

(2010) 12 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1360 of 2009

Narmada Bachao Andolan

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Business Rules — Rule 7
Constitution of India, 1950 — Article 14, 166, 21
Evidence Act, 1872 — Section 106
General Clauses Act, 1897 — Section 21
Land Acquisition Act, 1894 — Section 4

Citation : (2010) 12 MP CK 0017

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. R. Alam, C.J.—By means of this public interest litigation, a Non-government organization, namely "Narmada Bachao Aandolan" seeks to highlight the plight of land oustees, majority of whom, belong to weaker section of the society. The aforesaid land oustees are being uprooted for construction of Upper Beda Dam on river Beda, a tributary of holy river Narmada which is also known as "Reva" in central India and is the fifth largest river in the Indian subcontinent. It is worth mentioning that Narmada River has huge water potential and has 41,000 m. cum of average annual flow. In order to utilize the water potential of the river Narmada and to provide the water for drinking as well as irrigation purposes to areas which face the problem of water scarcity, several dams and canals have been constructed on river Narmada and on its tributaries; one of them is Upper Beda dam with which we are concerned in the case in hand.

2. The Petitioner claims to be an organization of the oustees working for last twenty years to secure the rehabilitation and resettlement of the oustees of different dams in Narmada valley. It has alleged that the land oustees are being deprived by the State Government of their rightful entitlements on account of

acquisition and submergence of their land for construction of Upper Beda Dam. The Petitioner in this petition has mainly sought appropriate directions for rehabilitation and resettlement of aforesaid land oustees.

3. The short facts necessary for adjudication of the controversy involved in the instant writ petition are that in the year 1972 the State of Madhya Pradesh for the welfare of the citizens had conceived a project to be constructed on Beda River to provide irrigation facilities to farmers of Khargone district. The area for which project was conceived comprises 68% of scheduled tribes, 4% scheduled castes and remaining 28% of other castes, which also comprise mainly of backward classes. The dam site of the project is situated at village Nemit, Tahsil Zirniya, District Khargone. The project was conceived with an object to provide irrigation to 9917 hectares of agricultural land. The dam on filling up upto full reservoir level of 317 meters shall cause submergence of 1258,59 hectares of land, out of which 1037.715 hectares of land is a private land which has been duly acquired by the State Government under the provisions of Land Acquisition Act, 1894. Out of remaining land, the land admeasuring 206.635 hectares is government land whereas 14.24 hectares is the forest land. Upper Beda project is a medium irrigation project.

4. On 10.1.1992 a detailed project report was prepared and submitted to the State Government. Final project report was approved by Technical Committee of Central Water Commission vide order dated 06.5.1997 (Annexure-P-3). Clearance to the project was given by the Government of India. On 30.8.2001, the Grievance Redressal Authority (in short "GRA") was constituted for Indira Sagar and Omkareshwar Dam projects. By notification dated 11.6.2002 the State Government extended the jurisdiction of Grievance Redressal Authority to all the on-going projects of Narmada Valley Development Authority (in short "NVDA") except Sardar Sarovar Project. Between the period from 2002 to 2005 proceedings under the provisions of Land Acquisition Act, 1894 were initiated and were completed for acquisition of private lands. On 10.10.2002 Environmental and Forest clearance was received for the project. By order dated 28.12.2002 the State Government sanctioned Special Rehabilitation Grant for Jobat and other projects of Narmada Valley Development Authority (NVDA). Thereafter, vide order dated 23.12.2003 in terms of Clause 2.2 of the Rehabilitation and resettlement policy, Delja Dewda command area was declared as nearest command area for Upper Beda project for calculating the compensation payable under Rehabilitation and resettlement Policy.

5. On 23.5.2004 construction of dam site commenced and was completed upto the crest level in the year 2008 and only gates were required to be installed so as to achieve full reservoir level of 317 meters. Thereafter, a notification (Annexure-p-2) dated 05.3.2008 was issued regarding submergence of four villages, namely, Sonud, Nimit, Bedhaniya Khurd and Khamid.

6. Thereafter, the writ petition was filed by the Petitioner before this Court on 02.9.2008 alongwith the prayer for interim relief restraining the State

Government from proceeding further with the construction work. This Court vide interim order dated 06.5.2009 refused to grant stay of construction of dam, however, the submergence of villages was stayed until further orders. Since the construction of dam was almost complete, therefore, the Respondents filed an interlocutory application, namely, I.A. No. 3336/2010 seeking permission to fill up the dam upto the crest level. Thereafter, again the State Government on 10.5.2010 submitted an interlocutory application to fill up the dam upto full reservoir level of 317 meters as the construction of dam was completed and as per the version of the State Government Rehabilitation & Resettlement entitlements to project affected families were already granted. The dam has been built at the cost of over Rs. 200 crores and is intended to provide benefit of irrigation to atleast 17520 farmers and would result in generating employment opportunities and is intended to make a backward area of district Khargone most prosperous.

7. In the aforesaid factual backdrop, the Petitioner has filed the instant writ petition pro bono publico in which various reliefs have been claimed, as stated infra-

(i) Stop any further construction of the dam, blocking of sluice gates, installation of radial gates and any other work which may cause submergence, so that the displaced families are resettled and rehabilitated six months in advance of submergence as per provisions of Rehabilitation & Resettlement clearance, Plan and Policy and Orders of the Hon'ble Supreme Court.

(ii) Direct the State Government to file the names and lists of Upper Beda dam affected families of each village both under FRL and between FRL and BWL for each village along with full details of status of acquisition of lands and properties, compensation, rehabilitation, and resettlement per family including the allotment of agricultural lands and house-plots, payment of grants and assistances, as per the Rehabilitation & Resettlement Policy.

(iii) Declare the alleged Order of Narmada Valley Development Department, GOMP dated 7.06.91 relating to amendment of Para 5.1 of the approved Rehabilitation & Resettlement Policy of GOMP, as of no consequence, on the grounds that it is ultra vires of the Rehabilitation & Resettlement Policy, and of the provisions of General Clauses Act and Article 166, 14 and 21 of the Constitution, and for being arbitrary and malafide.

(iv) Direct the Respondent to carry out back water survey arising from Maximum water level (MWL-318 meters) at the dam site, as well as FRL in villages where there is apprehension of wrong surveys.

(v) Direct land acquisition of houses on abadi/government/private lagani lands and lands in submergence under FRL and in submergence between FRL and BWL should be done.

(vi) Direct the State Government to provide irrigated agricultural land to the

eligible oustee families including encroachers and adult sons and adult unmarried daughters as per Sections 1.1, 3.2(a), (b), (c), 3.3, 5.1 and 5.4 of the Rehabilitation Policy and Orders of the Hon''ble Supreme Court.

(vii) Direct, as per Orders of the GRA annexed herewith, that those who have been given compensation for land without giving any written intimation or offer of agricultural land should be offered cultivable and irrigable agricultural land as per their entitlements in the Rehabilitation & Resettlement Policy, and if they accept the offer, and agree to return their 50% of compensation of agricultural land initially and rest in 20 yearly interest free installments in terms of Rehabilitation & Resettlement Policy, the same may be allotted to them.

(viii) Direct the State Government to provide 2 hectares of agricultural land to each landless family as per condition of Welfare clearance of the GOI dated 6.05.1997.

(ix) Direct the State Govt. to provide grant-in-aid under Para 5.4 to all eligible families, and rehabilitation grants, transportation assistances and other assistances under Paras 6 and 9 of the Rehabilitation & Resettlement Policy.

(x) Direct the State Government to prepare Family lists of all the villages and all "displaced families" as per para 1.1 of the approved Rehabilitation policy, conditions of clearance and Orders of Hon''ble Supreme Court and Hon''ble High Court.

(xi) Direct the State Govt. to acquire full land holding in cases where more than 75% of the lands of the oustee is under submergence, or the villages/lands/houses have become non-viable or are in tapu, as per Section 2.3 of the Rehabilitation policy.

(xii) Direct the State Govt. to acquire the houses of those families whose lands are in the submergence and for whom living in the submergence village has become unviable due to loss of livelihood.

(xiii) Direct the State Govt. to compensate houses and properties at replacement rates as required by Para 2 of the Rehabilitation Policy.

(xiv) Direct the State Government to allot house plots and construct resettlement sites for all villages eligible for resettlement with full civic amenities as per Section 7.1 and 10.1 of the Rehabilitation Policy, and house construction assistance to each displaced family as per Para 7.2 of the R&R Policy, ensuring that the R&R sites are close to the allotted agricultural lands.

(xv) Direct the State Government to acquire and compensate the abadi plots in the submergence of the Project.

However, when the matter was taken up for hearing as well as in the written submissions filed before us on behalf of the Petitioner, representative of the Petitioner, Ms. Chitraroopa Palit stated that Petitioner is not pressing the relief contained in Clauses (xii), (xiii) & (xv) of the relief clause and seeks liberty to

raise the same before the Grievance Redressal Authority.

8. Before proceeding further, we may advert to the provisions of the Rehabilitation Policy framed by the State Government. Initially, Rehabilitation and resettlement policy was formulated by a committee of Secretaries which was constituted under the Chairmanship of Vice Chairman of Narmada Valley Development Authority in the year 1987 and was dully approved by the State Cabinet which was subsequently accepted by the State Government in November, 1987. Thereafter, certain amendments were proposed by Narmada Valley Development Authority in the Policy. In February, 1989 the State Government approved the Policy with proposal for amendment as suggested by Narmada Valley Development Authority. The Rehabilitation Policy was formulated by the State Government with the object of relocation and resettlement of project affected families and to ensure that they either improve or atleast re-gain the previous standard of living within a reasonable time. The Policy, inter alia, also seeks to ensure that no hardship is caused to displaced families in moving out the present habitats and to pay proper compensation for agricultural lands, abadi plots and the property of the oustees.

9. Clause 1 of the Policy deals with definitions of displaced persons, displaced family, landless person, small farmer and marginal farmer. Clause 2 provides for land and property acquisition whereas Clause 3 deals with allotment of agricultural land. Clause 4 of the Policy prescribes for procedure for fixation of rates for lands to be obtained for submergence and allotment purposes. Clause 5 deals with recovery of cost of allotted land. Clause 6 provides for rehabilitation grant whereas Clause 7 provides for allotment of plots in rural areas. Clause 9 deals with landless families. Clause 10 provides for various civic amenities to which land oustees are entitled. Clause 11 deals with other facilities. Clause 12 of the policy provides that a displaced person aggrieved by the decision of the Rehabilitation Officer may prefer an appeal to District Collector who is under an obligation to decide an appeal within a period of three months.

10. The Rehabilitation and resettlement policy has been amended from time to time. Clauses of the amended Rehabilitation and resettlement policy which are relevant for the purpose of controversy involved in the instant writ petition are reproduced below:

Clause 1.1(b)(2). Every son/un-married daughter who has become major on or before the date of Notification u/s 4 of the Land Acquisition Act, will be treated as a separate family.

Clause 2.2.-The price of the land in the submergence area has been depressed for the last several years. For calculating the compensation for agricultural and rural abadi land to be acquired for the project, the price of similar land in the adjacent command areas will be taken as the basis. For assessing the value of urban abadi and other lands, the average sale prices in the nearest town of similar size outside the submergence area will form the basis of calculation of

compensation.

Clause 2.3-If 75 percent or more land of a contiguous holding of any person is required to be compulsorily acquired, such person shall have the right to seek such acquisition of the entire contiguous holding. In other cases, such as enclaves surrounded by water, hamlet rendered as navigable social unit, disjointed holdings, non-submerged land of less than 2 hectares etc. a decision about the offer, if any for acquisition of the entire holding would be taken after examination on case by case basis by the Narmada Valley Development Authority.

Clause 2.5-Displaced families would be allowed to take away the building material that could be salvaged at the old sites to the new relocation sites. There would be no reduction in the compensation amount due to this. Transit passes would be issued by the competent forest officials for carrying away wooden ballies, frames and all such articles which require permits.

Clause 3.2(a)-Every displaced family from whom more than 25 percent of its land is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it, subject to provision in 3.2 below, and it shall be allotted such land as far as possible.

Clause 3.2(b)-A minimum area of 2 hectares of land would be allotted as far as possible to all the families whose lands would be acquired irrespective of the fact whether government land is offered or private land is purchased for allotment. Where more than 2 hectares of land is acquired from a family, it will be allotted equal land, subject to a ceiling of 8 hectares.

Clause 3.3-Entitlements of Encroachers for allotment of land-Encroachers, whether on revenue land or forest land will also be entitled for the allotment of land. Where the area of the land acquired from an encroacher is up to 1 hectare he will be entitled to 1 hectare land. In those cases where acquisition of land from an encroacher is more than 1 hectare he will be entitled to 2 hectares of land irrespective of the fact that the land acquisition from such an encroacher may be even greater than 2 hectares. If the encroacher is also a land holder and he has been benefited by Clause 3.2 then he will not be entitled for land allotment under this clause.

Clause 5.1-At least fifty percent amount of compensation for the acquired land shall be retained as initial instalment towards the payment of the cost of the land to be allotted to the oustee family. However, if an oustee family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation, it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer. In such cases, oustee families will have no entitlement over allotment of land and shall be paid full amount of compensation in one instalment. An option once exercised under this provision shall be final, and no claim for allotment of land in lieu of the allotted land can be made afterwards. If any oustee family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector,

who will after necessary enquiry certify that this will not adversely affect the interest of the oustee family. Such application of the Scheduled Tribe oustee families will be accepted only after the said certification by the Collector.

Clause 5.4-Grant-in-aid would be paid to cover the gap between the amount of compensation and the costs of allotted land in those cases where the cost of allotted land is more than the amount of compensation. This grant would be payable to all displaced land-owning Scheduled Caste and Scheduled Tribe families and other families losing up to 2 hectares of land. For other families, from whom more than 2 hectares of land is acquired, grant-in-aid in addition to the amount of compensation will be given by the Narmada Valley Development Authority on the following rates whichever is less:

(a) Rs. 2000/- per hectare

(b) 50 percent of the difference of the price of allotted land and the amount of compensation.

Taking into consideration the appreciation in the cost of the land with the lapse of time, the amount of compensation will be revised by the Authority. For the families from whom more than 8 hectares of land is acquired, the amount of grant-in-aid under Clause 5.4 (b) shall be calculated on the basis of the amount of compensation for 8 hectares of land and the cost of the allotted land.

Clause 5.5(a)-Notwithstanding the provisions in Clause 5.1(a), a displaced person may deposit more than 50% of the compensation amount payable towards cost of land at the new site if he so desires.

Clause 12.-A displaced person aggrieved by the decision of the Rehabilitation Officer in respect of the extent of the project affected area, on identification of displaced persons and publication of the lists of such persons, civic facilities to be provided at the resettlement sites or by any other decision in the process of rehabilitation, may prefer an appeal against the decision before the District Collector. Such an appeal will be disposed of by the Collector in a period of 3 months.

11. Ms. Chittaroopa Palit, appearing for the Petitioner submitted that rehabilitation and re-settlement policy flows from Article 21 of the Constitution of India and is logical corollary of the same. While referring to paragraphs 62, 241 and 254 of the judgment of Supreme Court in Narmada Bachao Andolan Vs. Union of India and Others, (hereinafter referred to as first Narmada Bachao Andolan's case), she submitted that Supreme Court in the aforesaid case has held that displacement of tribals and other persons would not per se result in violation of their fundamental or other rights and what is to be seen is whether such tribals who are displaced and are rehabilitated at new locations are better off than what they were and enjoy more and better amenities than those enjoyed in their tribal hamlets. She also referred to paragraphs 60 of the judgment of Supreme Court in N.D. Jayal and Another Vs. Union of India (UOI) and Others, in

support of aforesaid proposition. Reference was also made to the observations made in para 9 of the judgment of Supreme Court in Narmada Bachao Andolan Vs. Union of India (UOI) and Others, (hereinafter referred to as the second Narmada Bachao Andolan's case). It has further been submitted that rehabilitation of project affected families should be done before six months of submergence. For this proposition, she has placed reliance on para 7 of the judgment of Supreme Court in B.D. Sharma v. Union of India and Ors., (1992) Supp. 3 SCC 93 and paragraphs 60 and 61 of the judgment of Supreme Court in N.D. Jayal, supra as well as observations made in para 9 of second Narmada Bachao Andolan's case.

12. It was further submitted that Petitioner even though an unregistered organization has locus to maintain the writ petition on behalf of land oustees and has been working for the last 20 years to secure rehabilitation and resettlement policy of oustees of different dams in Narmada Valley. In this context, reliance has been placed on decision of Supreme Court in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, . It has also been submitted that writ petition does not suffer from delay and laches, as the Petitioner is not seeking stoppage of construction of dam, but implementation of rehabilitation and resettlement policy which is a continuous cause of action. It has also been contended that writ petition preferred by the Petitioner should not be dismissed even if it is found that the same suffers from delay and laches as it deals with fundamental rights of the land oustees.

13. It was contended that para 5.1 of rehabilitation and resettlement policy which was approved by the Council of Ministers on 25.11.1987, did not provide for payment of compensation in lieu of land acquisition. However, the Petitioner subsequently learnt that by order dated 7.6.1991 issued by Narmada Valley Development Department, para 5.1 of the rehabilitation and resettlement policy was amended and provision for payment of compensation in lieu of land, was inserted. It has been submitted that order dated 7.6.1991 was neither put up for consideration of Council of Ministers nor was approved by the Council of Ministers. No reasons have been mentioned in the order dated 7.6.1991 for amending para 5.1 of the rehabilitation and resettlement policy and no material has been placed on record to show as to why para 5.1 of the rehabilitation and resettlement policy was amended.

14. It has further been submitted that specific averment was made in para 5.26M of the writ petition that order dt.7.6.1991 is spurious and despite repeated requests made by the Petitioner, record relating to amendment was not made available to it. In the additional return, Respondents have not specifically denied the averments made in para 5.26M. State Government has failed to prove that order dt.7.6.1991 was made in compliance with the procedure laid down under the Rules of Business framed under Article 166(2) & (3) of the Constitution of India. Amendment made in para 5.1 of the policy is also in violation of Section 21 of General Clauses Act. It has further been submitted that decision of Council

of Ministers dated 1.9.1989 is not an order in the first place and secondly, it is not an order issued in the name of Governor in terms of Article 166(1) of the Constitution of India, therefore, is not an order binding on the Government. In this connection, reliance has been placed in *State of Kerala Vs. Smt. A. Lakshmikutty and others*, , *J.P. Bansal Vs. State of Rajasthan and Another*, and *State of Bihar and Others Vs. Kripalu Shankar and Others*, . It has also been argued that order dated 7.6.1991 can neither be regarded as routine amendment nor the same can be held to be a clarification. It has further been submitted that challenge to amendment of Clause 5.1 of the policy is not hit by principles of *resjudicata*, as the order dated 7.6.1991 by which amendment has been incorporated, inherently lacks in jurisdiction and therefore the principle of *resjudicata* will not apply. For this proposition, reliance has been placed on *Ashok Leyland v. State of Tamil Nadu* AIR 2004 SC 2836 and *National Institute of Technology and Others Vs. Niraj Kumar Singh*, . Therefore, the plea of the Respondent that validity of the rehabilitation and resettlement policy has already been upheld by Division Bench of this Court in the case of *Narmada Bachao Andolan v. Narmada Hydro Electric Development Corporation and Ors.*, 2006 (3) M.P.J.R. 218, cannot be accepted.

15. It has further been submitted that provision for land for land, as envisaged by rehabilitation and resettlement policy has been given a complete go-bye. From perusal of paras 3 and 5.4 of rehabilitation and resettlement policy, it is clear that aforesaid provisions are mandatory in nature and are required to be mandatorily complied with. Similarly, under para 2 and 3.3 of the rehabilitation and resettlement policy, cultivators who are encroachers and have been cultivating on Government lands from before 13.4.1987 are also entitled to allotment of agricultural land between 1-2 hectares. However, the aforesaid provisions of the policy have also not been complied with. Similarly, landless families who are entitled to two hectares of land, as per clearance of Ministry of Welfare of Union of India have also been deprived of benefit of allotment of land. Similarly, land admeasuring 2 hectares have not been allotted to adult sons and unmarried daughters. The burden of proof that provisions of rehabilitation and resettlement policy have been complied with is on the State as the material with regard to implementation of rehabilitation and resettlement policy is in the special knowledge of State Government in view of Section 106 of Indian Evidence Act. The Government of Madhya Pradesh is also under an obligation to implement provisions of rehabilitation and resettlement policy and to accord all the benefits to land oustees as it is bound by doctrine of promissory estoppel. For this proposition, reliance has been placed on a decision of Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*,

16. It has also been argued that contention of Respondent that out of 705 project affected families, which were entitled for allotment of land, 226 have purchased more agricultural land than they had, out of the compensation amount paid to them and have saved substantial money, is incorrect. The data furnished by the Respondent in this regard is incorrect and erroneous. It has been

submitted that only 2% oustees could buy agricultural lands as per their entitlement in rehabilitation and resettlement policy. Other 26% could buy less land than their entitlement, which was mostly unirrigated and stony land. Table showing the particulars of land purchased by the project affected families, has been annexed as Annexure P/X-4 and P/X-5 to the affidavit of the Petitioner dated 21.6.2005.

17. It has further been contended that acceptance of compensation for land under the Land Acquisition Act or acceptance of amount under Special Rehabilitation Grant does not constitute any waiver on the part of land oustees for claiming land which is stipulated under the rehabilitation & resettlement policy because there is no provision for payment of compensation in lieu of land entitlements and the question of waiver of their right to receive land in lieu of land, does not arise as land oustees were never informed, offered or allotted agricultural land by the Respondent. There was no compliance with the procedure set out in amended para 5.1 of rehabilitation and resettlement policy. It has further been submitted that without prejudice to contention of the Petitioner that there is no provision in para 5.1 of Rehabilitation and resettlement policy for payment of compensation, procedure envisaged in amended para 5.1 of the policy has not been followed. It has further been submitted that Respondent has not denied the plea with regard to non-compliance of para 5.1 of rehabilitation and resettlement policy.

18. It has further been submitted that inconsistent and fraudulent pleas have been taken by the Respondent in the counter affidavit dated 28.6.2010 in the matter of application of oustees with regard to payment of compensation in lieu of land and about passing of the order by the Collector before payment of compensation as well as in the matter of grievances of oustees regarding arbitrary denial of land in lieu of land. It has been contended that SRG is not a part of and is not payable in lieu of land entitlements in para 3 of the rehabilitation and resettlement policy. Compensation on account of acquisition of land/special rehabilitation grant has been paid in "take it or leave it" manner under oppressive conditions. It has also been submitted that agricultural lands are available in command area and therefore allotment of the same is possible to land holders as well as land oustees. In support of the aforesaid fact, Petitioner has brought on record Annexure P/X-20. It has further been contended that acquisition of land and properties under back water level is required to be made under the rehabilitation and resettlement policy. However, the land and properties situate on the land which would be submerged on account of back water effect, has not been acquired by the State Government. A list of oustees who have applied for inclusion of their houses in the process of acquisition and compensation on account of back water effect, has been annexed as Annexure P/X-40 with additional affidavit of the Petitioner dated 21.6.2010. It has further been argued that submergence area under full reservoir is called "permanent submergence of the dam".

19. It has been argued that land oustees of Upper Beda Dam have to be provided rehabilitation entitlements as per the Rehabilitation and resettlement policy and as per conditions of clearance given by Ministry of Welfare dated 6.5.1997. The status of completion of Rehabilitation and resettlement policy is as follows:

S. No

Entitlement

Description

Extent of task left to be done

1.

Allotment of agricultural land to land-holders as per Section 3.2 of the R&R policy

Number of land-holder families who are losing more than 25% - 702 Not a single oustee allotted or offered agricultural land.

100%

2.

Allotment of agricultural land to encroachers as per Section 3.3 of the R&R policy

Land allotted to encroacher families -None

100%

3.

Allotment of agricultural land to adult sons/adult unmarried daughter of land holders under para 1.1 and 3.2/3.3 of the R&R policy

None of such families has been allotted 2 ha of land as per R&R policy and judgment of Hon^{ble} Supreme Court

100%

4

Rants under Para 5 of the R&R policy

Given to None

100%

5.

Rehabilitation grant, as per Section 6 of the R&R policy

Only to 495 families (35%) given rehabilitation grant. Rest 936 (65%) families have not been given rehabilitation grant.

65%

6.

Allotment of house plots as per Section 7.1 of the R&R policy

Total No. of plot required for estimated families: 1431 Ex parte allotment of house plots ? 493 Cash in lieu of house plots ? 504 Neither plot nor cash given ? 495

100%

House plots allotted are ex-parte allotment, and Respondent could provide a list of only 268 plots allotted. Oustees have returned ?pattas? of these plots with a request to allot them plots adjacent to the agricultural land to be allotted to them. As per the approved R&R policy nobody may be given cash grant or ex-parte allotment of house plots. Thus almost entire 1431 oustees remain to be allotted house plots in accordance with R&R policy.

7.

Transportation grant as per Section 7 of the R&R policy

Only to 442 families (31%) given transportation grant. Rest 989 (69%) families have not been given transportation grant.

69%

8.

Grant to landless for livelihood as per Section 9 of the R&R Policy.

None of landless oustees has been given grant as per Section 9 of R&R Policy.

100%

9.

Preparation of rehabilitation site as per Section 10 of the R&R Policy.

Two rehabilitation sites are incomplete and most of the facilities required as per Section 10 of the rehabilitation and resettlement Policy are not there. Most of the oustees do not want to settle on these sites because there is no agricultural land adjacent to these sites and oustees have requested house plots adjacent to the agricultural lands to be allotted to them.

80%

10.

Allotment of 2 ha. Of agricultural land to landless oustees as per condition of clearance of Ministry of Welfare dated 6.5.1997.

Given to none of the landless families

100%

Thus, rehabilitation of oustees of Upper Beda Dam is far from complete. Therefore, the submergence of the area cannot be permitted as in view of decisions of Supreme Court, rehabilitation and resettlement of the oustees has to be completed at least six months in advance, before submergence of the area.

20. It has further been argued that earthwork of canals is still in preliminary stage and the canals are unlined even at the dam site. Lining work of canal has been done only upto 0.3 Kms. from the dam site. The water cannot be released as the canals are incomplete and unlined and the same would cause water logging and would break the canals which would cause threat to human life. In the absence of canal network, irrigation and drinking water benefits cannot be provided to the beneficiaries till atleast next year even if Upper Beda Dam is permitted to be filled up this year. It has further been argued that reliance placed by learned senior counsel for Respondent on the order and judgment of this Court dated 11.8.2009 in Maan Dam case is misplaced. Concluding the submissions on behalf of the Petitioner Ms. Palit contended that until and unless rehabilitation and resettlement of land oustees is complete, the Respondent should not be permitted to fill up the dam.

21. On the other hand, Shri Shekhar Bhargava, learned senior counsel appearing for the State Government while opposing the submissions made on behalf of Petitioner submitted that out of 14 villages falling in submergence area, only three villages namely Palda-Khurd, Kharva and Udaipur are abadi villages. Out of 14 villages only one village namely Khamid would be fully submerged whereas, two villages would be submerged to the extent of 25 to 50% and remaining 9 villages would be submerged to the extent of less than 25%. Out of aforesaid 14 villages, only 3 villages namely Palda-Khurd, Kharva and Udaipur are Abadi villages and only one village Khamid would be fully submerged whereas two villages would be submerged to the extent of 25-50% and remaining 9 villages would be submerged to the extent of less than 25%. He has produced before us an abstract regarding village wise area of submergence of Upper Beda Dam. It has been submitted that back water analysis has been duly conducted by Central Water Commission, which is the only competent organization of the country to make such an analysis and as per the report of Central Water Commission (Annex.R/9) all the structures between full reservoir level and back water level have been acquired. A certificate to that effect has been placed on record as Annexure R-37.

22. While drawing our attention to Clause 2.2 and Clause 2.4 of the Rehabilitation and resettlement policy which provides for computation of price of acquired land, it was pointed out that amount of compensation has to be assessed on higher scale than the one provided under the Land Acquisition Act, 1894 as the policy provides that average sale price in the nearest town of similar size outside submergence area will form the basis of calculation of compensation and compensation for building will be determined on the basis of replacement

value. State Government has issued an order dated 27.8.2003 (Annex.R-31) filed with additional return with an object to provide more compensation to the project affected families than envisaged under the Land Acquisition Act, 1894 and for the purposes of assessment of market value of the land, the rates of nearest command area namely Dejala Devda command area shall be taken into account which comprises irrigated land. Since more compensation has been paid to the land owners than to which they were entitled under the Land Acquisition Act, no reference has been sought by any land holder under the provisions of Land Acquisition Act. By an order dated 28.12.2002, State Government has issued additional SRG benefit to the project affected families which is over and above the benefits under the rehabilitation and resettlement policy. The aforesaid SRG benefit was initially provided in respect of Jobat Project. However, vide order dated 23.12.2003, the same has been made applicable in respect of Upper Beda project also.

23. Learned senior counsel has further submitted that there are three categories of project affected families namely oustee who is losing his land only, oustee who is losing his land as well as the house and the oustee who is losing his house only. It has been further submitted that submergence area of dam in question is 1258 hectares out of which 1037 hectares of land is private land. It has further been stated that in all, there are 1412 project affected families. Out of 1412, 786 project affected families would lose their land only. Compensation has been paid to 507 persons who are recorded as owners in revenue record on acquisition of their lands, remaining 297 persons are sons and daughters of land owners. Learned senior counsel has contended that under rehabilitation and resettlement policy, sons and daughters are not entitled to separate compensation on account of acquisition of land. The question of entitlement for allotment of land to adult sons and unmarried daughters of land owners is pending adjudication before the Supreme Court and Supreme Court vide interim order dated 20.11.2009 has granted stay of directions which were issued to State for allotment of minimum two hectares of land to adult sons and unmarried daughters.

24. It has further been argued that 281 families have lost their land as well as houses on account of submergence. Out of aforesaid 281 project affected families, compensation has been paid to 195 persons who are recorded as land holders in the revenue records, remaining 86 persons are adult sons and unmarried daughters of the land holders who are not entitled to allotment of any land. However, they are entitled to allotment of house site. Under Rehabilitation and resettlement policy land oustees have either option to receive compensation in cash or a house site in lieu thereof. Allotment of house site in favour of 201 persons has been made by Respondent in village Pipiya-Khurd and village Palda which is situated near Bhikhangaon. Compensation of Rs. 20,000/- in lieu of house site has been paid to 80 persons. Rehabilitation grant and transportation grant to each land oustee who has lost his land as well as house will be paid as and when land oustee shall shift from his land in his occupation. Learned senior counsel has

further contended that all possible assistance would be provided to project affected families. 345 project affected families fall under the third category whose houses alone have been acquired for the purpose of construction of dam. Out of aforesaid 345 project affected families, 287 persons are head of the families, whereas, 58 are adult sons and unmarried daughters in project affected families. 278 persons have been allotted house sites and compensation of Rs. 20,000/- in cash has been paid to 67 persons in lieu of house site.

25. Learned senior counsel has also drawn the attention of this Court to a chart contained in Annexure R-15 and has stated that 226 project affected persons have after taking compensation, have purchased agriculture or urban land of their choice. It has been stated that statistics given in the chart are based on Government records as the oustees who went in for purchase of agricultural land and wish to claim exemption from payment of stamp duty and registration fee payable on the sale deed under Clause 11.3 of Rehabilitation and resettlement policy were required to approach NVDA for the said purpose because NVDA is ultimately required to pay duty and fee payable on the sale deed. By making reference to chart (Annex.R-15), it is pointed out that as against 506.604 hectares of land acquired from 226 land oustees, an amount of Rs. 10,24,88,911/- was paid as compensation whereas, aforesaid land oustees were able to purchase 521.07 hectares of land for Rs. 6,79,38,759/- leaving a cash surplus of Rs. 4,51,00,807/-. Thus, all 70 project affected families which were entitled for land for land, have received full benefit as per their entitlement under the rehabilitation and resettlement policy.

26. With regard to claim of allotment of land of adult sons and unmarried daughters as well as landless labours, it was brought to our notice by learned senior counsel that Division Bench of this Court in the case of same Petitioner namely Narmada Bachao Andolan v. State of M.P. and Ors. by an order dt.21.2.2008 passed in W.P. No. 4457/2007(PIL), while dealing with Omkareshwar Project, has held in para 64 of the order that landless labours are not entitled to allotment of land under the rehabilitation and resettlement policy. However, so far as direction given by the Division Bench of this Court for allotment of minimum two hectares of land to adult sons and unmarried daughters is concerned the same has been stayed by Supreme Court in SLP No. 18840/09 by order dated 20.11.2009. Since the issue with regard to entitlement of land to adult sons and unmarried daughters is pending before the Supreme Court, no directions in presenti can be issued by this Court. It has further been submitted that claim of encroachers to allotment of land is concerned, an encroacher is entitled to allotment of land provided he is in cultivating possession of the Government land prior to 13.4.1987. No encroacher has submitted any claim. It was further contended that Division Bench of this Court in W.P. No. 48/2004 while dealing with issue of rehabilitation of persons affected by Maan Dam Project, had invoked the theory of substantial compliance with regard to implementation of rehabilitation and resettlement policy. The progress of the project cannot be installed on the issue of entitlement of land for adult sons and

unmarried daughters.

27. It was further argued that the contention of Petitioner that Respondents have failed to implement land based rehabilitation package is misconceived. During the course of arguments on I.A. No. 5786/10, while seeking permission to fill the dam upto full reservoir of 317 meters when it was pointed out to this Court that not even one oustee of project affected family, had come before this Court or has filed an affidavit to show that cash compensation has been thrust upon him against his wishes whereas infact he wanted to have land for land, Petitioner suddenly changed its strategy by filing an application on 11.5.2010 and moved an application for amendment in which challenge was made to amendment in Clause 5.1 of rehabilitation and resettlement policy. The rehabilitation and resettlement policy was framed in the year 1989. Since the periodical updating of rehabilitation and resettlement policy is a necessity therefore the State Cabinet took a decision that routine amendments be carried out with the consent of rehabilitation department and approval of concerned Minister and in case of difference of opinion between two departments, the matter was required to be placed before the Chief Minister in coordination. On account of lack of clarity in the clause of rehabilitation and resettlement policy amendments were made in Clause 4.5, 5.1 and 8.3 of the policy after due approval of the authorities and were carried out vide order dated 7.6.1991 issued in accordance with Article 166 of the Constitution of India. The order dated 7.6.1991 has been issued in the name of Governor and has been duly authenticated. Therefore, there is a presumption in law with regard to its validity. Learned senior counsel while referring to Article 166(2) of the Constitution has contended that validity of an order or instrument which has been authenticated can not be called in question on the ground that it is not an order or instrument made or executed by the Governor. Learned senior counsel in this context has placed reliance on a decision of Supreme Court in Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, It has further been submitted that constitutional validity of Rehabilitation and resettlement policy has already been upheld by Division Bench of this Court in a decision reported in 2006(3) M.P.J.R. 218. It was also submitted that amendment was brought about in Clause 5.1 of the policy with a view to provide option to the land oustee to have cash compensation in lieu of land, since it was felt that if only provision for land for land is made in the policy, the same would be in conflict with provisions of Land Acquisition Act. In any case, challenge to the aforesaid amendment cannot be entertained specially in view of the fact that its validity has already been upheld by the Division Bench and after a period of five years after the cash compensation was paid and the same was willingly opted and was accepted by land oustees.

28. However, with a view to confuse and mislead this Court, Petitioner has produced two hundred applications allegedly submitted by land oustees asking for land and offering to return cash compensation paid to them. No reliance can be placed on so-called applications as the same were submitted to the Land Acquisition Officer during the pendency of the instant petition only in the month

of June, 2009. Though the genuineness of the aforesaid applications produced by the oustees was in doubt yet notice of hearing was issued to all the applicants, but none turned up therefore, the Land Acquisition Officer had no option but to reject the same by an ex-parte order. A chart has been annexed as Annexure R-21 with the return.

29. It was further submitted that final list of project affected families has been updated which includes the project affected families, affected by back water level also. A copy of the same has been annexed as Annexure R-30. The grievance of the Petitioner with regard to non-issuance of six months notice prior to submergence is misconceived as notice of submergence already exists on record in the form of Annexure P/2, camps held by the Respondents and other measures taken at the site. The Respondents have duly complied with provisions of rehabilitation and resettlement policy and requisite benefits have been extended to project affected families. In case any land oustee has any justifiable grievance with regard to non-implementation of rehabilitation and resettlement policy, he can approach to the Grievance Redressal Authority. Besides that, he has also the remedy of approaching the Collector by way of filing an appeal under Clause 12 of rehabilitation and resettlement policy. Learned senior counsel fairly submitted that State Govt. is under a Constitutional obligation to provide all the benefits under the rehabilitation and resettlement policy to the land oustees. He assured this Court that all the benefits under the policy shall be extended to project affected families and State Government shall do its best to ensure that no inconvenience is caused to the land oustees. Remaining benefits like transportation grant and rehabilitation grant shall be paid to project affected families, as soon as they intimate about their intention to vacate the area in their occupation.

30. It has further been submitted that project has already been completed and only the gates are required to be installed and over an amount of Rs. 200 Crores has been spent. In any case, the Court should grant the permission to fill the Dam up to 310 meters immediately so that the canal network which has already been constructed for irrigating 2600 hectares may be used from this season itself for purposes of irrigation and there is no deterioration in its quality due to its non-use. The project will benefit large number of families who have waited for years together to receive the canal water.

31. We have considered the submissions made on both sides. Firstly, we shall examine the issue of validity of order dated 7.6.1991 which is the main bone of contention between the parties. State Cabinet took a decision on 1.9.1989 which inter-alia provided that routine amendments could be carried out by the concerned department with the consent of Rehabilitation Department and approval of concerned Minister and in case of difference of opinion between two departments, the matter was required to be placed before the Chief Minister in coordination. The order dated 1.9.1989 which has been signed by the Chief Secretary, Govt. of Madhya Pradesh, has been placed on record as Annexure

R/35. Thereafter, vide order dated 7.6.1991 which has been issued in the name of the Governor, Clause 5.1 of the Policy was amended providing for payment of cash compensation in lieu of land.

32. Article 166(1) of the Constitution of India provides that all executive action of the Government of the State shall be expressed to be taken in the name of the Governor. Article 166(2) provides that orders and other instruments made and executed in the name of the Governor, shall be authenticated in such manner as may be specified in the Rules to be made by the Governor and validity of an order or an instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. The Petitioner has assailed the validity of the order dated 7.6.1991 on the ground that the order is in violation of Article 166(2) of the Constitution of India since all the proposals to vary or reverse a decision previously taken in the meeting of Council of Ministers are required to be brought before the Council as per Clause (viii) of Rule 7 of Part (II) of Rules of Business. It has further been contended that order dated 7.6.1991 was neither put up for consideration before Council of Ministers nor was it was approved by the same.

33. Since, periodical updating of rehabilitation and resettlement policy was considered to be necessity, the State Cabinet took a decision which inter-alia provided that routine amendments could be carried out by the concerned department with approval of concerned Minister and in case of difference of opinion between the departments, the matter was required to be placed before the Chief Minister in coordination. The decision dated 1.9.1989 has been placed on record as Annexure R/35 with the counter affidavit. Thereafter, by order dated 7.6.1991 Annexure R/36, amendment was made in Clause 5.1 in rehabilitation and resettlement policy. Order dated 7.6.1991 has been issued in the name of Governor and has been authenticated. The Council of Minister had delegated the authority to approve the amendment in the rehabilitation and resettlement policy to the concerned department with the approval of the Minister. Thus, order dated 7.6.1991 has been passed in accordance with the procedure prescribed under the Rules of Business. Even assuming for the sake of argument that the order suffers from some procedural irregularity, that by itself would not invalidate the order and would not render the executive action a nullity. In this connection, we may refer to the decisions of the Supreme Court in case of Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, and Major E.G. Barsay Vs. The State of Bombay, Article 166 of the Constitution grants an immunity to the order so that it cannot be challenged on the ground that it is not an order made by the Governor. In addition to this Constitutional provision, there is also a presumption of regularity of official acts. See: Ishwarlal Girdharlal Joshi etc. Vs. State of Gujarat and Another, Thus, for the aforementioned reasons, the contention made on behalf of Petitioner that order dated 7.6.1991 has been made in violation of provisions of Article 166(2) of the Constitution, cannot be accepted. The validity of order dated 7.6.1991 is to be upheld for yet another reason. Admittedly, land oustees have received cash compensation in the year 2005. Therefore, challenge

to validity of order dated 7.6.1991 is belated and cannot be entertained at this stage.

34. It would be relevant to state here that validity of rehabilitation and resettlement policy which has been amended from time to time between 12.6.1990 to 26.11.2005 was subject matter of challenge at the instance of the Petitioner before the Division Bench of this Court on various grounds in W.P. No. 3022/2005, which was decided by this Court vide order dated 8.9.2006. The aforesaid decision is reported in 2006 (3) MPJR 218 . This Court while dealing with the challenge to the validity of the Policy and while upholding the same, also noticed various amendments which were made in the Policy from time to time including the amendment made in the Policy vide order dated 7.6.1991. From perusal of para 70 of the judgment, it is apparent that Policy was challenged as being violative of Article 14 of Constitution of India on the ground that oustees were entitled to allotment of land in lieu of land as provided in the unamended Policy and grant of compensation in monetary terms to the oustees would not preclude them from claiming land for land and if they refund the money, they should be rehabilitated by allotting them the land. After considering all the submissions put forth on behalf of the Petitioner including the submission referred to para 70 of the judgment, the Division Bench of this Court in para 80 of the judgment recorded the conclusion that rehabilitation and resettlement policy cannot be declared unconstitutional on the ground that it violates Article 14 and 21 of the Constitution of India. This Court held that concern of the welfare State is writ large and the policy has been framed to give all requisite benefits to the oustees and to cover in its ambit and sweep various kinds and categories of oustees which makes the policy rational and reasonable keeping in view the interest of weak and marginalized section of the oustee. Thus, in our opinion, subsequent challenge to the amendment made in Clause 5.1 of the Policy on the ground that order dated 7.6.1991 is illegal and spurious is not permissible. Once validity of the policy has been upheld, all the grounds must be presumed to have been considered by the Court and fresh litigation challenging the validity of the same provision would be barred by principle of resjudicata. The Apex Court in para 10 of the judgment in *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, has held as under:

Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once Petitioners' challenge to Section 3 and the impugned notification was considered by the court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the court.

For this reason also, the issue with regard to validity of amendment in the rehabilitation and resettlement policy vide order dated 7.6.1991 cannot be gone into in the instant writ petition. The inevitable conclusion is that the challenge to order dated 7.6.1991 must fail. Thus, we have no hesitation in holding that

rehabilitation and resettlement policy was validly amended vide order dt.7.6.1991 and order dated 7.6.1991 does not suffer from any infirmity.

35. Now coming to the next issue i.e. the non-implementation of rehabilitation and resettlement policy, Ms. Palit while canvassing the aforesaid issue contended as follows:

- i) Complete go-bye has been given to provision of land for land as envisaged by rehabilitation and resettlement policy.
- ii) Land has not been allotted to encroachers as per clause 2 and 3.3 of the rehabilitation and resettlement policy;
- iii) Land has not been allotted to landless families ;
- iv) Land has not been allotted to adult sons and unmarried daughters as per clause 1.1(b)(2) of the Policy;
- v) Other grants like rehabilitation grant as envisaged by clause 6 of the policy and difference of amount payable under Indira Awas Yojana and amount of compensation paid for the acquired land as per clause 7.2 of rehabilitation and resettlement policy and transport assistance grant as per clause 6.3 of the policy have not been paid;
- vi) No acquisition has been made in respect of land and properties situate on the land which would be submerged on account of back-water effect.

36. The issue with regard to grant of benefits under rehabilitation and resettlement policy necessarily involves adjudication of factual issues. The Grievance Redressal Authority has been constituted with the purpose namely to ensure that issue relating to implementation of rehabilitation scheme can be adjudicated by it. The Court may entertain an issue with regard to rehabilitation of oustees and conferment of benefits to them under the rehabilitation and resettlement scheme only in extra-ordinary situation. In this context we may reproduce para 67 of the judgment of Supreme Court in Narmada Bachao Andolan Vs. Union of India (UOI) and Others,

Several contentions involving factual dispute had, we may notice, not been raised before the GRA. The GRA had been constituted with a purpose, namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. The GRA being headed by a former Chief Justice of the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extra-ordinary situation emerges.

In view of the above exposition of law by the Apex Court, we now examine as to whether any extra-ordinary situation exists warranting interference by this Court. We may hasten to add that if any land oustee is aggrieved with regard to non-

implementation of rehabilitation and resettlement policy, it will be open to him to approach the forums created under the rehabilitation and resettlement policy as well as the Grievance Redressal Authority. We may also clarify here that we have dealt with the aspect of implementation of rehabilitation and resettlement policy in the preceding paragraphs only to indicate that no extra-ordinary situation exists in the facts and circumstances of the case warranting interference of this Court.

37. At this stage it is relevant to mention that 14 villages would fall within the submergence of area of Upper Beda Dam. Out of aforesaid 14 villages, only 3 villages namely Palda-Khurd, Kharva and Udaipur are Abadi villages. Out of aforesaid 14 villages, only one village Khamid would be fully submerged whereas two villages would be submerged to the extent of 25-50% and remaining 9 villages would be submerged less than 25%. In all, there are 1412 project affected families which can be divided into three categories namely - (i) those who are losing their land only, (ii) those who are losing their land as well as house, and (iii) those who are losing their house only. It is also relevant to mention that total submergence of the dam in question is 1258 hectares out of which 1037 hectares of land is private land. Out of 1412 project affected families, 786 project affected families would lose their land only i.e. they fall under the first category. Out of aforesaid 786 project affected families, only 507 are recorded as land holders and 279 are major sons and unmarried daughters. Under the rehabilitation and resettlement policy, only recorded land holders are entitled to benefits. A chart showing the benefits extended to aforesaid 786 project affected families has been annexed with application for grant of permission to fill the dam upto FRL as Annexure R-14. From perusal of the aforesaid chart it is perceptible that cash compensation and special rehabilitation grant have been paid to the aforesaid oustees. The Respondent along with the return has annexed a chart Annexure R-15 to show that 226 land holders have purchased alternative land. As against 506.614 hectares of land acquired from 226 oustees they have purchased 523.071 hectares. In purchasing the aforesaid lands, the oustees have spent only Rs. 6.79 Crores as against Rs. 10.24 Crores received by them by way of cash compensation and special rehabilitation grant.

38. With regard to second category of land oustees i.e. the oustees who are using their land as well as the house, cash compensation and SRG has been paid to them. There are 281 project affected families in the second category. Out of them 195 are recorded land holders. They have opted to receive cash compensation and SRG. It has further been stated that all 281 project affected families are entitled to house, plots or cash compensation in lieu thereof. Most of the oustees have been allotted house plots. A chart indicating the details of the benefits of rehabilitation and resettlement policy extended to second category of project affected families has been annexed as Annexure R/17 with application for grant of permission to fill the dam.

39. Third category consists of 345 project affected families comprising 287

recorded land owners having 58 major sons or daughters whose houses are affected by submergence. Some of them have opted for cash compensation, whereas some of them have opted for allotment of house plots. Payment of cash compensation has been made and the house plots have been allotted to project affected families as per their choice. Chart indicating the details of the benefits extending to third category of project affected families is annexed as Annexure R-18. Thus, all 1412 project affected families have been duly extended rehabilitation and resettlement benefits as per their entitlement and remaining benefits like transportation grants and rehabilitation grant shall be paid to them as soon as they move out of the area.

40. So far as claim of major sons and unmarried daughters with regard to allotment of land is concerned, the same is pending adjudication before the Supreme Court in SLP No. 7971/2008. Similarly in SLP (c) No. 17053/08, Supreme Court vide order dated 20.11.2009 has granted interim stay of direction issued by this Court to State Govt. for allotment of minimum 2 hectares of land to adult sons and unmarried daughters. Since the issue with regard to entitlement of land to adult sons and unmarried daughters is pending adjudication before the Supreme Court, the question of their entitlement with regard to allotment of land cannot be gone into in the instant writ petition. However, the same shall be subject to the decision of the Supreme Court.

41. So far as claim of landless person with regard to allotment of land is concerned, Division Bench of this Court in WP No. 4457/07(PIL) vide order dated 21.2.2008 has already held that landless persons are not entitled to allotment of agricultural land, therefore, we have no reason to hold that under rehabilitation and resettlement policy, the landless persons are entitled to allotment of any land. As regards the claim of allotment of agricultural land to encroachers is concerned, as per Clause 3.3 of the policy such allotment is limited to only encroachers who are in possession of the Government land prior to 13.4.1987. As per the survey which has been conducted by the Respondent, out of 1435 persons identified as oustees, no one has been found to be an encroacher, the details are given in the action taken report annexed as Annexure R-30.

42. The other grants like rehabilitation grant as per Clause 6 of rehabilitation and resettlement policy, transportation assistance as per Clause 6.3 of the policy and difference of amount payable under Indira Awas Yojana an amount of compensation paid for acquired land as per Clause 7.2 of rehabilitation and resettlement policy, are payable at the time of actual displacement. Learned Counsel for the State has given an undertaking before us that aforesaid grants shall be paid to the displaced families at the time when they express their intention to shift.

43. From perusal of the certificate issued by Central Water Commission which has been annexed as Annex. R-37, we find that all structures between full reservoir level and back-water level have been acquired. Thus, from the facts stated supra, we find that State has extended the benefits of rehabilitation and

resettlement policy to project affected families. Certain benefit which are yet to be extended, have not been given to project affected families, as the same are given to them at the time of their actual displacement.

44. From perusal of Clause 2.2 and Clause 2.4 of rehabilitation and resettlement policy we find that computation of price of acquired land has to be assessed on higher scale than the one provided under the Land Acquisition Act, 1894 as the policy provides that average sale price in nearest town of similar size outside submergence area will form the basis of calculation of compensation and compensation for building will be determined on the basis of replacement value. Vide order dated 27.8.2003, State Govt. has provided that for purposes of assessment of market value of the land, rates of nearest command area namely Dejla-Devda command area shall be taken into account which comprises irrigated land. Therefore, more compensation has been paid to the land owners than they were entitled to under the provisions of Land Acquisition Act, 1894. Since, more compensation has been paid to them, therefore, not a single land holder has sought a reference under the provisions of Land Acquisition Act, 1894. The State Govt. has sanctioned additional rehabilitation grant in favour of the project affected families. Thus, the concern of the welfare State is writ large and policy has been framed by the State Govt. to give all requisite benefits to the land oustees.

45. The project affected families have received compensation in the year 2005. Since 2005 till filing of the petition on 2.9.2008, no grievance of any sort was made. The instant writ petition was filed before this Court after approximately six months i.e. 2.9.2008 from the date of issuance of notification dt.5.3.2008 regarding submergence of 4 villages namely Sonud, Nimit, Bedhaniya-Khurd and Khamid. In case any project affected person has a grievance, that benefit of rehabilitation and resettlement policy has not been extended to him, he is at liberty to approach the Rehabilitation Officer and in case he is aggrieved by the decision by the Rehabilitation Officer, under Clause 12 of the rehabilitation and resettlement policy, he has the remedy of appeal before the Collector, which has to be decided by the Collector within a period of three months. Apart from this, Grievance Redressal Authority has also been constituted by the State Government vide notification dt.30.8.2001 and its jurisdiction has been extended to all the projects in the State of Madhya Pradesh vide notification dated 11.6.2002.

46. We may now come to the submission made on behalf of the Petitioner that the Respondent should not be permitted to fill up the Dam as rehabilitation and resettlement policy of land oustees is not complete. It is worthwhile to note that Upper Beda Dam is already complete. It has been constructed with an expenditure of over Rs. 200 Crore. It is a fait accompli. The Dam has been constructed with a view to provide irrigation facility to farmers of Khargone District. The area for which the project has been constructed, is a backward area with 68% population consisting of Scheduled Tribes, 4% of Scheduled Castes and

remaining 28% of other castes. The project shall provide irrigation to 9917 hectares of agricultural land. We have been informed that canal network to irrigate 2600 hectares of land has already been completed. In case Respondent is not permitted to fill up the Dam, the farmers of the backward area would be deprived of the benefits for which they have waited long. In such a case, individual rights or interests must subserve larger public interest, which lies in permitting the Respondent to fill up the Dam. As stated supra, no extra-ordinary situation exists with regard to implementation of rehabilitation and resettlement policy and; therefore, larger public interest would be served in permitting the Respondent to fill up the Dam. Thus, the contention of the Petitioner that Respondent should not be permitted to fill up the dam, deserves to be rejected.

47. However, in the facts and circumstances of the case and looking to the nature of controversy involved in the writ petition, we would like to emphasise the need that the State Government being a welfare State should take care of the land oustees and civic amenities besides proper and hygienic atmosphere with medical facilities should be made available at the place where they are to be shifted. Shri Shekhar Bhargava, learned senior counsel appearing for the Respondent during the course of submission assured the Court that the State Government shall do its best to ensure that land oustees are rehabilitated and resettled and are given their entitlements under the rehabilitation and resettlement policy.

48. Now we take up I.A. No. 11862/2010, an application filed on behalf of the Petitioner for summoning the records. After the arguments were heard, the matter was closed for delivery of judgment, the aforesaid application was filed on 29.9.2010 with the prayer to summon File No. F-2/180/27/87/Part-II of Narmada Valley Development Department to enable this Court to ascertain whether the decision of the Cabinet dated 1.9.1989 is merely a noting on note-sheet or an order of the Cabinet. The arguments on the application were heard by us on 22.10.2010 and vide order of even date, orders on the aforesaid application were reserved and it was provided that the orders on the application shall be passed alongwith the judgment. This question has been dealt in detailed in the preceding paragraphs of this order. Besides that since the copy of the order dated 1.9.1989 is already on record and the subsequent decision amending the Rehabilitation and Resettlement Policy vide order dated 7.6.1991 having been upheld by another Division Bench in W.P. No. 3022/2005, this question cannot be reopened in this proceedings. Therefore, for the aforesaid reasons, we are not inclined to allow the prayer made in the application. It is accordingly rejected.

49. In the result, we dispose of the instant writ petition with the following declarations and directions:

- i). The State Government is hereby permitted to install radial gates, block sluice gates and to fill up the Upper Beda Dam upto level of 310 meters.
- ii) As and when canal network is ready, the State Government would be at liberty

to approach this Court seeking permission to fill up the dam upto 317 meters.

iii) The State Government shall make public announcement for shifting of the project affected families who are still residing in submergence area and will take necessary measures for their shifting.

iv) The other grants like rehabilitation grant as per Clause 6 of rehabilitation and resettlement policy, transportation assistance as per Clause 6.3 of the policy and difference of amount payable under Indira Awas Yojana, amount of compensation paid for acquired land as per Clause 7.2 of rehabilitation and resettlement policy, shall be paid immediately after their shifting but not beyond a fortnight from the date of shifting.

v) The State Government will ensure that the sites which have been earmarked for the purpose of rehabilitation of the project affected families should be developed and all civic amenities should be made available to the said families within a period of six months.

vi) The State Government shall ensure that the land oustees are given the benefits to which they are entitled under the Rehabilitation and Resettlement Policy, if already not given, within a period of four months.

vii) In case any project affected person approaches either the Rehabilitation Officer or the Collector or the Grievance Redressal Authority with the grievance that he has been deprived of his entitlements under the rehabilitation and resettlement policy, the aforesaid authorities shall deal with the claim with utmost objectivity and shall adjudicate the grievance as expeditiously as possible by a speaking order.

viii) The Petitioner shall be at liberty to agitate the grievances contained in Clauses (xii), (xiii) and (xv) of the relief clause of the instant writ petition before GRA.

50. The writ petition is accordingly disposed of with the above directions. There shall be no order as to costs.