Leave Petition. Again, the petitioners preferred a contempt case, being Contempt Case (C) No. 148 of 2012, in which this Court issued notices to the respondent No. 3 & 4 on 30.03.2012 (Annexure - P/15) to show cause as to why contempt proceedings be not drawn against them for willful disobedience of the order dated 13.07.2010 passed in W.P. (C) 2525 of 2010. In spite of issuance of notice in Contempt Case (C) No. 148 of 2012, the respondent authorities have not discontinued from dumping the Ash on the land in dispute and with the help of the Police Officers, the Administrative authorities are compelling the petitioners to vacate the land in dispute. Thus, this petition.

8. Shri Sarafraj Khan & Shri Sudeep Agrawal, learned counsel appearing for the petitioners, would submit that instead of deciding the objections and complying with the order dated 13.07.2010 passed by this Court in W.P. (C) No. 2525 of 2010, the respondent No. 3 has passed an order dated 30.03.2011, stating that the objections have been decided. The objections, as per the Act, 1894, can be heard only by the Collector and after hearing the parties, the Collector would submit the report along with opinion to the Appropriate Government i.e. State of Chhattisgarh and the Appropriate Government will decide the objections of the land owners, but in the case on hand nothing has been done. The incompetent authority has decided the objections. Even no notice for appearance prior to deciding the objections to that effect was ever issued to the petitioners, but the respondents have drafted the order sheet dated 30.3.2011, in such a manner that the petitioners were heard, if the petitioners would have been heard then certainly their signatures would have been obtained on the order sheet.

9. Shri Khan would further submit that the provisions of Section 6(2) of the Act, 1894 has not been complied with in its letter and spirit and the notification u/s 6 has not been published in two daily newspapers circulating in the locality of the petitioners. The petitioners have specifically pleaded in the writ petition, but the same have not been effectively replied or any document purporting to the compliance have been filed by the respondents. No notice u/s 9 of the Act, 1894 has been issued to the petitioners, Section 9 of the Act, 1894 makes it obligatory upon the Collector to issue notice to persons interested. The award had prescribed three categories, as firstly, Barren Land (Rs.6.00 lacs per acre), secondly, Non-Irrigated (Single Crop) (Rs.8.00 lacs per acre), thirdly Irrigated (Double Crop) (Rs.10.00 lacs per acre). No such specifications have been mentioned in the award passed by the respondent No. 3. The land of the petitioners come in third category, i.e. Irrigated land (Double Crop are sown every year by the petitioners). Even the award does not grant benefit as

contemplated u/s 23 of the Act, 1894 with regard to 30% Solatium and 12% per annum Additional Interest for the period from the date of issuance of notification u/s 4 to the date of passing the award.

10. Shri Khan would next submit that in other land acquisition proceedings of the State of Chhattisgarh, the benefits provided in the Chhattisgarh R&R Policy 2007 (as amended) (for short "the CG R&R Policy"), with regard to permanent employment have been provided to the land oustees, but in the case on hand the said benefit has not been extended. Clauses 1.1.3, 1.1.4, 1.2.7, 7.1 & 11.2.3 of the CG R&R Policy, oblige the State to provide permanent employment to one member of each displaced family according to his capabilities and qualifications and Clause 11.2.3. prescribes that, if no permanent employment is provided to the one member of the land oustees within 2 years of acquisition, then the amount which a person may earn if he is employed in the establishment or amount which a person earns from Rojgar Guarantee Yojna, which ever may be higher will be provided to the land oustees till he is afforded with permanent employment.

11. On the other hand, Shri Kishore Bhaduri, learned Addl. Advocate General appearing for the State/respondents No. 1 to 3, would submit that after following the due process of law, the land acquisition proceedings have been initiated by issuing the notifications under the provisions of Sections 4, 6 & 9 of the Act, 1894. Even the award has already been passed by the Land Acquisition Officer and communicated the same to the petitioners, but the petitioners never approached the authorities for collecting the amount, as awarded by the Land Acquisition Officers.

12. Shri Rajendra Tiwari & Dr. N.K. Shukla, learned senior counsel appearing with Shri B.D. Guru, Shri Apoorv Kurup, Shri Shailendra Shukla, Shri T.K. Khadka & Shri S. Pandey, learned counsel for the respondent No. 4, would submit that the lands in dispute are located in Village Ghorapat, Tahsil Katghora, District Korba and the lands admeasuring 94.82 acres, were proposed to be acquired for the Ash Dyke Stage III of the respondent No. 4. Looking to the urgency, a notification u/s 4(1) of the Act, 1894 was published on 25.9.2009. This was proposed by the Collector in August, 2009 and published in the local news papers - Dainik Bhaskar and Haribhoomi on 13.10.2009 & 11.10.2009, respectively. This notification was issued u/s 17(1) of the Act, 1894 as well. Thus, an enquiry on objection u/s 5A of the Act, 1894 was not allowed.

13. Shri Tiwari, learned senior counsel, would further submit that according to law in such a situation, notification u/s 6 could be issued at any time without waiting for the report of the Collector after a decision on objections. Accordingly, the notification u/s 6 was published on 25.12.2009, and such publication was made in Navbharat & Dainik Bhaskar on 19.12.2009 and 18.12.2009, respectively. Section 9 notification was issued on 30.1.2010. One objection dated 7.11.2009 was filed, which was unsigned. Another objection dated 17.2.2010 was filed. WP (C) No. 2525 of 2010 was filed by the petitioners challenging the

notification issued u/s 4 of the Act, 1894 and the land acquisition proceedings, but on 13.7.2010 the petitioners forgo the challenge to the aforesaid notification and acquisition proceedings and restricted their relief to a direction to decide their objections contained in 7.11.2009, and 17.2.2010. This Court disposed of the petition and directed that the objections of the petitioners be decided, if the same had not already been done. Thereafter, the matter was taken up to the Supreme Court, but the petitioners could not succeed, at any stage.

14. Shri Tiwari would also submit that, in fact, the petitioners herein were called upon for hearing their objections on 9.12.2010 and they were heard in the meeting of Village Development Advisory Committee (for short "the VDAC") held on 5.2.2011. Petitioner No. 1 was present in the meeting, being a member of the VDAC. The petitioners wanted that the land be left from acquisition or they be given extraordinary compensation, but the VDAC decided that it cannot be done because it is a compulsory acquisition. The Land Acquisition Officer considered the case of the petitioners on 30.3.2011. The petitioners gave an application dated 5.4.2011 asking for reassessment of the trees and properties. Thus, they completely gave up their challenge to the acquisition proceedings. This was done on 9.4.2011. Information about decision dated 30.3.2011 on the objection was sent to the petitioners, but they refused to accept the same. The award, thereafter, was passed 16.5.2011. This was within their knowledge because they did not come forward to receive compensation, and a notice was issued on 3.12.2011 (Annexure - P/1). Thus, the petitioners herein had knowledge of the award at least from 3.12.2011. If aggrieved, they should have applied for a reference to Civil Court u/s 18 of the Act, 1894 within time. Pursuant to Annexure - P/1, the petitioners submitted several applications to take the compensation after the decision by the Supreme Court. The petitioners cannot challenge any of the notifications and the land acquisition proceedings because they forgo the challenge in the earlier petition i.e. WP (C) No. 2525 of 2010. Moreover, the petition is not maintainable because an award has been passed on 16.5.2011. At the instance of one family the land acquisition proceedings initiated in public interest cannot be stalled or cancelled.

15. Shri Tiwari would next submit that the Chhattisgarh Ideal R&R Policy 2007 is a model policy. All i.e. mentioned therein is to be taken into account, as far as possible to improve the condition of project affected people. Respondent No. 4 is committed to give the petitioners benefits under the applicable Rehabilitation Policy, besides the amount mentioned in the award. The award mentions the compensation rates for the year 2008- 09, 2010-11. The petitioners' lands are single crop lands. Compensation for such land is calculated at Rs.8.00 lacs per acre. Such compensation is much higher than the market rates, which were prevalent in the year 2008-09, 2009-10 and 2010-11. NTPC Ltd's Power Plant at Korba is an old industry, which is over staffed. Therefore, the alternatives prescribed in the R & R policy in lieu of employment are adhered to. The petitioners have taken advantage of the prevailing situation prescribed, but suppressed them in the petition. According to the well settled principles of law

laid down by the Supreme Court as well as this Court in umpteen number of decisions, the petition is not maintainable after the award has been passed. Thus, the petition filed by the petitioners may be dismissed.

16. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

17. The petitioners earlier preferred a writ petition before the High Court on 18.5.2010, being W.P. (C) No. 2525 of 2010. In the said petition, the petitioners questioned the legality and validity of the notification dated August, 2009 issued u/s 4(1) read with Section 17(1) of the Act, 1894; notification dated 4.12.2009 issued u/s 6 of the Act, 1894 and also the notice dated 30.1.2010 issued to one Kunjram, S/o Dajaram to appear before the respondent No. 3 on 17.2.2010. The main ground of challenge in the said petition was not dispensing with enquiry u/s 5A of the Act, 1894, but to consider objections raised by the petitioners herein.

18. The High Court having heard learned counsel for the parties and perused the pleadings, disposed of the petition on 13.7.2010 as under :

1. Challenge in this petition is to the notification dated __-8-2009 (Annexure - P/1) issued under the provisions of Section 4 of the Land Acquisition Act, 1894 on the ground that the land in dispute is a good agricultural land having high fertility. The petitioners raised objections also to the competent authority on 7-11-2009 (Annexure - P/2) and on 17-2-2010 (Annexure - P/5).

2. Learned counsel appearing for the petitioners, on instructions, submits that he does not want to press this petition on merits; however, learned counsel prays that the respondent authorities may be directed to consider and decide the objections of the petitioners before proceeding further in the land acquisition proceedings.

3. At this juncture, learned counsel appearing for the State submits that if the objections raised by the petitioners have not been considered the same shall be done at the earliest before proceeding further in the land acquisition proceedings.

4. Learned counsel appearing for the respondent No. 5/NTPC also submits that since the objections of the petitioners are pending consideration the authorities may be directed to consider the objections and pass appropriate orders in accordance with law.

5. In view of foregoing, the State/ respondent is directed to consider and decide the objections raised by the petitioners on 7-11-2009 (Annexure - P/2) and on 17-2-2010 (Annexure - P/5), in accordance with law and on its own merits, before proceeding in the land acquisition proceedings.

6. With the aforesaid observations and directions, the writ petition is disposed of.

19. Thus, the challenge of the petitioners in respect of notification issued u/s 4(1) read with Section 17(1) as well as the notification issued u/s 6 of the Act, 1894 were given up and the petitioners confined their prayer to decide the

objections of the petitioners pending before the Land Acquisition Officer. Since no liberty was sought to reagitate the aforesaid notifications, the petitioners cannot reagitate the same in the instant petition.

20. In this regard, the Supreme Court in *Sarguja Transport Service v. State Transport Appellate Tribunal, MP, Gwalior and Others*, observed as under :

9..But we are of the view that the principle underlying Order XXIII rule 1 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench- hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

21. In *Avinash Nagra v. Navodaya Vidyalaya Samiti and Others*, the Supreme Court observed as under :

13. The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive *res judicata* would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court is applying the correct principle of law. Thus considered we find no merit in the appeal for interference.

22. The Supreme Court in *M. Nagabhushana v. State of Karnataka & Ors.* observed as under :

14. The principles of *res judicata* are of universal application as it is based on two age old principles, namely, '*interest reipublicae ut sit finis litium*' which means that it is in the interest of the State that there should be an end to litigation and the other principle is '*nemo debet bis vexari si constat curiae quod sit pro una et eadem cause*' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of *res judicata* is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

23. In respect of other grounds namely; land in dispute of the petitioners is agricultural land, thus the authorities be directed to exempt the same from

acquisition proceedings, cannot be considered at this stage.

24. The High Court by order dated 13.7.2010 passed in WP (C) No. 2525 of 2010 directed the authorities to consider and decide the objections dated 7.11.2009 and 17.2.2010 raised by the petitioners, in accordance with law and on its own merits, before proceeding in the land acquisition proceedings.

25. The first objection dated 7.11.2009 is on behalf of the residents of the Village Ghorapat, which is not signed, however, the same has been received in the office on 7.11.2009 and the second objection dated 17.2.2010 is raised by the petitioners. In the objections, it was said that the policy of the respondent No. 4 is not in the interest of residents of village and certain other general allegations against the respondent No. 4. In the said objection, lastly the petitioners pleaded that they may be awarded a sum of Rs.60.00 lacs per acre and employment in respondent No. 4/NTPC. No objection has been raised by the petitioners about the legality and validity of the acquisition proceedings dispensing with Section 5A, enquiry or any legal question. The objections were considered on 30.3.2011 in presence of the petitioners and the officers of the NTPC by the Sub Divisional Officer, after having considered the views of the parties including payment of Rs.60.00 lacs per acre and employment in lieu of acquisition of land in dispute and it was communicated to the petitioners.

26. The relevant portion of communication dated 30.3.2011 reads as under :

27. Thereafter, the award was passed on 16.5.2011 (Annexure - R4/4) and granted the compensation. The relevant calculation made in the award reads as under :

28. While determining the compensation, needless to say that the factors set out in Section 23 of the Act, 1894 must be considered. It is found that the same have been done. If the petitioners have any grievance in regard to computation of compensation, the petitioners are at liberty to take recourse to the provisions of Section 18 of the Act, 1894 seeking reference to the District Court.

29. Reliance of the learned counsel appearing for the petitioners upon the decision of this Court rendered in Smt. Anjana Kedia v. State of Chhattisgarh & Others and other connected matters, is misplaced, as the issue in Smt. Anjana Kedia, inter alia, was whether the land can be acquired for a public purpose, but for a company; and whether acquisition for a company can be made only under the provisions contained in Section 40(1)(a) read with Section 44B of the Act, 1894, and other related issues.

30. Reliance of the petitioners in Rohit Singhania & Others v. State of Chhattisgarh & Others seems to be still pending consideration, as no final order has been produced by the petitioners.

31. In Devender Kumar Tyagi and Others v. State of Uttar Pradesh and Others, the Supreme Court has directed to consider the urgency provisions u/s 17 of the Act, 1894 even after the award has been passed.

32. The decision of the Supreme Court in Raghbir Singh Sehrawat v. State of Haryana and Others, also deals with the applicability of Section 5A of the Act, 1894.

33. The petitioners also placed reliance upon of the decisions of the Supreme Court in Radhy Shyam (Dead) through LRs and Others v. State of Uttar Pradesh and Others and Satluj Jal Vidyut Nigam Ltd. and Another v. Sangh Dass and Another and upon the decision of the Madhya High Court rendered in Smt. Sugandhi widow of Dammulal v. Collector, Raipur and Others

34. All the aforesaid decisions are not applicable, as the foundation has not been made, as required to challenge the award either during the land acquisition proceedings or after award has been passed, in the instant petition, as aforestated.

35. The ratio as laid down by the Supreme Court in the abovestated decisions is on the facts of the case, which are not in issue in the instant petition, as the petitioners have not initially raised the issue of Section 5A of the Act, 1894 in the earlier petition i.e. W.P. (C) No. 2525 of 2010. Secondly, the question with regard to validity of notifications issued under Sections 4(1) read with Section 17(1) and u/s 6 of the Act, 1894 was given up by the petitioners in the earlier writ petition without seeking permission to reagitate the same. In the objections the petitioners have not raised the issue of dispensing with Section 5A requirement or invoking urgency clause. Thus, the petitioners cannot be permitted to raise the issue of dispensing with Section 5A of the Act, 1894 on account of issue of notification u/s 4(1) read with Section 17(1) of the Act, 1894.

After the objections were decided, and award has been passed by the respondent authorities on 16.5.2011 (Annexure - R4/4). This is unsustainable in law. Rehabilitation package :-

36. Clause 7 of the CG R&R Model Policy framed by the State Government of Chhattisgarh provides for employment and other facilities, which reads as under :

7. Employment and other facilities: - 7.1. Such displaced family will be eligible for employment who has been land owner or lease holder of acquired land undependably or jointly three year prior to the date of publication of Notification u/s 4 of land acquisition act.

An one member of such displaced family providing employment shall be made agreement whose more than 75% of the land is acquired for commercial project and whose land is acquired for industrial/mining project, one member of affected families will be provided employment as per their eligibility and appropriateness.

(a) At the time of providing employment at project work displaced family will be given priority.

(b) The eligible educated young people shall be made arrangement of training to provide them better employment in project as per their education qualification.

(c) In the project of Govt. Department/public under taking shall be relaxed for 2 years in the appointment on grade III post.

(d) Displaced family in the project shall be made special arrangement to provide necessary transiting to make availability of beneficiary work to them.

(e) Training of Fishermen will be provided to flood affected area. If there is given opportunity of fishermen in the project then society of affected people/fishermen will be preferred for tender ship.

(f) The priority of employment shall be given in following order : -

(i) Whose 100% of agricultural land and house is acquired.

(ii) Whose 100% of agricultural land is acquired.

(iii) Whose more than 75% of agricultural land is acquired.

(iv) Whose more than 50% of agricultural land is acquired.

(v) Whose more than 25% of agricultural land is acquired.

(vi) Other displaced family.

(G) If opportunity of regular employment in Commercial/Industrial/Mining project and Allied work is less than number of displaced families, then in that condition following alternatives shall be provided for them : -

(1) One member of displaced family will be given a shop (as he wants) in projects area adjacent to that or near block head office or in the area of Nagar Panchayat /Municipality. Company will bear all the expenditure. In head office of the Janpad Panchayat/Nagar Panchayat/ Municipality area company will be allotted land on the basis of sale rates by the collector. After constructing shop company will be allotted them to the displaced.

(2) Such displaced family who have an alternative of self employment in transport business whether it is related to the carriage of product or raw material use in project or passenger transport they will be given priority in transport constructs of project by the institution and to serve the purpose transport vehicle will be made available for them.

Those member of displaced families who are eligible for getting employment in projects but do not possess any necessary/required technical qualification, then in that condition they shall be made to train them as per their educational qualification by concerned institution in case of big projects and in other case by govt. department/institution training will be arranged independably or by using available training facilities of state govt., as case may be :

7.3. Project affected other people specially land less people will be given training by the govt. dept. to develop new skills in them and they shall be endeavored to provide them employment in small project. Those persons will be provided wok

in such project generated /created by the State Government.

7.4. Displaced families shall be endeavored made to give privilege by marking them for self employment rooted plans (development of dairy, poultry, fisheries, short college industry etc.) to be executed by the state govt. and by making loan arrangements for them from financial agencies.

7.5. Government projects like Irrigation projects, Road projects, School projects or Hospital project is Public welfare projects. After there is no opportunity of employment there so there is no need to given employment to govt. projects displaced people but they shall be made legitimate provision for giving priority in employment in Government/Semi government Organization establishment.

7.6. The self help groups working in project area will be taken to join them to the activities /work in industries. To serve this purpose steps will be taken for organizing workshop /training by the concern Department /establishment.

37. The respondent No. 4 has offered the rehabilitation package to the petitioners as under :

An amount of Rs.3.86 crore is being paid to the petitioners and family members, out of which Rs.2.66 crores already deposited with the State and balance amount will be paid directly to the petitioners and family. Besides the above following additional benefits were offered to the petitioners :

(i) 5 vehicles of Kumar Ban and his family would be hired on priority in NTPC.

(ii) 2 vegetable shops will be allotted in the township.

(iii) 1 medical shop will be allotted in township

(iv) Contract to their society (Project Affected Person Society) on single tender basis.

(v) 7 plots measuring 14000 sq. in rehabilitation colony, Gopalpur.

(vi) Kumar Ban and family will be temporarily accommodated in the Gopalpur community centre available with NTPC, till they construct their houses in the plots offered.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

That, besides other compensation, the respondent is also granting compensation of R&R grant in lieu of annuity and subsistence allowance to the petitioners in the following manner :

S.N

Name

Area (in (Annuity Acers))

R&R (In Rs.)

Subsi-stence (In Rs.)

1.

Kumar Ban Goswami

6.63

19,89,00

85,40,00

2.

Vijay Pal Ban

6.85

20,55,00

85,40,00

3.

Rishi Ban Goswami

8.18

24,54,00

85,40,00

4.

Rajendra Ban Goswami

6.63

19,89,00

85,40,00

5.

Rupendra Ban Goswami

0.37

2,50,000

85,40,00

38. The CG R&R Policy provides for grant of employment three years prior to the date of publication of notification u/s 4 of the Act, 1894. It is further provided

that priority should be given to one member of each displaced family in providing employment. Training should be given and also make necessary arrangements for providing the facility for higher education. There should be two years age relaxation in the appointment on Grade III post.

39. Clause (G) of the CG R&R Policy provides, inter alia, if regular employment in Commercial/Industrial/Mining project and Allied work is less than number of displaced families, then the alternatives shall be provided for them, wherein, member of displaced family will be given a shop on his choice. Shop has to be constructed by the company.

40. The offer of the respondent No. 4/NTPC for rehabilitation nowhere indicates that the respondent No. 4 has considered the members of the displaced families for employment and since availability was less than the employment available, alternatives were offered to them.

41. Accordingly, the respondent No. 4 is directed, in addition to what has been offered, to consider granting employment to one member of the each displaced family and if the same is not available, a proper certificate be issued. Before granting alternative rehabilitation package to one member of each displaced family, in lieu of employment, they should be given discretion for choosing a shop. It cannot be on the basis of company's decision.

42. The Supreme Court in *Satluj Jal Vidyut Nigam Ltd.*⁹, observed as under :

9...The whole purpose of the Resettlement and Rehabilitation Scheme was to ensure that families rendered landless by the acquisition of land were made available some benefits apart from the compensation payable under the provisions of the Land Acquisition Act..

43. The petitioners have been displaced from their ancestral place. The pains of leaving the ancestral place and the sentiments attached with the area cannot be compensated by some amount of money. Thus, keeping in view the said object, the State Government has framed the CG R&R Policy, which has to be monitored and ensured by the District rehabilitation committee (Appendix - 1 of the CG R&R Policy). The rehabilitation policy of the respondent No. 4/NTPC is in consonance with the CG R&R Policy, except clause 7.1 of the CG R&R Policy, which provides for consideration of one member of displaced family and if it is found that the job is not available alternatively one member of displaced family will be given a shop on his choice. In the case on hand, as observed in para 42 of this order, the respondent No. 4 is directed to consider the same afresh.

44. For the reasons mentioned hereinabove, it is ordered as under :

I. For grant of higher compensation to the petitioners for acquiring the land in dispute, the petitioners may take recourse to the provisions of Section 18 of the Act, 1894 for reference to the District Court.

II. It is directed that except granting a shop, in lieu of employment, all other

rehabilitation package of the respondent No. 4/NTPC be complied with forthwith.

III. The respondent No. 4/NTPC is directed to consider one member of the each displaced family for employment as per clause 7.1 of the CG R&R Policy and if the employment is not available, alternative rehabilitation package to one member of each displaced family shall be provided, in view of clause 7.1 of the CG R&R Policy.

IV. The petitioners are continuing in the land in dispute, as this Court by order dated 8.5.2012 had directed that "if the petitioners are in possession of the property in question, there shall be no dispossession of the petitioners." Therefore, it is directed that till the compensation is paid, rehabilitation package is settled and the displaced families of the petitioners constructed their houses on the plots allotted to them, the petitioners, as offered by the respondent No. 4, shall be provided temporary accommodation in the Gopalpur Community Centre.

V. The respondent No. 4 is further directed to make necessary arrangements for transportation of the belongings of the petitioners and their family members from the present place to the newly established place for their temporary accommodation with other day-to-day requirements.

Accordingly, the writ petition stands disposed of.

No order asto costs.