

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
SINGLE BENCH : HON'BLE SHRI JUSTICE S.C. SHARMA

WP No.7547/2013

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Punya and another

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Omprakash

vs.

Narmada Valley Development Authority (N.V.D.A)

WP No.1422/2016

Narmada Valley Development Authority (N.V.D.A)

vs.

Satya

Mr Vivek Patwa, learned counsel for the petitioners with Ms Ishita Agrawal.
Mr Umesh Gajankush, learned counsel for the respondents State.

J U D G M E N T**(Delivered on this 28th day of February, 2017)**

Regard being had to the similar controversy involved in above cases, they have been heard analogously together with the consent of the parties and a common order is being passed in the matter.

02. Learned counsel for the parties have drawn the attention of this court towards the order passed by the Hon'ble apex court in the case of **Narmada Bachao Andolan Vs. Union of India & Ors.** passed in **Writ Petition (C) No.328/2002** on **08/02/2017** and the same reads as under:-

“We have heard this matter over a number of days. The instant exercise is being carried out, so as to arrive at an equitable settlement, for the

rehabilitation of the 'project affected families', consequent upon the implementation of the Sardar Sarovar Project. The figures, which we will indicate in our order, may be treated as tentative. It will be open to others similarly situate, to seek the same relief, by establishing their credentials (before the Grievance Redressal Authority).

2. We are informed, that rehabilitation packages, had to be offered to 4998 'project affected families' in the State of Madhya Pradesh. Out of these 'project affected families', 4774 families opted for the 'Special Rehabilitation Package', namely, they would accept cash payment as compensation, and would purchase land out of the said payment. The aforesaid payment was to be made in two installments. The first installment would be spent as earnest money, and the second installment would constitute the final payment for executing the sale deed. Out of the 4774 families, who had opted for the 'Special Rehabilitation Package', 4264 families are stated to have accepted, both installments. Out of the 4998 'project affected families', according to the learned Attorney General (and the other learned counsel representing the concerned State Governments), 4264 have been fully compensated. These 4264 'project affected families' are not entitled to any further compensation.

3. Out of those, who had opted for the 'Special Rehabilitation Package', 386 families were extended the first installment only, and could not be favoured with the second installment. They are disputants before this Court. In addition to these disputants, there were 120 families, who did not accept any money whatsoever, and another 4 families which were in litigation with reference to the compensation payable. Calculated in terms of the figures, indicated hereinabove, 510 (386 + 120 + 4) 'project affected families', are still entitled to compensation, as they had not been extended full compensation. This position has been acknowledged by the Union of India (as also, the concerned State Governments).

4. Besides those who opted for the 'Special Rehabilitation Package', there were some families who had sought land in lieu of land, and not cash payment, under the 'Special Rehabilitation Package'. In fact, we are informed, there were 224 such families. Out of those 224 families, 53 families accepted the land offered to them, without any objection. These 53 project affected families, according to the learned Attorney General (and other learned counsel representing the concerned State Governments), have been fully compensated, and as such, their claim cannot be treated as a surviving claim. The remaining 171 families, have not been compensated, even though they are 'project affected families'. These 171 'project affected families' are admittedly entitled to their rehabilitation claim.

5. Based on the figures, depicted in the foregoing two paragraphs, it is apparent, that 681 families are yet to be extended compensation (510 'project affected families', which had originally opted for the 'Special Rehabilitation Package' + 171 families which had claimed land in lieu of land).

6. During the course of our deliberations, it came to be accepted at one stage, that compensation to these 681 families should be determined under the provisions of the Land Acquisition Act, 2013. However, based on the suggestions made at the behest of the learned counsel for the applicants, that the land value in the vicinity ranges from Rupees fifteen lakhs per hectare, to

Rupees eighty lakhs per hectare, we were of the view, that it would be more appropriate to finally determine the compensation, here and now. The average suggested payment at the behest of the learned counsel for the applicants would be in the range of Rupees thirty lakhs per hectare, and as such, every affected family would be entitled to approximately, Rupees sixty lakhs, in terms of their entitlement (for two hectares of land) as compensation. Mr. Mukul Rohatgi, learned Attorney General for India suggested, that the agreed figure be, fixed at Rupees forty five lakhs, in lieu of two hectares of land to which they are entitled, and that, the matter be concluded here and now itself.

7. Having given our thoughtful consideration to the suggestions made at the behest of the learned counsel for the rival parties, we are satisfied in directing the concerned authority, to pay compensation to the 681 'project affected families', who have yet to receive compensation, and who have been fully described above, at the rate of Rupees sixty lakhs per family, as a matter of full and final settlement. An undertaking in this behalf should be obtained, before the amount of compensation is released.

8. It is also apparent, that a large number of families, out of the 4264 families which had received both installments, under the 'Special Rehabilitation Package', were duped. The number of duped 'project affected families', indicated in the Justice S.S. Jha Commission's Report, is 1358. This number is affirmed by the learned Attorney General for India, and confirmed by the respective State counsel. Referring to these 1358 families, the Jha Commission in its report of January, 2016, had observed as under:

“(29) Poor oustees particularly tribals have been looted by middlemen. They have lost their livelihood and are not daily wagers. Their installments have been siphoned off by the middlemen. When oustees appeared before the Commission were not even having clothes to wear. They have wrapped small cloth or towel round their waist when they appeared before the Commission.”

(emphasis is ours)

It is in the above circumstances, that the Jha Commission recorded the following conclusions, in its report:

“CONCLUSION

1. The reason for fake sale deeds is a faulty SRP policy of the Government. The Government was not having sufficient irrigated agricultural lands in their Land Banks near the R & R sites. The Policy itself is against Narmada Award, and the judgment of the Supreme Court. Supreme Court has observed that the PAFs and PAPs should live better life has been frustrated by this Policy.

(i). By not allowing any scrutiny of the sale deeds and free hand has been given to the Rehabilitation Officers and Land Acquisition Officers in disbursing the compensation which resulted into large number of fake sale deeds.

(ii) The free access to middlemen in the Office of NVDA in getting the money withdrawn of the oustees also reflects about the interest of middlemen and nexus with NVDA officials. Though

evidence is not received against the NVDA officials all the oustees have stated that they were made to sit outside the NVDA office and their work was done by the middlemen and they were made to sign on the papers without explaining the contents discloses that NVDA officials had obtained signatures or thumb impressions of the oustees without explaining the contents demonstrate irregularity on their part and they are prima facie responsible for large number of fake registries.

2. The quality of construction was very poor without any planning. No geographical mapping was done before selecting the R & R sites whereby cultivable good black cotton soil is converted into house building sites for residential plots. There was a faulty policy of not establishing a laboratory to test the soil for carrying out constructions on the black cotton soil. The construction was done on the R & R sites on common maps and designs of the building. Superior officers had never cared to visit R & R sites to examine the construction work. The Government has found 40 engineers responsible for substandard quality of construction, but has not cared to rectify the defect after finding the substandard construction. Most of the places the expenditure on construction has gone waste as the R & R sites are not occupied by the oustees or they are occupied by very few PAPs and PAFs. Thus, the expenditure on these sites is waste of money.

3. The NVDA has not maintained proper records relating to livelihood grants and alternative livelihood which itself demonstrate that there was large scale corruption in the livelihood grants and alternative livelihood.

The officers of NVDA involved in allotment of house plot sites have not followed the Rules framed by the Government in allotting the plots. They have allotted the plots in an arbitrary matter and usurp the power of changing the allotment which was not vested with them. Thus, this shows their corrupt intention. Any arbitrary action attracts the vice of mala fide. The officers involved in allotment of plots are wholly responsible for irregularities and corruption in allotment and change of plots.”

(emphasis is ours)

9. We are of the considered view, that even though the above-mentioned 1358 project affected families were paid both installments, they need to be further compensated, so as to alleviate their hardship, as they have not been able to purchase land in lieu of land, not because of their own fault or lapse, but because they were duped. This would enable them to purchase alternative land at the lesser rate suggested by the learned counsel for the applicants. It is in the above view of the matter, that we hereby direct the concerned authorities, to pay these 1358 project affected families, a sum of rupees fifteen lakhs per family. While making the instant payment, earlier installments made to such families, shall be deducted (from out of the sum of Rupees fifteen lakhs). At the time of making the above payment, the concerned authority shall obtain an undertaking from the concerned 'project affected family', that

the instant payment would be as a matter of final settlement of their claim, arising out of the implementation of the Sardar Sarovar Project. Any such claimant, who fails to furnish the above undertaking, would not be entitled to any payment of compensation. 10. The above order takes into consideration the issue of compensation, towards all 'project affected families'.

11. We have not addressed the issue of the amenities, that needed to have been extended to the concerned families, in terms of the Narmada Water Disputes Tribunal Award, dated 12.12.1979. In order to address any such grievance (with reference to the amenities postulated under the Tribunal's award, referred to above), we permit such of the 'project affected families', who have any grievance, to raise the same, before the concerned Grievance Redressal Authority, within one month from today. In case such a representation is made, and is accepted by the concerned Grievance Redressal Authority, the concerned State Government shall implement the recommendation, as expeditiously as possible, without raising any unnecessary objection. In case, any of the "project affected families" is not satisfied with the recommendations made by the Grievance Redressal Authority (on the representation, or alternatively, if no decision is taken thereon, within three months of registration of such representation), it shall be open to such family, to pursue its cause before a Court of competent jurisdiction, in consonance with law.

12. All connected petitions/applications are disposed of in the above terms. Payment in consonance with the instant order, (to the 681 'project affected families', referred to above) by the concerned State Government shall first be released to the Narmada Valley Development Authority (for short 'NVDA'), which in turn shall deposit the compensation payable to the 681 'project affected families', in the account of the Grievance Redressal Authority, within two months from today. The above amount shall positively be released, to the concerned 681 project affected families, within one month thereafter. The same procedure is directed to be followed with respect to the 1358 project affected families, which are stated to have been duped.

13. All the occupants including all the 'project affected families' shall vacate the submergence area under reference, on or before 31.07.2017, and in case there are individuals in the submergence area, after the aforesaid deposit has been made into the account of the Grievance Redressal Authority, after 31.07.2017, it shall be open to the State Government to remove all such individuals forcibly.

14. The order passed hereinabove, is exclusively directed towards the resettlement and rehabilitation of the 'project affected families', in the State of Madhya Pradesh. We hereby direct the States of Gujarat and Maharashtra to conclude all the commuted resettlement and rehabilitation activities, in the respective States, within three months from today.

15. In view of the consolidated order passed by us today, all pending litigations, civil and criminal, emerging out of the recommendations made by the Jha Commission, in the report dated January, 2016, shall come to an end.

16. The instant order has been passed by us in exercise of our jurisdiction under Article 142 of the Constitution of India, and with the tacit consent of the Union of India (and the concerned State Governments), and shall not ever be

treated as a precedent, or be cited for similar claims for compensation.

Disposed of in the aforesaid terms.”

03. In light of the aforesaid order, the petitioners are left with no other choice except to comply the judgment delivered by Hon'ble Supreme Court.

04. Resultantly, the writ petitions stands dismissed with a direction to the petitioners to comply the judgment delivered by the Hon'ble Supreme Court.

With the aforesaid, the writ petition stands dismissed alongwith the connected writ petitions.

No order as to costs.

Certified copy as per rules.

(S. C. SHARMA)
J U D G E

Rashmi