
(2019) 07 SHI CK 0126

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2646 Of 2015

Sat Dev Singh

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A)
Code Of Civil Procedure, 1908 — Section 80
Madras Port Trust Act, 1905 — Section 110
Constitution Of India, 1950 — Article 12, 136

Citation : (2019) 07 SHI CK 0126

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ashok K. Tyagi, Vinod Thakur, Bhupinder Thakur, Svaneel Jaswal, Ram Lal Thakur, Sunil Mohan Goel

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. I would preface this judgment by referring to the observations made by the Hon'ble Supreme Court in Noida Entrepreneurs Association vs. Noida and others, (2011) 6 SCC 508, wherein the Hon'ble Supreme Court observed as under:-

"Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in large public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. "Public authorities cannot play fast and loose with the powers vested in them." A decision taken in an arbitrary manner contradicts the principle of legitimate expectation. An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons." It must be exercised bona fide for the purpose and for none other.

2. Similar sentiments have been expressed earlier and later to this decision and some of which shall be referred to during the course of this judgment.

3. Adverting to the facts, it would be noticed that the land of the petitioner was acquired by the Himachal Pradesh Power Corporation Ltd. (for short 'HPPCL') by way of negotiation vide sale deed dated 24.09.2009. The purpose of acquisition was for the construction of Renukaji Dam Project. Immediately after the execution of the sale deed the respondent-HPPCL issued a certificate of assurance in favour of the petitioner agreeing therein that in case the negotiated rates for the land being acquired for dam and reservoir area (sub mergence area) are enhanced the same rate would be paid to him. It was further stated in the assurance certificate that this undertaking was being given to ensure that those persons who come forward for sale of land voluntarily are not disadvantaged.

4. It is not in dispute that subsequently the respondents No. 2 to 5 acquired the land of other persons/land owners of the same area for same purpose wherein such persons were granted enhanced amount of compensation. As per award dated 23.08.2012, the petitioner called upon the respondents to pay the enhanced amount vide notice dated 27.10.2014 but the said notice was not replied constraining the petitioner to file the instant petition, wherein he has claimed the following substantive reliefs:-

1. That the respondents No. 1 to 3 may kindly be directed to comply the undertaking Annexure P-1, direction P-3 and pay the amount of enhanced compensation with up to date interest, having become due to be paid to the petitioner by the respondents on the basis of award No. 658, dated 23.08.2012 and supplementary award in main award No. 658, dated 06.03.2013 passed by respondent No. 4 in the interest of justice.

2. That the respondents No. 1 to 3 may kindly be directed to pay the amount of enhanced compensation alongwith 30% solatium and additional amount under Section 23 (1A) of the Land Acquisition Act at the rate of 12% from 30.07.2009 till realization of the same.

5. In the reply filed by the respondents No. 2 to 5, it was averred that the land owned by the petitioner was purchased by the replying respondents in the year 2009 through negotiated rate of Rs.50,000/- per bigha for Nakabil, Gair Mumkin & Nakabil Charand types of land. Subsequently on 30.09.2009, the negotiated rates for the above mentioned types of land was enhanced to Rs.75,000/- per bigha and in order to honour the assurance given by the replying respondents, the differential amount of negotiated rate was paid to the petitioner vide cheque No. 675434, dated 01.12.2009, which was duly received by the petitioner. Lastly, it was stated that petitioner himself willingly sold the land to the replying-respondents and having thus received consideration for the sold land in the year 2009 as per negotiated rates approved by the Board of Directors based on classification of land, therefore his claim for payment of compensation as per the

land acquisition award pronounced by the Land Acquisition Collector in the year, 2012 is not tenable.

I have heard learned counsel for the parties and have gone through the records of the case.

6. It needs to be mentioned that the case was initially heard on 03.07.2019, when this Court came to a prima facie conclusion that the defence as raised by the respondents was not tenable in law and directed the counsel for respondents No. 2 to 5 to seek instructions and the matter was adjourned to 17.07.2019. On 17.07.2019, learned counsel for respondents No. 2 to 5 prayed for adjournment and on his request it was ordered to be listed on 18.07.2019. Even on the said date, this Court directed the learned counsel for respondents No. 2 to 5 to seek instructions in terms of the last order and at his request the case was adjourned to 23.07.2019, on which date Shri Ajay Kumar Jasta, Dy. G. M., Sh. Manjeet Sharma, LAO, HPPCL, Sh. Anoop Kumar Sharma, Sr. M. (Law) and Sh. Prem Chand Naib Tehsildar were present in person. The officials of the respondents were specifically informed that their defence was not tenable and therefore, they should obtain clear cut instructions, as to whether they would like to pursue the instant lis or not. Even on 24.07.2019 in the pre lunch session, the respondents were again directed to seek instructions in terms of the previous order and when the matter was thereafter taken up in the post lunch session, the learned counsel for respondents No. 2 to 5 stated that he had specific instructions to argue the matter. The Court then heard the arguments and reserved the judgment.

7. In order to appreciate the controversy in issue, it would be necessary to refer to the assurance given by respondents No. 2 to 5, which is in writing and has been annexed as Annexure P-1. It would be apposite to reproduce the said assurance in its entirety and the same reads as under:-

"ASSURANCE FOR NEGOTIATED RATES FOR LAND ACQUISITION IN RENUKAJI HP

HPPCL has offered rates for land to be acquired through negotiations vide its orders No. HPPCL/MD/Rev.-1/08-1696-99 dated 06.12.08. HPPCL agrees that in case the negotiated rates for land being acquired for dam and reservoir area (sub mergence area) are enhanced the same rates will be paid to Shri Sat Dev Singh son of Sh. Shiv Dev Singh R/o Naya Bazar Nahan, Distt. Sirmour H.P. for his land measuring 17-15 bighas comprised in Kh. No. 402/3016, 404/316/2, 320 321, 322, 416/368, 369, 370 total Kita 8, measuring 17- 15 bighas vide Sale Deed No. 227 dt. 24.09.09 situated in Village Sium Sub Teh. Nahan, Distt. Sirmour, H.P.

This undertaking is being given to ensure that those persons who come forward for sale of land voluntarily are not disadvantaged.

Sd/-

For and on behalf of HPPCL"

8. It is argued by Shri Sunil Mohan Goel, learned Advocate that the assurance

given by respondents No. 2 to 5 to the petitioner was only to the effect that in case the negotiated rates of land being acquired for dam and reservoir area are enhanced through negotiation by the respondents themselves, only then the petitioner would be paid the enhanced amount and not when the enhancement is made by the Collector/Court under the Land Acquisition Act.

9. To say the least, the submission is absolutely fallacious and contrary to what is stated in Annexure P-1. The language of the assurance is clear and brooks no other interpretation, wherein the respondents have clearly assured the petitioner that in case the negotiated rates that forms the basis of the sale deed dated 24.09.2009 are enhanced the same will be paid to the petitioner. The assurance has to be interpreted in the light of the words employed in it and not on any other basis.

10. Not only this, there is a specific undertaking in the assurance to the effect that the undertaking was being given to ensure that those persons who come forward to sale of land voluntarily are not disadvantaged. Therefore, it does not lie in the mouth of the respondents to contend otherwise.

11. Moreover, in case the plea of respondents is accepted then this in itself would amount to a case of invidious discrimination, which obviously is not permissible under law.

12. It is not a case of the respondents that the rates of similar land are being enhanced as per award No. 658, dated 23.08.2012. Therefore, there is no reason as to why the enhanced amount be not paid to the petitioner rather the Collector while passing the award (Annexure P-3) has made a specific note of the fact that since the land owners have transferred their share in favour of the HPPCL through private negotiation and there are also fruit and non-fruit bearing trees standing over such land then HPPCL, who has given undertaking at the time of sale transaction will give the enhanced rate of compensation to the other interest holders.

13. This is clearly evident from the following observations:-

Some of the land owners have transferred their share in the land comprised in Kh. Nos. 325, 326, 409/327, 336, 357, 361, 362, 363, 364, 365, ¼, 104/1, 402/316, 452/404/316, 320, 321, 322, 416/368, 369, 370, 372, 374 in favour of HPPCL through private negotiation and there are also fruit and non-fruit bearing trees standing over such land. Since the HPPCL has given undertaking at the time of sale transactions that they will give enhanced amount of compensation if given to the other interest holders, value of trees which has not been paid and assessment of which has now been done, is payable to the interest holders who have sold the land by way of private negotiation as well. Hence the compensation on account of trees falling to the share of such interest holders too has been included in this award. This amount will be paid as per the share recorded in the revenue record before the sale of the land in favour of HPPCL.

14. To say the least, respondent No.2, which is 'State' within the meaning of Article 12 of the Constitution of India and is a public institution has conducted itself of untrustworthiness out of its own mouth by resorting to litigation like a cantankerous litigants by raising technical plea.

15. Respondents No. 2 to 5 have acted irresponsibly though they were expected to litigate within expected judicial norms. Respondents No. 2 to 5 like belligerent litigants could not resist the temptation of litigation and have fought their legal battle as if it was a war. The battle otherwise is "uneven" as on one side is a public institution whereas on the other side is a private individual.

16. In such a case, one is bound to recall to mind the observations made by Hon'ble Supreme Court in Dilbagh Rai Jerry vs. Union of India, AIR 1974 SC 130, wherein it was observed as under:-

"25. I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved make a big draft on the public exchequer. In the contest of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negated in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report on amendments to the Civil Procedure Code has suggested the deletion of Section 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision, P.P. Abubacker v. Union of India, AIR 1972 Ker 103, 107: para 5 which I may usefully excerpt here:

" The State under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably get involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook ; for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser

motivations which move private parties to right in court. The lay-out on litigation costs and executive time by the State and the agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Minister of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

17. It must be remembered that the State defined within the ambit of State under Article 12 of the Constitution of India, is not an ordinary party trying to win a case against one of its own citizens by hook or by crook. The State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity.

18. This Court has no hesitation to conclude that public money has been wasted because of the adamant behaviour of the officers of respondent No. 2 due to litigious attitude adopted by those officers in pursuing the instant litigation before this Court.

19. In *Urban Improvement Trust, Bikaner vs. Mohan Lal* (2010) 1 SCC 512, the Hon'ble Supreme Court observed that it is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. It was further observed that statutory authorities which existed for to discharge statutory functions in public interest should be responsible litigants and cannot raise frivolous and unjust objections nor act in a callous and high-handed manner. It would be apposite to refer to the relevant observations, which reads thus:

"5. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

7. In *Dilbagh Rai Jarry vs. Union of India* [1974 (3) SCC 554] where the Hon'ble Supreme Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court (*P.P. Abubacker vs. Union of India*, AIR 1972 Ker 103, AIR pp. 107-08, para 5)]:(SCC p.562, para 25)

"25.....'5."The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.' "

8. In *Madras Port Trust v. Hymanshu International*, (1979) 4 SCC 176 the Hon'ble Supreme Court held: (SCC p. 177, para 2):

"2. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well -founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable...."

9. In a three Judge Bench judgment of *Bhag Singh & Ors. v. Union Territory of Chandigarh through LAC, Chandigarh* [(1985) 3 SCC 737]: the Hon'ble Supreme Court held: (SCC p. 741, para 3)

"3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

10. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals."

20. In *Mahanadi Coalfields Ltd. and another vs. Mathias Oram and others* (2010) 11 SCC 269, the Hon'ble Supreme Court observed as under:-

10. The counter argument goes like this. It is very often the process of development that most starkly confirms the fears expressed by Dr. Ambedkar about our democracy. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens.

11. This is not to say that the relevant laws are perfect and very sympathetic towards the dispossessed. There are various studies that detail the impact of dispossession from their lands on tribal people. It is pointed out that even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively (and that happens rarely!), uncomfortable questions remain. For a people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

21. In *Gurgaon Gramin Bank vs. Khazani and another* (2012) 8 SCC 781, the Hon'ble Supreme Court considered the approach of the Government to litigate and observed as under:-

2. Number of litigations in our country is on the rise, for small and trivial

matters, people and sometimes Central and State Governments and their instrumentalities Banks, nationalized or private, come to courts may be due to ego clash or to save the Officers' skin. Judicial system is over-burdened, naturally causes delay in adjudication of disputes. Mediation centers opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this court has reminded the Central Government, State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless, serious questions of law of general importance arise for consideration or a question which affects large number of persons or the stakes are very high, courts jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters are being brought to courts even at the level of Supreme Court of India and this case falls in that category.

22. In Punjab State Power Corporation Ltd., Patiala and others vs. Atma Singh Grewal (2014) 13 SCC 666, the Hon'ble Supreme Court noted the facts that Courts are burdened with unnecessary litigation primary for the reason that the Government or Public Sector Undertakings etc. decide to litigate even when there is no merit in the claim. It would be apposite to refer to the relevant observations, which read thus:-

8. It is not the first time that the Court had to express its anguish. We would like to observe that the mind set of the Government agencies/undertakings in filing unnecessarily appeals was taken note of by the Law Commission of India way back in 1973, in its 54th report. Taking cognizance of the aforesaid report of the Law Commission as well as National Litigation Policy for the States which was evolved at an All India Law Ministers Conference in the year 1972, this Court had to emphasize that there should not be unnecessary litigation or appeals. It was so done in the case of Mundrika Prasad Singh v. State of Bihar, 1979 4 SCC 701. We would also like to reproduce the following words of wisdom expressed by Justice V.R. Krishna Iyer, who spoke for the Bench, in Dilbagh Rai Jarry v. Union of India and Ors., 1974 3 SCC 554.

25.....5..... But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a

positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf.

9. In its 126th Report (1988), the Law Commission of India adversely commented upon the reckless manner in which appeals are filed routinely. We quote hereunder the relevant passage therefrom:

2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the cesti que trust. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy to do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted:

4. We would like to emphasize that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 Code of Civil Procedure is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.

Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem.

2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of public litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings.

10. Even when Courts have, time and again, lamented about the frivolous appeals filed by the Government authorities, it has no effect on the bureaucratic psyche. It is not that there is no realisation at the level of policy makers to curtail unwanted Government litigation and there are deliberations in this behalf from time to time. Few years ago only, the Central Government formulated National Litigation Policy, 2010 with the "vision/mission" to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of citizens, and to respect their fundamental rights and in the process it should become "responsible litigant". The policy even defines the expression 'responsible litigant' as under:

Responsible litigant" means-

- (i) That litigation will not be resorted to for the sake of litigating.
- (ii) That false pleas and technical points will not be taken and shall be discouraged.
- (iii) Ensuring that the correct facts and all relevant documents will be placed before the Court.
- (iv) That nothing will be suppressed from the Court and there will not attempt to mislead any court or tribunal.

2. That Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the Court decide", must be eschewed and condemned.

3. The purpose underlying this policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the national mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority.

11. This policy recognises the fact that its success will depend upon its strict implementation. Pertinently there is even a provision of accountability on the part of the officers who have to take requisite steps in this behalf. The policy also contains the provision for filing of appeals indicating as to under what

circumstances appeal should be filed. In so far as service matters are concerned, this provision lays down that further proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Also, appeals will not be filed to espouse the cause of one section of employees against another.

12. The aforesaid litigation policy was seen as a silver lining to curb unnecessary and uncalled for litigation by this Court in the matter of Urban Improvement Trust, Bikaner v. Mohan Lal, 2010 1 SCC 512 in the following manner:

11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants.

13. Alas, in spite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.

14. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Rameshwari Devi and Ors. v. Nirmala Devi and Ors., 2011 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We don't think so. We are of the firm opinion that imposition of cost on the State/ PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.

23. In Subrata Roy Sahara vs. Union of India and others (2014) 8 SCC 470, it

was observed by the Hon'ble Supreme Court that State and its agencies litigate endlessly just because lack of responsibility to take decision. It was observed as under:-

This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that we have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason. In private litigation as well, the litigant concerned would continue to approach the higher Court, despite the fact that he had lost in every court hithertobefore. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant no matter how irresponsible he is suffers no consequences. Every litigant, therefore, likes to take a chance even when counsel's advice is otherwise.

24. Similar reiteration of law can be found in a fairly recent judgment of the Hon'ble Supreme Court in Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others (2015) 10 SCC 400, wherein again while referring to the earlier decision in Hymanshu's case (supra), the Hon'ble Supreme Court held in para 32 as under:

"32. Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in Madras Port Trust vs. Hymanshu International (1979) 4 SCC 176, wherein it was opined that it is about time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Para 2 from the said case reads thus :- (SCC p.177)

"2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (2 of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the

recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (2 of 1905)."

25. In *Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak and others* (2015) 14 SCC 327, the Hon'ble Supreme Court considered the plight of farmers effected by land acquisition and creation of compulsive situation to avoid luxurious litigation instituted or the circumstances created by the State. It shall be apposite to refer to the relevant observations as contained in paras 16 to 18 of the judgment, which read as under:-

16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/ authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct. It would be apt to quote the well known words of Justice Brennan:

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

17. The fundamental right of a farmer to cultivate his land is a part of right to livelihood "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system."

"10.....A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land. the economic and cultural shift to a market economy can be traumatic."

(Vide: *Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors.*, 2010 11 SCC 269; and *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.*, 2011 AIR(SC) 1989)

18. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache he will never know how it feels. The risks faced by the farming community are many; they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them.

26. The observations of the Hon'ble Supreme Court in the judicial precedent noted above squarely apply to this litigation generated because of and by respondent No. 2.

27. If this was not enough, the respondents, more particularly, respondent No. 2 did not even care to reply to the legal notice issued by the petitioner through his counsel.

28. It is more than settled that the object of the notice is to give the opposite party, be the government or the public officer or even an individual, an opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. When statutory notice is issued to public authority, they must take the notice in all seriousness and they should not sit over it and force the citizens to the vagaries of litigation. They are expected to let the petitioner (who has given notice), know what stand they take, within the statutory period, or, in any case before plaintiff embarks upon litigation. The whole object of serving a notice is to give opposite party sufficient warning of the case proposed to be instituted so that the opposite party can settle the claim without litigation or afford restitution without recourse of law.

29. The giving of notice to the government or any public officer in respect of any act purporting to be done by such public officer is mandatory as per Section 80 of the CPC even though the said provision does not apply to a writ petition but nonetheless once a notice had been issued to respondents, who admittedly are covered under Section 80 of the CPC then it was incumbent upon the respondents to have taken the notice in all seriousness and not sit over it and force the petitioner to the vagaries of litigation.

30. Issuance a notice under Section 80 is a measure of public policy with the object of ensuring that before a suit is instituted against the government or public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim and if it be found a just claim, to take immediate action

and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person who has issued the notice to resort to litigation involving considerable expenditure and delay.

31. The defence raised by the respondents is most bogus and frivolous one, where public money has been squandered and the petitioner harassed. It is a well known fact that the courts across the country are saddled with large number of cases and respondent No. 2 unfortunately has indulged in further burdening the court.

32. Time and again, the courts have been expressing their displeasure at the Governments'/public sector undertakings' compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon the Government/public sector undertakings not only when it pursue cases which can be avoided but also when it forces the public to do so. The precise time, effort and other resources go down the drain in vain.

33. This situation is best described by the Hon'ble Delhi High Court in National Textile Corporation vs. Kunj Behari Lal (2011) 167 Comp Cas 29 (Delhi), wherein it was observed as under:-

18. Present petition is most bogus and frivolous one and has been filed just to squander public money and to harass a common man who committed blunder by giving his property on rent to the mighty public undertaking. It is a well known fact that courts across the country are saddled with large number of cases. Public Sector undertakings indulgences further burden them. Time and again, courts have been expressing their displeasure at the Governments/Public Sector undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public Sector undertakings not only when it pursue cases which can be avoided but also when it forces the public to do so.

19. Public Sector undertakings spent more money on contesting cases than the amount they might have to pay with regard to the premises which have been taken on rent by them. In addition there to, precious time, effort and other resources go down the drain in vain. Public Sector undertakings are possibly an apt example of being penny wise, pound foolish. Rise in frivolous litigation is also due to the fact that Public Sector undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the court.

20. Frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to the genuine litigants. Public Sector undertakings should not indulge in mindless litigation and unnecessary waste the time and public exchequer's money. A strong message is required to be sent to those litigants (whether Government or Private) who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who go on filling frivolous applications

one after another.

The aforesaid case was then dismissed with costs of Rs.50,000/-.

34. Not only is the stand taken frivolous and untenable but even otherwise if such stand is accepted it would only result in the undue enrichment of the respondents by not paying the compensation as per the market value to the petitioner.

35. As per sale deed entered into between the parties, the petitioner has been paid a sum of Rs. 16,27,500/- whereas as per the rates determined by the Land Acquisition Collector vide his award dated 23.08.2012, the amount now works out to more than three times at Rs. 51,19,432/-.

36. Even after deducting the amount already received by the petitioner the petitioner would still be entitled to a sum of Rs. 34,91,932/- and in addition thereto the other statutory benefits flowing out of the act when calculated works out to Rs.47,50,175/- as would be evident from the following details:-

S. No.

Nature of Land

Rate per bigha

1.

For 0-19 bighas Obad Abal at the rate of Rs.3,60,000/-
3,42,000/-

2.

For 6-13 bighas Obad Doam at the rate of Rs.3,60,000/-
23,94,000/-

3.

For 0-7 bighas Banjar jaded at the rate of Rs.2,60,000/-
91,000/-

4.

For 2-8 bighas Banjar Kadeem at the rate of Rs.2,60,000/-
6,24,000/-

5.

For 7-6 bighas Ghasni at the rate of Rs.60,500/-
4,41,650/-

6.

For 0-15 bighas gair mumkin at the rate of Rs.60,500/-

43,375/-

Total

39,38,025/-

7.

+30% Solatium

11,81,407/-

Total

51,19,432/-

8.

Less already paid to the petitioner through negotiation

51,19,432/- - 16,27,500/- =34,91,932/-

9.

+ additional amount under section 23(a) at the rate of 12% per annum w.e.f. 3.7.2009 to 20.8.2018 total 3 years 23 days (1118 days) on rupees 34,91,932/-

34,91,932/-

+12,58,243/-

47,50,175/-

37. The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. This was so held by the Hon'ble Supreme Court in *Renusagar Power Co. Ltd. Vs. General Electric Co.* 1994 Supp (1) SCC 644:-

"98. The principle of unjust enrichment proceeds on the basis that it would be unjust to allow one person to retain a benefit received at the expense of another person. It provides the theoretical foundation for the law governing restitution. The principle has, however, its critics as well as its supporters. In the words of Lord Diplock: "...there is no general doctrine of unjust enrichment in English law. What it does is to provide specific remedies in particular cases of what might be classed as unjust enrichment in a legal system that is based upon civil law." (See: *Orakpo V. Manson Investments Ltd.* 1978 AC, 104). In *The Law of Restitution* by Goff and Jones, it has, however, been stated "that the case-law is now sufficiently mature for the courts to recognize a generalized right of restitution" (3rd Edn., P. 15). In *Chitty on Contracts*, 26th Edn., Vol. I, p. 1313, para 2037, it has been stated that "the principle of unjust enrichment is not yet clearly established in English law". The learned editors have, however, expressed

the view:

"Even if the law has not yet developed to that extent, it does not follow from the absence of a general doctrine of unjust enrichment that the specific remedies provided are not justifiable by reference to the principle of unjust enrichment even if they were originally found without primary reference to it." (pp. 1313-1314, para 2037)."

38. The issue regarding undue enrichment thereafter came up before the Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India and others* (2011) 8 SCC 161 and it was held as follows:-

"UNJUST ENRICHMENT

151. Unjust enrichment has been defined as:

"Unjust enrichment.---A benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense."

See *Black's Law Dictionary*, 8th Edition (Bryan A. Garner) at page 1573. A claim for unjust enrichment arises where there has been an "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."

152. "Unjust enrichment" has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (*Schock v. Nash*, 732 A.2d 217, 232-33 (Delaware. 1999). USA)

154. Unjust enrichment occurs when the defendant wrongfully secures a benefit or passively receives a benefit which would be unconscionable to retain. In the leading case of *Fibrosa v. Fairbairn*, [1942] 2 All ER 122, Lord Wright stated the principle thus :

"... .Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognized

to fall within a third category of the common law which has been called quasi-contract or restitution."

155. Lord Denning also stated in *Nelson v. Larholt*, [1947] 2 All ER 751 as under:-

"..... It is no longer appropriate, however, to draw a distinction between law and equity. Principles have now to be stated in the light of their combined effect. Nor is it necessary to canvass the niceties of the old forms of action. Remedies now depend on the substance of the right, not on whether they can be fitted into a particular frame-work. The right here is not peculiar to equity or contract or tort, but falls naturally within the important category of cases where the court orders restitution if the justice of the case so requires."

156. The above principle has been accepted in India. This Court in several cases has applied the doctrine of unjust enrichment.

39. In a system governed by the rule of law there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repositories of such powers. There is nothing like a power without any limit or constraint. The officers of respondent No. 2 while riding high on the fuel of power failed to realize that public offices both big and small are sacrosanct. Such offices are meant for use and not for abuse and in case the repositories of such offices spoils the rule, then the law is not that powerless and would step in.

40. Respondent No. 2 being a creation of statute, is admittedly a State within the meaning of Article 12 of the Constitution of India and cannot, therefore, act like a private individual, who is free to act in a manner whatsoever he likes., unless it is interdicted or prohibited by law. It is settled that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are governed by Rules, regulations and instructions.

41. In *Secretary, Jaipur Development Authority, Jaipur vs. Daulat Mal Jain & Ors.* (1997) Vol. 1 SCC 35, the Hon'ble Supreme Court observed as under:-

"13. All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the Department. All Government actions, therefore, means actions performed by individual person to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions. Social and economic democracy are set down in the Preamble, Part III of H.P. 9 and Part IV of the Constitution. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as a territorial unit or nation as a whole.

42. The respondents have grossly misused and abused the process of the Court by adopting litigious attitude. The respondents have wasted the precious time of this Court.

43. It is shocking that respondent No.2, which is a public sector undertaking and

a State within the meaning of the Article 12 of the Constitution has tried to illegally appropriate an amount of nearly a half crore rupees i.e. more than Rs. Forty seven lacs due and payable to the petitioner.

44. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court.

45. Faith of the people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win they would turn out to be a fool as the wrongdoer is the real gainer. Thus, it becomes the duty of the Court to see that such wrongdoer are discouraged at every step and one such way to curb this is by imposing real and punitive costs.

46. As noticed above, the respondents have indulged in vexatious, frivolous and speculative litigation and has thereby driven the petitioner to unnecessary and otherwise avoidable litigation. Moreover, even the precious time of the Court has been wasted, therefore, this is a fit case where the petition deserves to be allowed with heavy and special cost.

47. In view of the aforesaid discussion, the petition is allowed by directing the respondents to pay the enhanced amount of compensation alongwith upto date interest as per the Award No. 658, dated 23.08.2012 and Supplementary Award dated 06.03.2013.

48. In addition thereto, the respondents are directed to pay the statutory benefits in terms of the Constitutional Bench judgment of the Hon'ble Supreme Court in *Sunder vs. Union of India* 2001 (7) SCC 211.

49. Accordingly, the present petition is allowed in the aforesaid terms with costs of Rs.1,00,000/-, out of which Rs.50,000/- shall be paid to the petitioner and remaining Rs.50,000/- shall be paid to the President, Red Cross Society, Account No. 790210100010759, Bank of India, The Mall, Shimla on or before 31.08.2019. The cost at the first instance will be paid by respondent No. 2 from its own coffers and thereafter shall be recovered from the erring officials irrespective of whether they are still serving or not. The inquiry against the erring officials shall be personally conducted by the Chief Secretary- cum-Chairman, HPPCL. Compliance report, thereof be submitted to this Court on or before 31.10.2019.

List for compliance on 31.10.2019.