2022 INSC 995

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Miscellaneous Application No 2279 of 2018
in
Writ Petition (Civil) No 328 of 2022

Narmada Bachao Andolan and Ors .... Petitioner(s)

Versus

Union of India & Ors ....Respondent(s)

WITH
Miscellaneous Application No 610 of 2020
in
Writ Petition (Civil) No 328 of 2022

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

Miscellaneous Application No 2279 of 2018

1 The Miscellaneous Application for clarification/modification has been filed by Ms. Archana, a resident of Village Bhawariya, Tehsil Kukshi, District Dhar in the State of Madhya Pradesh.

2 Before we proceed to analyze the application for clarification/modification, it is necessary to extract the relief which is specifically sought, at this stage:

> "a) Clarify/Modify that the order dated 08.02.2017 passed by this Hon'ble Court in IA No. 42, 43, 50, 51 and 52, 53 in WP (C) No. 328 of 2002 read with terms of NWDTA, MP R&R Policy 1989, judgments of this Hon'ble Court reported in 2000(10) SCC 664 and 2005 (4) SCC 32; entitles PAF's to amount @ Rs. 30 Lacs/Ha. for minimum 2 ha. of land, or to the extent of land he/ she is losing, subject to maximum for 8 ha of irrigable/cultivable land;"

3 A brief history of the dispute is set out hereafter.

4 On 12 December 1979, the Narmada Water Disputes Tribunal[1] rendered its final order and decision. Among the issues which were dealt with by the Tribunal was the issue pertaining to resettlement and rehabilitation of project affected families. Sub-Clause IV(7) of Clause XI (Directions Regarding Submergence Land Acquisition and Rehabilitation of Displaced Persons) provides for the allotment of agricultural lands to every displaced family. Clause IV(7) is extracted below :

> "IV(7): Allotment of Agricultural Lands : Every displaced family from whom more than 25% of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the prescribed ceiling in the state concerned and a minimum of 2 hectares (5 acres) per family, the irrigation facilities being provided by the State in whose territory the allotted land is situated : This land shall be transferred to the oustee family if it agrees to take it. The price charged for it would be as mutually agreed between Gujarat and the concerned State. Of the price to be paid for the land a sum equal to 50% of the compensation payable to the oustee family for the land acquired from it will be set off as an initial instalment of payment. The balance cost of the allotted land shall be recovered from the

1 "Tribunal"

> allottee in 20 yearly instalments free of interest. Where land is allotted in Madhya Pradesh or Maharashtra, Gujarat having paid for it vide Clause IV(6)(i) supra, all recoveries for the allotted land shall be credited to Gujarat."

5 The above extract indicates that the entitlement for the allotment of agricultural land for a displaced family from whom more than 25 per cent of the landholding was acquired was in the following terms:

(i) Allotment of irrigable land to the extent of land acquired from the family;

(ii) Subject to the prescribed ceiling in the state concerned; and

(iii) A minimum of two hectares (five acres) to be allotted per family.

6 The rest of the provisions which have been extracted above deal with the manner in which the price would be adjusted or, as the case may be, paid from the compensation payable to the 'oustee' families.

7 In September 1989, the State of Madhya Pradesh formulated a Resettlement and Rehabilitation Policy[2]. Clause 3.2 of the R&R Policy was in the following terms:

> "3 Allotment of Agricultural Land:
>
> […]
>
> 3.2 Without taking care of it that whether the land for allotment is government land or the purchased land is personal land, 2 hectares of land shall be allotted to those entitled oustee families

2 "R&R Policy"

> whose agricultural land has been acquired. If the acquired land is of more than 2 hectares, then as far as possible, the same shall be allotted, but the maximum limit of land to be allotted shall not be more than 8 hectares."

8 Hence, R&R Policy stipulated that two hectares of land would be allotted to 'oustee' families whose lands were acquired. However, if more than two hectares of land was acquired, the same would be allotted subject to a maximum of eight hectares.

9 On 30 March 2000, the Narmada Valley Development Department issued an order, *inter alia*, for constituting a Grievance Redressal Authority[3] for resolving the grievances of the project affected families of the Sardar Sarovar Project resettled in Madhya Pradesh.

10 In **Narmada Bachao Andolan** v **Union of India**[4], this Court held that the Tribunal's award would be final and binding.

11 An order was passed by the Court of the Land Acquisition Officer, Sardar Sarovar Project in the case of the applicant indicating that the land which was acquired was 4.293 hectares and determining the compensation payable at Rs 5,48,072.

12 On 26 December 2005, the Resettlement Officer issued a communication to the applicant again reiterating the rehabilitation package which would be made available to the applicant in lieu of the acquisition of 4.293 hectares of land which

3 "GRA"
4 (2000) 10 SCC 664

was acquired by the Narmada Valley Development Authority. By another communication of the same date, the applicant was informed that in compliance with the order dated 15 March 2005 passed by the Supreme Court, the applicant would be entitled to the allotment of 4.293 hectares of agricultural land. The Action Taken Report of the Resettlement Officer of December 2005 indicates that:

(i) The total land holding of the applicant was 7.741 hectares;

(ii) The area of the affected land was 4.293 hectares;

(iii) The affected land was 55% of the total holding;

(iv) The total compensation payable was Rs 5,48,072; and

(v) An area of 4.293 hectares of land was allotted to the applicant in Village Talwada of Tehsil Dhaar.

13 On 30 January 2006, the applicant submitted a representation to the Settlement Officer stating that the land which was proposed to be allotted to her was Charnoi land, which was not cultivable.

14 On 8 February 2017, a Bench of three-Judges of this Court heard a batch of IAs arising in **Narmada Bachao Andolan** v **Union of India**[5]. The Court noted that it was carrying out the exercise to arrive at an equitable settlement for the

[5] Writ Petition (Civil) No 328 of 2002

rehabilitation of the project affected families, consequent upon the implementation of the Sardar Sarovar Project. The factual narration in the text of the order indicates the following position:

(i) Total number of project affected families to whom the rehabilitation package was to be offered – 4998;

(ii) Out of (i) above, 4774 families had opted for the Special Rehabilitation Package in terms of which they would accept cash payment as compensation;

(iii) Out of (ii) above, 4264 families had accepted both the instalments as compensation and, hence, would not be entitled to further compensation;

(iv) Out of those who had opted for the Special Rehabilitation Package, 386 families were paid the first instalment, but not the second instalment;

(v) In addition to (iv) above, 120 families had not accepted any compensation whatsoever;

(vi) In addition to (iv) and (v) above, 4 families had been engaged in litigation on the compensation payable;

(vii) A total of 510 project affected families [(iv)+(v)+(vi)] were still entitled to compensation as they had not been paid full compensation;

(viii) 224 families had sought land in lieu of land and not cash payment;

(ix) Out of (viii) above, 53 families had accepted the land without any objection; and

(x) The remaining 171 families had not been compensated even though they were project affected families.

15 Based on the above factual position, the Court noted that a total of 681 families (510 projected affected families who had originally opted for the Special

Rehabilitation Package and 171 families who had claimed land in lieu of land) remained to be compensated. The Court noted that the figures in regard to the number of families who had been compensated and who remained to be compensated were tentative in nature. In its effort to arrive at a full and final resolution of the controversy, the Court heard submissions on behalf of the counsel for the applicants which are reflected in paragraph 6 of the order, which is reproduced below:

> "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."

16 The directions which the Court issued after hearing the above submissions are set out in paragraph 7, which is extracted below:

> "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."

17 Besides the above directions, the Court also noted that about 1,358 project affected families were found to have been duped, as indicated in the report of a Commission of Enquiry described as the Justice S S Jha Commission. The Court directed the authorities to pay these 1,358 project affected families a sum of Rs 15 lakhs per family. Eventually, all the connected petitions were disposed of in the above terms.

18 In paragraphs 12 to 16 of the order dated 8 February 2017, the Court finally concluded the controversy in the exercise of its jurisdiction under Article 142 of the Constitution. The concluding paragraphs of the order of this Court read as follows:

> "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."

19 Following the order of this Court dated 8 February 2017, the GRA passed an order in March 2017 intimating the applicant that in terms of the order of this Court she was eligible to receive a final payment of Rs 60 lakhs after adjusting the payment which was made to her earlier.

20 The applicant submitted a representation on 11 May 2017 to the GRA. The applicant claimed that since her entitlement was for the allotment of 4.293 hectares of agricultural land, she would be entitled to receive compensation of Rs 1,28,79,000 equivalent to the area of the land. In other words, the applicant submitted that the quantum of Rs 60 lakhs which was determined in the order of this Court dated 8 February 2017 was on the basis of the land holding of two hectares and would not represent the full entitlement of the applicant. The GRA rejected the claim of the applicant on 22 May 2017, which led to the institution of

Writ Petition (Civil) No 16369 of 2017. The specific reliefs which were sought in the writ petition included the following:

> "(i) Issue a writ, direction or order in the nature of certiorari or other appropriate writ quashing the impugned order dated 22.05.2017 passed by the Learned GRA, being contrary to the NWDTA, R&R Policy, Action Plan and Judgments of the Hon'ble Supreme Court.
>
> (ii) Direct the respondents to make payment of compensation at the rate of Rs. 30,00,000/- (Rupees Thirty Lakhs) per hectare for the 4.293 hact. of land acquired from the petitioner as per the Supreme Court's order dated 08.02.2017.
>
> (iii) Direct the respondents to pay an additional amount of Rs. 1,00,000/- as compensation to the petitioner for its failure to comply with the directions of the Apex Court dated 08.02.2017."

21 The Division Bench of the High Court of Madhya Pradesh dismissed the writ petition by an order dated 29 November 2017. Before the High Court, the applicant sought to rely on the provisions contained in the Award of 1979. The High Court rejected the writ petition, holding that in view of the order of this Court dated 8 February 2017, the GRA had correctly disallowed the claim and that the entitlement of the applicant was Rs 60 lakhs and no more.

22 The order of the High Court was sought to be questioned in a Special Leave Petition[6] before this Court. On 19 February 2018, the Special Leave Petition was dismissed as withdrawn in terms of the following order:

> "Learned counsel appearing for the petitioner, after some arguments, seeks permission to withdraw the special leave petition and states that he will move the Court for

6 SLP(C) No 4485 of 2018

> review/clarification/modification of order dated 8.2.2017 in WP(C) no. 328/2002(Narmada Bachao Andolan Vs. Union of India & Ors.). Permission is granted. The special leave petition is accordingly dismissed as withdrawn."

23 An application for clarification/modification of the order dated 8 February 2017 has been filed.

24 Mr Sanjay Parikh, senior counsel appearing on behalf of the applicant, submitted that in terms of the Tribunal's Award of 12 December 1979, the entitlement of the applicant was for the allotment of 4.293 hectares of land. Hence, it is urged that while the applicant had opted for land in lieu of land in terms of the Tribunal's Award, she had represented that the land which was allotted was uncultivable. In this backdrop, the submission of senior counsel is that the order of this Court dated 8 February 2017 which provided an equitable resolution of the claims of the project affected families computed a payment of Rs 60 lakhs per family on the basis of an average rate of Rs 30 lakhs per hectare and with the holding of two hectares. Senior counsel submitted that while the applicant has no dispute about the compensation which has been fixed, a proper reading of the order of this Court would indicate that the compensation to which persons such as the applicant are entitled would have to be pegged at Rs 30 lakhs per hectare and since the applicant was entitled to the allotment of 4.293 hectares, the actual compensation would work out to approximately Rs 1.28 crores and not Rs 60 lakhs which has been offered in pursuance of the order dated 8 February 2017.

25 Opposing these submissions, Ms Aishwarya Bhati, Additional Solicitor General, has urged that the order of this Court dated 8 February 2017 was passed in the exercise of the jurisdiction under Article 142 of the Constitution. Moreover, paragraph 7 of the order of this Court clearly indicates that a total quantum of Rs 60 lakhs per family was determined as being payable to 681 project affected families who were yet to receive compensation as a matter of full and final settlement. The Additional Solicitor General submitted that what is recorded in paragraph 6 of the order of this Court are the submissions during the course of the deliberations that took place in court. Hence, it was urged that once the final settlement package has been determined at Rs 60 lakhs per family and an order has been passed in the exercise of jurisdiction under Article 142, a clarification/ modification of the order cannot be sought since, in substance, this would amount to a substantive review of the order of this Court.

26 The crux of the issue which falls for decision is whether the directions which are contained in the order of this Court dated 8 February 2017 are susceptible to either a clarification or modification to the effect that the applicant should be granted compensation at the rate of Rs 30 lakhs per hectare for the entirety of the land holding of 4.293 hectares to which she had been found to be entitled for the allotment of agricultural land. There is no dispute about the fact that in pursuance of the Award of the Tribunal dated 12 December 1979, the applicant had opted for the allotment of agricultural land in lieu of the acquisition of a portion of the land holding. The order of this Court dated 8 February 2017

represented a comprehensive determination of the compensation which would be payable to those families who were yet to receive compensation either in full or in part. The Court noted that 681 project affected families were still to receive compensation either in full or in part. The Court specifically noted in paragraph 6 of the order extracted above that it was of the view that it would be more appropriate "to finally determine the compensation, here and now". On the one hand, counsel for the applicants had indicated that the land value would be in the range between Rs 15 lakhs and Rs 80 lakhs per hectare. On the other hand, the Attorney General for India suggested that the value of the land should be pegged at Rs 45 lakhs in lieu of two hectares of land.

27 Based on the rival submissions, the Court held that 681 project affected families who were yet to receive compensation would be paid an amount at the rate of Rs 60 lakhs per family as a matter of full and final settlement. In other words, the quantum of Rs 60 lakhs per family represented a comprehensive settlement package. That package is incapable of being broken down into a per hectare determination. Once the Court had arrived at a final figure of Rs 60 lakhs per family recording that this would be in full and final settlement and directions were issued in the exercise of the jurisdiction under Article 142, it is impermissible for the applicant to claim any amount in excess of that determination. There is no doubt about the legal position that the Award of the Tribunal is final and binding as submitted by the counsel on behalf of the applicant. At the same time, it is necessary to note that though the Award of the Tribunal had attained finality, it

had given rise to litigation and diverse applications were pending before this Court. Hence, when this Court passed the order dated 8 February 2017 it was in order to resolve the controversy once and for all.

28 The Court also had before it 1358 project affected families who had been duped and who had not actually received any compensation at all. It is in this backdrop that the Court passed a consolidated order covering all claims and directed that in view of its order, all pending litigation, civil and criminal, arising out of the recommendations contained in the report of the Justice S S Jha Commission dated January 2016, would come to an end. The Court observed that the order applied to the resettlement and rehabilitation of project affected families in the State of Madhya Pradesh, but the States of Gujarat and Maharashtra would also conclude all the resettlement and rehabilitation activities within three months from the date of the order. The settlement package of Rs 60 lakhs per family represents a final compensation package which was directed to be paid in the exercise of the jurisdiction of this Court under Article 142. Paragraph 7 of the order of this Court does not admit of any ambiguity. In any event, the order of this Court and the directions which have been issued under Article 142 are not susceptible of being clarified or modified any further in a Miscellaneous Application of the nature that has been placed before this Court. Insofar as the applicant is concerned, she had challenged the order of GRA before the High Court. The High Court rejected the writ petition on the basis of a correct interpretation of the order of this Court dated 8 February 2017.

29 For the above reasons, we are of the view that there is no merit in the Miscellaneous Application. The Miscellaneous Application stands dismissed.

IA Nos 146014, 146015 of 2022 and 146002 and 146003 of 2022 and Miscellaneous Application No 610 of 2020 with connected applications

30 Mr Mayank Kshirsagar, counsel appearing on behalf of the applicants, states that the applicants have moved the Grievance Redressal Authority constituted by the State of Madhya Pradesh for seeking the benefit of the order of this Court dated 8 February 2017. However, according to the counsel, GRA has not taken any decision on the application.

31 If the GRA has yet not taken any decision, as stated before this Court, on the representations/applications filed by the applicants, we permit the applicants to move the GRA for expeditious disposal of the representations/applications. The GRA shall, in that event, dispose of the representations/applications within a period of two months from the date of the receipt of a certified copy of this order. In the event that the applicants are aggrieved by the order of the GRA, it would be open to them to challenge the correctness of the order by adopting appropriate remedies before the High Court of Madhya Pradesh.

32 Hence, no further directions are required to be passed in the present applications.

33 The applications are accordingly disposed of.

IA Nos 184229 of 2018, 184220 of 2018, 184221 of 2018, 184236 of 2018, 184237 of 2018, 184244 of 2018, 184246 of 2018, 184240 of 2018, 184241 of 2018 and 184242 of 2018

34 None appears on behalf of the applicants.

35 The applications are dismissed for non-prosecution.

……..…….....……..…….....J.
[Dr Dhananjaya Y Chandrachud]

……..…….....……..…….....J.
[Hima Kohli]

……..…….....……..…….....J.
[Pamidighantam Sri Narasimha]

New Delhi;
September 22, 2022

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