

(2019) 10 CHH CK 0032
In the Chhattisgarh High Court
Case No : Writ Petition (PIL) No. 56 Of 2013

Suo Moto Proceeding

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Coal Bearing Areas (Acquisition And Development) Act, 1956 — Section 4
Constitution Of India, 1950 — Article 38(1), 39A, 48A

Citation : (2019) 10 CHH CK 0032

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : U.N. Awasthy, Raksha Awasthy, S.C. Verma, V.R. Tiwari, Shivraj Singh, Vivek Tankha, Naveen Kumar, Shashank Thakur, Manish Khalbande, Prashant Shivarajan, Priya Singh

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, CJ

1. This matter was originally filed by four persons by name, Smt. Krishna Bai Patel, Shri Padum Lal Patel, Shri Bhim Ram Nayak and Shri

Chhatarmani Patel, styled themselves as 'public spirited citizens' standing for the cause of the society; by virtue of the Fundamental Duties enshrined

under Article 51A under Part IV A {in particular, sub clause (a), (d), (g), (h), (i) and (j)}, read with the Directive Principles of the State Policy under

Article 38(1) 39A and 48A of the Constitution of India. Grievance was mainly with regard to the alleged encroachment into the public property {land

belonging to the 3rd Respondent-Chhattisgarh Mineral Development Corporation (for short 'the CMDC') which is a State Government Undertaking}

by the 4 th Respondent-Jindal Power Limited, and against the constructions effected allegedly in violation of the relevant provisions of law, in the

course of expansion of their project. The prayers are as extracted below:

10.1 The respondents 1 to 3 may kindly be directed to forthwith start the legal process against illegal usurpation of public property and illegal

construction thereon jeopardizing environment and larger public interest and wealth of the nation;

10.2 The respondent No. 4 JPL may kindly be restrained from proceeding their illegal construction without obtaining due sanctions and approval of

competent authorities;

10.3 Such other relief(s) and direction may be granted as Hon'ble the High Court may think fit to protect the public.

10.4 Costs of the petition may be allowed as the Hon'ble High Court may think fit.

2. When the matter came up for consideration before this Court on 23.11.2016, in view of the allegation that the 4th Respondent was illegally

possessing the lands belonging to the 3rd Respondent-CMDC, without commenting on the merits of the case, at that stage, this Court directed the

Managing Director of the 3rd Respondent-CMDC to file personal affidavit to explain as to what steps the CMDC had taken to recover its land, which

according to the CMDC was in illegal occupation of the 4th Respondent. The said allegation was sought to be rebutted by the 4th Respondent-

CMDC.

3. Subsequently, when the matter was listed before this Court on 27.08.2019, taking note of the proceedings filed from the part of the Petitioners,

virtually disowning the lawyer whom they had engaged and the attempt to turn back, we directed the original Writ Petitioners to be transposed as

additional Respondents in the writ petition and Shri U.N.Awasthy, the learned Senior Counsel who was addressing the Court earlier on behalf of the

original Writ Petitioners, as assisted by Ms. Raksha Awasthy, was appointed as Amicus Curiae to help the Court, to take the proceedings to a logical

conclusion with reference to the merits involved.

4. The matter was heard finally on 23.09.2019, when Shri Awasthy, the learned Senior Counsel who was appointed as the Amicus Curiae addressed

this Court with regard to the issues projected in the writ petition. We heard Shri S.C.Verma, the learned Advocate General representing the

State/Respondents No. 1 and 2, Shri Shivraj Singh, the learned counsel who

entered appearance on behalf of the 3rd Respondent-CMDC, and Shri

Vivek Tankha, the learned Senior Counsel who made submissions on behalf of the 4th Respondent.

5. The original Writ Petitioners, who now stand transposed as Respondents No. 5 to 8 in the writ petition, have stated in the writ petition that it was

filed as a 'Public Interest Litigation' based on the 'reports from the local newspapers' and also on the basis of the information gathered by them by

visiting the place concerned. It was stated that the Government of India, Ministry of Coal, New Delhi, had instructed the State Government not to take

up any large scale construction projects on Coal Bearing Areas without ascertaining the view of the Ministry of Coal or Coal Companies concerned. It

was also pointed out that differential treatment was being meted out to the ordinary citizens who were prevented from putting up even residential

buildings, whereas extraneous consideration was being shown and extended in the case of the 4th Respondent.

6. The 1st and 2nd Respondent/State have filed their return, disputing the locus of the original Writ Petitioners and stating that the averments made

were rather vague, without making any attempt to collect the actual facts and figures. It is pointed out that the land was allotted to the 4th

Respondent for setting up a mega project and that no additional extent of land was required for expansion, also adding that the expansion of the Unit

was effected in the 'surplus land' available with the 4th Respondent i.e. 115 hectares out of the total 360 hectares originally allotted to them. It is

further pointed out that there is some dispute between the 3rd and the 4th Respondents over the property involved, adding that there was no

usurpation of the public property or jeopardization of the environment or the larger public interest.

7. The 4th Respondent has filed a counter-affidavit dated 18.06.2014 explaining the facts and figures and asserting that the Unit has been set up in the

property allotted to them after complying with all the statutory formalities and after getting clearances from different sectors, adding that there was

absolutely no basis for the allegations levelled against the said Respondent.

8. The 3rd Respondent-CMDC has filed its return dated 14.10.2014 to the effect that the activities being done by the 4th Respondent were not in

conformity with the relevant provisions of law/instructions/directions, issued by

the competent authorities. Later, pursuant to the directions given by this Court on 23.11.2016, affidavit dated 13.07.2017 has been filed by the Managing Director of the 3rd Respondent, wherein it has been conceded in 'paragraph 16', that the land originally allotted to the 3rd Respondent has been re-allotted by the Government of India, vide Annexure A/2 order dated 14.09.2015 (the Gare Palma Sector-1 Coal Block) to the Gujarat State Electricity Corporation Limited, thus, conceding that the 3rd Respondent-CMDC was having no interest over the disputed property as on date.

9. The 4th Respondent filed an affidavit dated 27.11.2018 producing some additional documents as well. Particulars of the land originally allotted, the orders of the proceedings granting Environmental Clearance (for short 'the EC'), both in respect of Phase I and Phase II, the expansion of the Units sought to be effected in the land already available with the 4th Respondent, etc. have been explained therein. It is pointed out that the 4th Respondent had already set up a Unit of 1000 MW in the land allotted and as part of the expansion of the project consisting of Units with 2400 MW, more land was sought to be provided. Later, steps were taken to have the land requirement for the project to be optimized, as suggested by the Ministry of Environment and Forest (for short 'the MoEF'), and approval/clearance from the authorities concerned was sought for substantiating that, for setting up of the second phase as part of the expansion, no additional land was necessitated; asserting that the same was being set up in the remaining 115 hectares of the land originally allotted at the time of setting up of the 1000 MW Unit.

10. It is revealed from the pleadings and proceedings that, it was the State of Madhya Pradesh (before bifurcation) who issued a 'Letter of Intent' in favour of the 4th Respondent to set up 1000 MW Power Project in the District Raigarh, in September, 1994, leading to execution of a Memorandum of Understanding (for short 'the MoU') in this regard on 21.10.1994. So as to remove any doubt or objection, clarification was sought for by the Respondent No. 4 from the 'South Eastern Coalfields Limited' as to whether the area was notified as a Coal Bearing Area under Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1956, in response to which the position was clarified by the South Eastern Coalfields Limited on 16.05.1996, that it was not notified so. Based on further steps, an extent of

637.127 hectares of land was sought to be acquired for setting up 1000 MW Power Plant and necessary 'No Objection Certificate' was given by the Madhya Pradesh State Pollution Control Board in February, 1997. The MoEF granted 'EC' for the first phase, to be situated in the total property of 614 hectares; with the Power Plant in 360 hectares, Ash Dyke in 198 hectares and the Colony in 56 hectares. After formation of the State of Chhattisgarh, a fresh 'MoU' was executed with the State Government on 21.05.2001. Chhattisgarh Environment Conservation Board granted 'Consent to Establish' the Phase I Unit (2X275 MW) on 11.11.2004 and EC was granted for the Phase II by the MoEF on 08.06.2006. Consent to establish the Phase II was granted by the Chhattisgarh Environment Conservation Board in July 2006, and the original EC granted in September, 1996 for Phase I was modified by the MoEF as 2X250 MW (instead of 2X275 MW). 'Consent to Operate' was granted by the Chhattisgarh Environment Conservation Board in respect of the Phase I Unit on 07.09.2008 and the 'Consent to Operate' in respect of Phase II (2 X 250 MW) was granted on 22.04.2008. It is seen that Units I, II, III and IV (each having 250 MW) were commissioned on 08.12.2007, 16.04.2008, 15.06.2008 and 05.09.2008 respectively, thus completing the first leg of project, having a total capacity of 1000 MW by September, 2008.

11. In the year 2009, the 4th Respondent took steps for setting up 2400 MW Power Plant (4X600 MW) and for such expansion, the land requirement estimated initially was 1041 hectares (consisting of Power Plant in 350 hectares, Ash Dyke (2) in 491 hectares, Reservoir in 100 hectares and Colony in 100 hectares). After a public hearing held in May, 2010 in connection with the expansion of the project, the 4th Respondent submitted the revised EIA report to the MoEF stating that the main Plant would be established in the remaining/surplus 115 hectares of land available with them and instead of two Ash Dykes, one Ash Dyke on 241 hectares would be sufficient and further that the staff would be accommodated in the existing staff colony of the 4th Respondent. The steps for optimization of the land requirement as suggested by the MoEF were intimated to the Environment Impact Assessment Committee as well. After getting the 'No Objection Certificate' from the Gram Panchayat in January 2011, EC was obtained from the MoEF for 2X600 MW (expansion Phase I) in March 2011; followed by EC for the

remaining 2X600 MW (expansion Phase II) obtained in November, 2011. 'Consent to Establish' was given by the Chhattisgarh Environment Conservation Board for all the four Units of 600 MW each on 15.11.2011 and after effecting the construction, based on the clearance/licences obtained including the Factory Licence, 'Consent to Operate' was given by the CECB for all the four Units of 600 MW on 29.03.2014. The first two Units (2X600 MW) of 2400 MW Power Plant were commissioned on 30.03.2014 and the remaining two, of equal capacity were commissioned in October, 2014. In the meanwhile, the allotment of the property at Gare Palma Coal Block to the 3rd Respondent was cancelled and it was re-allotted by the competent authority to the Gujarat State Electricity Corporation Limited on 14.09.2015. On 26.04.2017, amended EC was issued, permitting the 4th Respondent to utilize the existing Ash Dyke for two more years and for using the existing Water Reservoir.

12. The learned Senior Counsel for the 4th Respondent submits that there is absolutely no pith or substance in the averments raised by the original

Writ Petitioners, who subsequently realised the correct position and showed their retracting move, which made this Court to transpose them as

additional Respondents No. 5 to 8, intending to proceed with the matter suo moto, to consider whether there was any merit in the case. The learned

Senior Counsel submits that no wrong has been committed by the 4th Respondent at any point of time and that the expansion of the Unit has been

brought about in the surplus land allotted to the 4th Respondent [an extent of 115 hectares], which hence did not necessitate any additional land

requirement. This factual position has been asserted from the part of the State as well, in their return. It is pointed out that the property, which was

earlier allotted to the 3rd Respondent, now stands re-allotted to the Gujarat State Electricity Corporation Limited and no part of the said property or

any other property has been encroached into by the 4th Respondent. The land was measured out in presence of all concerned (including the parties

and also the different authorities), preparing a 'Mahzar' which bears the signature of all concerned. A copy of the said proceeding (apart from the

materials already produced) is also made available before this Court for perusal. It is further pointed out that, there is no grievance for the Gujarat

State Electricity Corporation Limited to whom the disputed property has been re-

allocated and that there is absolutely no basis for the averments and allegations raised in their return or the affidavit filed by the Managing Director of the 3rd Respondent, who does not have any subsisting interest in the property originally allotted to them; which came to be cancelled and re-allotted to the Gujarat State Electricity Corporation Limited. The learned Senior Counsel also submits that the 4th Respondent does not have any objection at all, if this Court finds it appropriate, to cause the property in their possession to be re-measured; adding that the writ petition was originally caused to be filed on the basis of surmises and conjectures.

13. The case put forth by the 4th Respondent is supported by the 1st and 2nd Respondents/State and nothing is brought on record to the contrary, from the part of other Respondents. As the matter stands so, we do not find it as a fit case to proceed with further steps.

14. The writ petition stands closed accordingly.