

(2013) 08 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11130 of 2013 (PIL)

Narmada Bachao Andolan Khandwa

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2013) 08 MP CK 0066

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.; Subhash Kakade, J

Bench : Division Bench

Advocate : Shobha Menon, Mr. Rahul Choubey and Mr. Agrawal, for the Appellant; R.N. Singh, learned senior counsel and Shri Arpan J. Pawar, for the Respondent

Final Decision : Disposed Off

Judgement

1. In this writ petition, the petitioner has sought for the following reliefs:

(i) Quash condition stipulated at para 7 of the Order of the Narmada Valley Development Department, Government of Madhya Pradesh, dated 7-6-2013 annexed as Annexure-P/1 for being unreasonable, oppressive and in violation of the Articles 14 and 21 of the Constitution and the law settled by the Hon''ble Supreme Court and this Hon''ble Court requiring prior rehabilitation and resettlement and breathing time of six months as well as fundamental principles of the R & R Policy.

(ii) Direct that the grants under the package announced by the State Government be provided to the desirous oustees immediately, (except what is in contempt of the orders of the Hon''ble Supreme Court and this Hon''ble Court requiring prior rehabilitation and resettlement and breathing time of six months be provided to the oustees to make the necessary arrangements by 31st of December, 2013, or in the alternative by 31st October, 2013.

(iii) Any other orders, as the Hon"ble Court may find fit and proper.

The petitioner, in a nutshell, has challenged the condition No. 7 of the order, Annexure-P/1, dated 7th June, 2013 which reads thus:

2. Condition No. 7 of the aforesaid order is challenged by the petitioner on the sole ground that the affected persons should have been firstly rehabilitated and only then they could have been displaced. In this regard the condition No. 7 is very harsh and is affecting rights of the persons who have to shift. It is submitted that reasonable period for six months or up to 30th October, 2013 may be provided to the persons who are to be displaced from the Dam areas. It is further submitted by the learned senior counsel that firstly these persons be paid amount of special package and then they should be displaced from the Dam areas.

3. Shri R.N. Singh, learned senior counsel opposed the aforesaid contention and it was submitted by him that the order Annexure-P/1 is by way of special package, the affected persons have been paid compensation earlier and the special package has been provided in lieu of the decision taken by the Special Committee, dated 9-4-2013, a copy of which has been filed as Annexure-A/3. He has also referred to certain paragraphs of the judgment of the apex Court rendered in Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, and submitted that this petition filed on behalf Narmada Bachao Andolan deserves to be dismissed, because no affected persons have approached this Court for ventilation of their grievances.

4. Before considering the rival contentions, raised by the parties, it would be appropriate, if certain paragraphs from the judgment of the apex Court in Narmada Bachao Andolan (supra) are referred. The apex Court in paras 183 to 189 has held thus:

183. These appeals involved two issues, namely, (i) allotment of land in lieu of land acquired; and (ii) entitlement of major son to get the allotment of land as a separate family. So far as the first issue is concerned, in respect of the same, we hold that in view of the provisions contained in R & R Policy, the State Authorities are under an obligation to allot the land to the oustees "as far as possible". In case an oustee has not accepted the compensation/SRG or has any grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach the GRA and the GRA will adjudicate upon the issue and pass an appropriate order in individual cases after giving an opportunity of hearing to all the parties concerned. Needless to say, the person aggrieved by the order of GRA shall be entitled to approach the High Court for appropriate relief. However, in case of private person, the application/petition would be in the name of that individual person duly supported by his affidavit. So far as the issue of entitlement of major son for allotment of land as a separate family is concerned, our conclusion is in the negative. In other words, there is no such entitlement.

184. This appeal involved three issues, namely, (i) entitlement of land to the

landless labourers; (ii) applicability of NWDT Award in the Omkareshwar dam project; and (iii) entitlement of allotment of land to the oustees of five villages already submerged. Our conclusion in respect of Issue Nos. (i) & (ii) is in the negative. However, on Issue No. (iii), the oustees shall be entitled for the relief as given to the oustees on Issue No. (i) in Civil Appeal Nos. 2115-2116/2011. T

185. These appeals have been preferred by the State of M.P. and NHDC in respect of acquisition of land of five villages, wherein the State wants to withdraw the acquisition proceedings. Our conclusion is that in the fact-situation of the case, the State is entitled to abandon the land acquisition proceedings in exercise of its power u/s 48 of the Act 1894. However, it shall not apply to 167 dwelling units on the said land. Such persons whose dwelling units are acquired shall be entitled to the benefit of R & R Policy to the extent provided therein. The State shall establish the roads etc. after raising the height of the Bandh as proposed by the Authorities.

186. IAs. Nos. 196-210, 211-225, 241-255 of 2011 and 226-240 of 2011 filed by both the parties u/s 340 Cr.P.C., do not require to be dealt with in view of our observations made in para 169 of this judgment.

187. All the appeals and IAs. stand disposed of accordingly. No order as to costs.

188. We have been given to understand that on the Narmada River, in the State of Madhya Pradesh, in all 29 major and minor projects are contemplated. Some of them have already been completed, but on account of stay order by the court/ Authority some projects could not be completed. It is unfortunate that in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest.

189. Before parting with the case, we record our deep appreciation for the assistance rendered to this Court by Shri M.K. Mudgal, learned District Judge, Indore, and officials of the CWC, particularly Shri U.K. Ghosh, Chief Engineer (NBP), CWC, Shri M.P. Singh, Director (FCA), CWC, and Shri D.P. Singh, Director (ND & HW), CWC, New Delhi.

5. The apex Court in the same judgment has also considered the matter at length in paras 51 to 53 of the judgment, which are reproduced hereunder:

51. None of the obligations on the part of the authorities as clearly stipulated by the R & R Policy had been fulfilled. The Adhiniyam 1985 had not been made applicable in respect of the Omkareshwar Dam Project taking into account the past experience in other projects. Undoubtedly, the acquisition of land and displacing other persons for resettling these oustees could have a chain reaction and the remedy/cure might have been worse than the disease itself and could further give rise to the question as to whether such an action was permissible in law. The State authorities ought to have assisted the oustees in purchasing the land of their choice from other agriculturists and met the difference of cost, if

any, over and above the amount of compensation and the cost of land so purchased. While determining such issues, the State authorities could take into consideration the fact that the land should be not less than of the same quality and nature which the oustees were originally having with them. This exercise could have been done "pari pasu" which means "equally" or "ratably"; to the construction of the Dam and could have been completed much in advance of completion of the Dam to the Full Water Level.

52. In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the tribal areas are today in the grip of extremism, as the tribal youths have become easy prey to the extremists" propaganda.

53. While dealing with I.A. No. 42086/2008 in Writ Petition No. 4457 of 2007 (PIL), the High Court on 16.3.2009 considered the grievance of the oustees that the land available with the State for allotment was not cultivable and had been encroached upon, thus, the oustees were not willing to accept the land offered to them. The Court directed the Indian Council of Agricultural Research (Bhopal) to depute a sufficient number of experts to inspect the land offered to the displaced families and to find out as to whether it was suitable for agricultural purposes and submit its report and further directed the authorities to file an affidavit as to whether the encroachment could be removed expeditiously within a period of two months. The expert committee of Indian Council of Agricultural Research (Bhopal) had submitted the report that the land was cultivable. The matter was directed to be listed on 13.9.2009 and in the meanwhile, the GRA was directed to dispose of all applications/objections of the oustees for allotment of land in lieu of land acquired except those where the dispute related to entitlement of major sons for allotment of land and where the oustees had withdrawn the entire amount of compensation/SRG amount. Report dated 13.1.2010 submitted by the GRA before the High Court makes it clear that all objections filed before it by the oustees had been decided and directions issued by the GRA had been complied with by the State authorities.

6. Now, in the light of the aforesaid judgment, it is apparent that the apex Court has concluded the matter, in so far as it relates to R & R Policy and compensation/SRG. In para 183 of the judgment the apex Court has specifically held that in case an oustee has not accepted the compensation/SRG or has any grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach GRA and GRA will adjudicate upon the issue and pass an appropriate order in individual cases after extending an opportunity to all the parties concerned. The apex Court further directed that the person aggrieved by the order of GRA shall be entitled to approach the High Court for appropriate relief, meaning thereby the apex Court has granted liberty only to an aggrieved person to approach the High Court if he is aggrieved by the order of the GRA.

None, even the petitioner, was granted the said liberty to file a petition for ventilation of grievance, except the persons who were affected by the order of the GRA.

7. Now, in the light of the aforesaid judgment of the apex Court, condition No. 7 of Annexure-P/1, which is under challenge, may be looked into. The aforesaid condition has been issued in continuation of the decision taken by the Special Committee, dated 9-4-2013 (Annexure-A/3). The Committee consisted of two Ministers, Principal Secretary, Narmada Valley Development Department, the Commissioner, Indore Division, Indore, and the Collector, Khandwa. The Committee had considered the matter at length and had provided the special package to the displaced persons. The relevant portion of Annexure-A/3 is reproduced hereunder:

8. From a perusal of the aforesaid, it is apparent that the special package was provided to all the oustees and total amount of Rs. 223.995 crores was decided to be paid to the oustees. It appears that 7159 applications were pending and all the persons were directed to be informed and accordingly, the aforesaid condition No. 7 was inserted in the order, Annexure-P/1, so that the affected persons may leave the place and receive the aforesaid amount and benefits of the scheme can be extended. The apex Court in Narmada Bachao Andolan (supra), has categorically stated in paragraph 188 of the judgment, "that in the State of Madhya Pradesh, in all 29 major and minor projects are contemplated. Some of them have already been completed, but on account of stay order by the court/authority some projects could not be completed. That in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest". Meaning thereby that the intention of the apex Court was to give effect to implementation of the project and the State Government was directed to get the stay order vacated so that the projects are completed. It appears that the entire intention of the respondents by putting the condition No. 7 is, that affected persons should vacate the places to get the benefit of the said special package which is apart from the compensation already paid, and the project can be completed.

9. In view of the aforesaid, we do not find any error in insertion of the condition No. 7 in the order, Annexure-P/1, by the respondents, warranting interference of this Court.

10. Smt. Shobha Menon, learned senior counsel for the petitioner submitted that appropriate time may be allowed to the oustees to vacate the houses or places, so that they may rehabilitate to some other places. In continuation to this, we have asked the learned senior counsel for the respondents whether an appropriate time may be extended so that the affected persons may vacate the premises within a reasonable period, because earlier the last date was fixed as 15th July, 2013 which has been now extended up to 16th August, 2013 for giving effect to the order passed as Annexure-P/1. Because of rainy season, as the

period of 16 days may be insufficient, we asked the learned Senior Counsel for the respondents to provide some time, so that affected persons can reap benefit of Annexure-P/1 and vacate the houses and places, where they are presently occupying. It is submitted by Shri Singh that the aforesaid period has been fixed looking to the facts and circumstances. That at any point of time the Election Commission may declare and notify the ensuing Legislative Assembly elections and in that situation, it would not be possible for the respondents to disburse the amount of special package as provided in Annexure-P/1. However, in case this Court permits the respondents to disburse the amount in spite of the aforesaid outer limit or notification of the election, the respondents have no objection, if a reasonable period is provided to the oustees for vacating the land or houses which they are occupying.

11. In the aforesaid circumstances, looking to the factual scenario, we find it proper to allow time to oustees to take benefit of the order Annexure-P/1, till 8th September 2013. If the oustees seek benefit of the order Annexure-P/1, there would be no hurdle to the respondents to disburse the amount to such oustees under the order Annexure-P/1, even if the dates of election are notified by the Election Commission in the State of M.P. and it would not be a bar to the oustees for receiving amount under the special package provided in Annexure-P/1. However, the respondents shall complete the process of ascertaining the amount of special package, if already not ascertained. With the aforesaid clarification, this writ petition is finally disposed with no order as to costs.