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Shankar Vs. Nhdc Limited

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Court : Madhya Pradesh

Decided On : Aug-19-2013

Appellant : Shankar

Respondent : Nhdc Limited

Judgement :

W.P. No.6703/2013 1 HIGH COURT OF MADHYA PRADESH, JABALPUR Single Bench: HON'BLE SHRI JUSTICE A.K. SHRIVASTAVA W.P. No.6703/2013 PETITIONER Shankar s/o Baba Scheduled Tribe Bhil, R/o village Sukwa, Tehsil Punasa, District Khandwa (M.P.) Versus RESPONDENTS 1 NHDC Limited through Chief Executive Director, NHDC Limited, Parayvas Bhavan, Arera Hills, Jail Road, Bhopal (M.P.) 2. State of Madhya Pradesh through Principal Secretary Narmada Valley Development Department, Vallabh Bhawan, Bhopal (M.P.) 3. Grievance Redressal Authority Through Chairman/ Member Secretary, Narmada Complex Projects, Narmada Bhawan, 59, Arera Hills, Bhopal (M.P.) ---------- Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey, Advocate for the petitioner. Shri R.N. Singh, Senior Advocate with Shri A.J.Pawar, Advocate for the respondents 1 and 2. ---------- Date of Hearing :

30. 07/2013 Date of Order :

22. 08/2013 W.P. No.6703/2013 2

ORDER

(22/08/2013) The order passed in this petition shall also govern the disposal of connected W.P.No.7794/2013 (Shankar s/o Pithya v. NHDC and others), W.P.No.7796/2013 (Chandarsingh s/o Ratansingh v. NHDC Ltd. and others), W.P.No.7797/2013 (Kabarbai s/o Gyarasya v. NHDC Ltd. and others), W.P.No.7799/2013 (Lakshmibai w/o Sukhram v. NHDC Ltd. and others), W.P.No.7800/2013 (Chhajju s/o Champalal v. NHDC Ltd. and others), W.P.No.7805/2013 (Budhibai w/o Sukhram v. NHDC Ltd. and others), W.P.No.7816/2013 (Mohan s/o Pithya v. NHDC Ltd. and others), W.P.No.7817/2013 (Madan s/o Tukaram v. NHDC Ltd. and others), W.P.No.7832/2013 (Nanakram Bondar s/o Bodar v. NHDC Ltd. and others), W.P.No.7951/2013 (Kcharibai s/o Babu v. NHDC Ltd. and others), W.P.No.8068/2013 (Jyotibai s/o Premchand v. NHDC Ltd. and others), W.P.No.8097/2013 (Jafar Ali s/o Ajjali v. NHDC Ltd. and others), W.P.No.8356/2013 (Neelabai w/o Suklal v. NHDC Ltd. and others), W.P.No.11745/2013 (Afjal s/o Shekgaphur v. NHDC Ltd. and others), W.P.No.12718/2013 (Gulabchand s/o Hirachand v. NHDC Ltd. and others), which are hereinafter referred to as Item Nos.2 to 15 and W.P.No.7789/2013 (Dhhannalal s/o Jaya Singh v. NHDC Ltd. and others), W.P.No.7790/2013 (Prembai v. NHDC Ltd. and others), W.P. No.6703/2013 3 W.P.No.7791/2013 (Meghabai w/o Keshab v. NHDC Ltd. and others), W.P.No.7801/2013 (Chintaram s/o Gulab v. NHDC Ltd. and others), W.P.No.7806/2013 (Bhukkan s/o Kalu v. NHDC Ltd. and others), W.P.No.7808/2013 (Dhansingh s/o Chhotiya v. NHDC Ltd. and others), W.P.No.7812/2013 (Chintaram s/o Gulab v. NHDC Ltd. and others), W.P.No.7813/2013 (Motiram s/o Jomya v. NHDC Ltd. and others), W.P.No.7815/2013 (Nandram s/o Jayaram v. NHDC Ltd. and others), W.P.No.7818/2013 (Anokhipuri s/o Somawarpuri v. NHDC Ltd. and others), W.P.No.7819/2013 (Sobharam s/o Nasariya v. NHDC Ltd. and others), W.P.No.7820/2013 (Durgaram s/o Khema v. NHDC Ltd. and others), W.P.No.7822/2013 (Sukya s/o Chainya v. NHDC Ltd. and others), W.P.No.7827/2013 (Labhu s/o Nihal v. NHDC Ltd. and others), W.P.No.7831/2013 (Bankat s/o Baghvan v. NHDC Ltd. and others), W.P.No.7837/2013 (Badlamsingh s/o Manoharsingh v. NHDC Ltd. and others), W.P.No.7842/2013 (Naharmal s/o

Dhansingh v. NHDC Ltd. and others), W.P.No.7844/2013 (Thakur s/o Bodiya v. NHDC Ltd. and others), W.P.No.7853/2013 (Lalitabai w/o Lakshyana v. NHDC Ltd. and others), W.P.No.7872/2013 (Jankibai s/o Nathu v. NHDC Ltd. and others), W.P.No.7875/2013 (Mangliya s/o Mangya v. NHDC Ltd. and others), W.P.No.7882/2013 (Bondar s/o Dayaram v. NHDC Ltd. and others), W.P.No.7883/2013 (Shobhag Bharati s/o Ratanvarati v. NHDC Ltd. and others), W.P.No.7885/2013 (Sukmabai w/o Girwarsingh v. NHDC Ltd. W.P. No.6703/2013 4 and others), W.P.No.7890/2013 (Jaimal s/o Motiram v. NHDC Ltd. and others), W.P.No.7894/2013 (Nannu s/o Bala v. NHDC Ltd. and others), W.P.No.7896/2013 (Lobhilal s/o Narayan v. NHDC Ltd. and others), W.P.No.7897/2013 (Jaswantgiri s/o Ganapathgir v. NHDC Ltd. and others), W.P.No.7899/2013 (Isram s/o Malsingh v. NHDC Ltd. and others), W.P.No.7907/2013 (Kamlabai w/o Ranjitsingh v. NHDC Ltd. and others), W.P.No.7912/2013 (Mangubai w/o Budhia v. NHDC Ltd. and others), W.P.No.7918/2013 (Nageshwar Bharti v. NHDC Ltd. and others), W.P.No.7922/2013 (Nannu s/o Mangilal v. NHDC Ltd. and others), W.P.No.7923/2013 (Chetram s/o Isram v. NHDC Ltd. and others), W.P.No.7928/2013 (Mithibai w/o Banwari v. NHDC Ltd. and others), W.P.No.7931/2013 (Bhagwan s/o Kanahiya v. NHDC Ltd. and others), W.P.No.7934/2013 (Jamnabai w/o Devram v. NHDC Ltd. and others), W.P.No.7939/2013 (Chhajju s/o Mohan v. NHDC Ltd. and others), W.P.No.7943/2013 (Omkar s/o Isram v. NHDC Ltd. and others), W.P.No.7945/2013 (Ladkibai s/o Banbatsingh v. NHDC Ltd. and others), W.P.No.7958/2013 (Lokendrasingh s/o Ranjitsingh v. NHDC Ltd. and others), W.P.No.7963/2013 (Nathusingh s/o Ranajitsingh v. NHDC Ltd. and others), W.P.No.7972/2013 (Tuta s/o Mohabbat v. NHDC Ltd. and others), W.P.No.7976/2013 (Sudabai d/o Ganpatgiri v. NHDC Ltd. and others), W.P.No.8069/2013 (Sangitabai s/o Ganpatgiri v. NHDC Ltd. and others), W.P.No.8071/2013 (Debram s/o W.P. No.6703/2013 5 Ganasya v. NHDC Ltd. and others), W.P.No.8075/2013 (Nandabai s/o Mayaram v. NHDC Ltd. and others), W.P.No.8076/2013 (Motu s/o Natthu v. NHDC Ltd. and others), W.P.No.8077/2013 (Meenabai s/o Premchand v. NHDC Ltd. and others), W.P.No.8078/2013 (Maheshgiri s/o Ganpatgiri v. NHDC Ltd. and others), W.P.No.8079/2013 (Prahaladsingh s/o chainsingh v. NHDC Ltd. and others),

W.P.No.8082/2013 (Patalibai s/o Pyara v. NHDC Ltd. and others), W.P. No.8083/2013 (Sukhdev s/o Gadbad v. NHDC Ltd. and others), W.P. No.8087/2013 (Kalibai S/o Pyara Vs. NHDC Ltd. and others), W.P. No.8088/2013 (Bhimsingh S/o Hiralal Vs. NHDC Ltd. and others), W.P. No.8092/2013 (Morobi S/o Rasidali Vs. NHDC Ltd. and others), W.P. No.8095/2013 (Jagdishpuri S/o Shankarpuri Vs. NHDC Ltd. and others), W.P. No.8101/2013 (Gorelal S/o Bhikaram Vs. NHDC Ltd. and others), W.P. No.8102/2013 (Dhumsingh S/o Hiralal Vs. NHDC Ltd. and others), W.P. No.8104/2013 (Kanchanbai S/o Mangilal Vs. NHDC Ltd. and others), W.P. No.8105/2013 (Sampat S/o Totaram Vs. NHDC Ltd. and others), W.P. No.8175/2013 (Roopsingh S/o Hiralal Vs. NHDC Ltd. and others), W.P. No.8176/2013 (Nyajobi S/o Rashidali Vs. NHDC Ltd. and others), W.P. No.8179/2013 (Chintaram S/o Kadawa Vs. NHDC Ltd. and others), W.P. No.8280/2013 (Kisansingh S/o Malsingh Vs. NHDC Ltd. and others), W.P. No.8282/2013 (Pharsingh S/o Malsingh Vs. NHDC Ltd. and others), W.P. No.8283/2013 (Bhagada Singh S/ W.P. No.6703/2013 6 o Rumalsingh Vs. NHDC Ltd. and others), W.P. No.8285/2013 (Dodabai W/o Sukhdevram Vs. NHDC Ltd. and others), W.P. No.8286/2013 (Mallubai W/o Malsingh Vs. NHDC Ltd. and others), W.P. No.8287/2013 (Shriram S/o Devaram Vs. NHDC Ltd. and others), W.P. No.8288/2013 (Surajpuri S/o Shankarpuri Vs. NHDC Ltd. and others), W.P. No.8290/2013 (Ramesh Giri S/o Ganpath Gir Vs. NHDC Ltd. and others), W.P. No.8291/2013 (Dilip S/o Premchand Vs. NHDC Ltd. and others), W.P. No.8292/2013 (Nanhu S/o Bhagchand Vs. NHDC Ltd. and others), W.P. No.8293/2013 (Dinesh S/o Vikram Singh Vs. NHDC Ltd. and others), W.P. No.8294/2013 (Baliram S/o Motiram Vs. NHDC Ltd. and others), W.P. No.8295/2013 (Banwari S/o Bala Vs. NHDC Ltd. and others), W.P. No.8297/2013 (Gajendra Singh S/o Prahlad Singh Vs. NHDC Ltd. and others), W.P. No.8298/2013 (Dipak S/o Premchand Vs. NHDC Ltd. and others), W.P. No.8299/2013 (Rukhdia S/o Kunwarjee Vs. NHDC Ltd. and others), W.P. No.8300/2013 (Ramesh Singh S/o Shobharam Vs. NHDC Ltd. and others), W.P. No.8302/2013 (Bisan Singh S/o Mal Singh Vs. NHDC Ltd. and others), W.P. No.8304/2013 (Neelabai S/o Badlam Singh Vs. NHDC Ltd. and others), W.P. No.9063/2013 (Chetram Vs. NHDC Ltd. and others), W.P. No.9064/2013 (Sudama Giri S/o Ganpath Giri Vs. NHDC Ltd. and others), W.P. No.11743/2013 (Fajal Bi

W/o Abdul Hakim Vs. NHDC Ltd. and others), W.P. No.11744/2013 (Kalibai S/o Gamarsingh Vs. NHDC Ltd. and W.P. No.6703/2013 7 others), W.P. No.11750/2013 (Rajapuri S/o Haripuri Vs. NHDC Ltd. and others), W.P. No.11751/2013 (Farid S/o Nazir Vs. NHDC Ltd. and others), W.P. No.11752/2013 (Sakila Bi W/o Sheikh Mehboob Vs. NHDC Ltd. and others), W.P. No.11753/2013 (Bagsingh S/o Lakhmesingh Vs. NHDC Ltd. and others), W.P. No.11754/2013 (Rukhma Bai Vs. NHDC Ltd. and others), W.P. No.11755/2013 (Raeesbi Vs. NHDC Ltd. and others), W.P. No.11759/2013 (Sunil S/o Sakhram Vs. NHDC Ltd. and others), W.P. No.11766/2013 (Banaras Bai Vs. NHDC Ltd. and others), W.P. No.11797/2013 (Kailash S/o Gobinda Vs. NHDC Ltd. and others), W.P. No.11798/2013 (Lakhmesingh S/o Bhawasingh Vs. NHDC Ltd. and others), W.P. No.11800/2013 (Suman Bai W/o Vallusingh Vs. NHDC Ltd. and others), W.P. No.11801/2013 (Haripuri S/o Sukhadebpuri Vs. NHDC Ltd. and others), W.P. No.11802/2013 (Kalibai W/o Gamarsingh Vs. NHDC Ltd. and others), W.P. No.11804/2013 (Lakshimibai W/o Sakharam Vs. NHDC Ltd. and others), W.P. No.12006/2013 (Edu S/o Murar Vs. NHDC Ltd. and others), W.P. No.12709/2013 (Navab Ali S/o Chhoutuali Vs. NHDC Ltd. and others), W.P. No.12710/2013 (Jairam S/o Sitaram Vs. NHDC Ltd. and others), W.P. No.12712/2013 (Barki Bai W/o Bhavsingh Vs. NHDC Ltd. and others), W.P. No.12715/2013 (Saidabi S/o Rasidali Vs. NHDC Ltd. and others) and W.P. No.12717/2013 (Gulab Singh S/o Ramubai Vs. NHDC Ltd. and others), which are hereinafter referred to as Item Nos.16 to 123, W.P. No.6703/2013 8 since common question of fact and law is involved in all these writ petitions.

2. Item Nos.2 to 15 which are heard analogously with this petition are the bunch of writ petitions where the oustees are given only compensation while the writ petitions at item Nos. 16 to 123 are the petitions heard analogously with this petition where the oustees are given compensation and Special Redressal Grant (SRG).

3. By this petition under Article 226/227 of the Constitution of India the petitioner is seeking the following reliefs:- (a) This Hon'ble Court be pleased to issue writ/order/direction, quashing the impugned order passed by GRA to the extent of direction for prior refund of half of the compensation amount and the entire SRG

amount to the State/ project authorities within 90 days from the date of the receipt of the Order, as a condition precedent to the consideration of the land application of the petitioner and offer and allotment of land by the authorities. (b) In the facts and circumstances of case, this Hon'ble Court be pleased to direct that the deadline of refunding/ repaying the compensation & SRG amount within 90 days shall not come in the way of the petitioner obtaining the substantial relief of land entitlements granted to him by the Hon'ble Supreme Court and the GRA. (c) This Hon'ble Court be pleased to issue W.P. No.6703/2013 9 writ/ order/direction, permitting the petitioner to pay the compensation and SRG amounts to the authorities, after the allotment of land as far as possible. by the project authorities in terms of the R&R policy and of the judgment of the Apex Court dated 11.05.2011. The petitioner may be permitted to refund the compensation amount in 20 yearly equal installments from the first year after unencroached and suitable land of not less than equal quality and nature as his submerging land is allotted to him, as directed by the Hon'ble Supreme Court. The petitioner may be permitted to return the amounts even earlier if possible for him. Until the return of the compensation amount, the lands of the petitioner may be mortgaged with the authorities to the proportionate extent, in terms of the R&R policy. (d) This Hon'ble Court be pleased to issue writ/order/direction, directing the State and NHDC Limited to allot land as far as possible. to the petitioner within a period of three months in light of various orders of the Hon'ble Supreme Court. (e) This Hon'ble Court be pleased to issue writ /order/ direction, directing respondents for setting up a Committee under Clause 4.1 of the R&R Policy for the purchase and procurement of land for allotment to the petitioner and other oustees. (f) Any other and further relief, as may be deemed fit by this Hon'ble Court may be granted to the petitioner, in the interest of justice.

4. No exhaustive statements of fact are required to be narrated for the purpose of disposal of this petition since the factual matrix of this case is not at all in dispute not it has been W.P. No.6703/2013 10 controverted by learned counsel for the parties during the course of hearing. For ready reference, it would be apt to state here that against the order of the Division Bench of this Court dated 21.2.2008 (Annexure P-7) passed in W.P. No.4457/2007 (PIL) [Narmada Bachao Andolan v. The State of Madhya Pradesh and Narmada Hydro-Development Corporation (in

short NHDC.)]. the parties to the writ petition filed different appeals which were decided by the Supreme Court on 11.5.2011 by passing a common order. The said decision is reported in AIR 201.SC 198.= (2011) 7 SCC 63.(Narmada Bachao Andolan v. State of Madhya Pradesh & Another). However, in this order the paragraphs of AIR 201.SC 198.are being referred since they have been differently numbered in the Supreme Court case.

5. In terms of the decision passed by the Supreme Court in aforesaid decision Narmada Bachao Andolan (supra), the petitioner submitted application before the Bench No.2 of the Grievance Redressal Authority (GRA) to provide suitable land in terms of Rehabilitation and Resettlement Policy (in short R & R policy.). The said policy has been placed on record as Annexure P-6. The GRA vide its order dated 9.7.2012 allowed the application of the petitioner by holding that in case the petitioner in compliance to the decision of the Supreme Court returns the 50% of the amount of compensation within 90 days and files application to provide suitable land in lieu of the land which has W.P. No.6703/2013 11 been acquired, as far as possible, the suitable land be provided to him. Indeed, this petition has been filed on the ground that the direction of the Apex Court has been misinterpreted by the Authority (GRA).

6. The contention of Smt. Shobha Menon, learned senior counsel for the petitioner is that by misconstruing and misinterpreting the directions of the Supreme Court, the GRA has erroneously directed the petitioner to deposit 50% of the compensation amount, which has been deposited by the respondent No.2 in his account. According to the learned senior counsel, no such stigma of deposition of 50% of the compensation amount has been cast by the Supreme Court in the aforesaid decision. Hence, it is prayed that by allowing this petition the condition of said deposition be struck off.

7. On the other hand, Shri R.N. Singh, learned senior counsel appearing for the respondents 1 and 2 has submitted that in very clear terms the Supreme Court in para-86 of its decision Narmada Bachao Andolan (supra) has directed that the displaced families, who have not withdrawn SRG benefits/ compensation voluntarily, submit applications for allotment of the land before the GRA, they only

shall be entitled to the allotment of agricultural land as far as possible. in terms of the R & R policy. Hence, the alternative land is to be provided in terms of the aforesaid R & R policy (Annexure P-6). Learned senior W.P. No.6703/2013 12 counsel submits that if clauses 5.1 to 5.5 of the R & R policy are considered in true perspective and particularly by paying heed to clause 5.1 it would be as clear like a noon day that an oustee is required to deposit 50% of the amount of compensation for the acquired land as initial installment towards payment of cost of the land to be allotted to him and therefore, the learned GRA has rightly directed the petitioner to deposit 50% of the amount of compensation. On these premised submissions it has been put forth by learned senior counsel for the respondents 1 and 2 that this petition and the connected petitions be dismissed.

8. Learned senior counsel for the parties have also submitted the written-submissions. Smt. Shobha Menon, learned senior counsel for the petitioner has settled the additional written-submissions on behalf of the petitioners and the same have also been filed by the petitioners. Similarly, the written- submissions have been settled by Shri R.N. Singh, learned senior counsel for the respondents 1 and 2.

9. Having heard learned counsel for the parties, I am of the view that this petition as well as connected petitions deserve to be allowed.

10. This Court has simply to see whether learned GRA has rightly imposed the aforesaid condition to deposit 50% of the compensation amount and further whether it is in consonance to W.P. No.6703/2013 13 the decision of the Supreme Court. Thus, the interpretation of para-86 of the decision of the Supreme Court in the aforesaid Narmada Bachao Andolan (supra) is to be interpreted by this Court and nothing more.

11. The order of the Division Bench decision of this Court dated 21.2.2008 (Annexure P-7) was assailed by the parties of the said writ petition in the Supreme Court. Indeed, the Supreme Court in para-86 of its decision has modified the paragraph 64(i) of the order (Annexure P-7) of this Court. First of all, it would be apt to quote para 64(i) of the order of this Court which has been modified by the Supreme Court, which reads, thus:-

64. In the result, we dispose of this writ petition with the following declarations and directions: (i) The displaced families and encroachers are entitled to allotment of agricultural land as far as possible in terms of paragraphs 3 and 5 of the R&R policy of 1993 amended in 2002, and we accordingly direct the respondent No.1 to locate Government land or private land and allot such land as far as possible, to the displaced families and encroachers, if they opt for such land and refund 50% of the compensation amount received by them to be retained towards the installments of price of land, and if they agree to other terms stipulated in paragraphs 5 of the R&R policy of 1993.

. On bare perusal of the said para of this Court it is gathered that the displaced families and encroachers are entitled to allotment of agricultural land as far as possible in terms of paragraphs 3 W.P. No.6703/2013 14 and 5 of the R & R policy of 1993 amended in 2002 (Annexure P-6) and eventually directed the State of M.P. to locate government land and allot the land as far as possible to the displaced families and to the encroachers if they opt for such land and refund 50% of the compensation amount received by them.

12. At this juncture only I would like to quote paragraphs 3 and 5.1 of the R & R policy (Annexure P-6) which are quite relevant since the benefit has been provided to the petitioner and other oustees, which read, thus:- 3.0 Allotment of Agricultural Land:- 3.1 Displaced families would be rehabilitated in accordance with their preferences on land at the new sites, taking as far as possible, the social groups as an unit. 3.2(a) Every displaced family from whom more than 25 percent of its land is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it, subject to provision in 3.2 below, and shall be allotted such land as far as possible. (b) A minimum area of 2 ha. of land would be allotted as far as possible to all the families whose lands would be acquired irrespective of whether Government land is offered or private land is purchased for allotment. Where more than 2 ha. of land is acquired from a family, it will be allotted equal land, subject to a ceiling of 8 ha. c) The Government will assist displaced families in providing irrigation by W.P. No.6703/2013 15 well/tube-well or any other method on the land allotted, provided such land is not already irrigated. In case the allotted land cannot be irrigated (which fact would be certified by the Agriculture

Department), the displaced family would be allotted as far as possible a minimum of 4 hectares of land instead of 2 hectares provided at 3.2(b) above. In other cases, where irrigation is not possible, the development of dry land would be subsidized by the State Government to the extent of 75% of the cost involved, unless higher subsidies are provided to farmers in any other scheme of the Government. 3.3 Entitlements of Encroachers for allotment of land: Encroachers, whether on revenue land or forest land will also be entitled for the allotment of land. Where the area of the land acquired from an encroacher is upto 1 ha. he will be entitled to 1 ha. area of land. In those cases where acquisition of land from an encroacher is more than 1 ha., he will be entitled to 2 ha. of land irrespective of the fact that the land acquisition from such an encroacher may be even be greater than 2 ha. If the encroacher is also a land holder and he has been benefited by Clause 3.2 then he will not be entitled for land allotment under this clause. 5.0 Recovery of cost of allotted land:

5. 1 At least fifty percent amount of compensation for the acquired land shall be retained as initial installment towards the payment of the cost of the land to be allotted to the oustee family. However, if an oustee family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation, it can do so by submitting an application to this effect W.P. No.6703/2013 16 in writing to the concerned Land Acquisition Officer. In such cases, oustee families will have no entitlement over allotment of land and shall be paid full amount of compensation in one installment. An option once exercised under this provision shall be final, and no claim for allotment of land in lieu of the allotted land can be made afterwards. If any oustee family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry certify that this will not adversely affect the interests of the oustee family. Such application of the Scheduled Tribes oustee families will be accepted only after the above said certification by the Collector.

13. Thus, the Division Bench of this Court while deciding the aforesaid PIL directed the first respondent to allot the agricultural land to the oustees as far as possible in terms of paragraphs 3 and 5 of the R & R policy, as a result of which

directed the displaced families and encroachers by giving option that if they so opt, they may refund 50% of the compensation amount received by them. The Supreme Court in Narmada Bachao Andolan (supra) in para-86 has modified para 64(i) of the order (Annexure P-7) of this Court. On bare perusal of this paragraph, this Court finds that pre-requisite condition of deposition of the 50% of compensation has been deleted by the Supreme Court. For more clarity, I would like to keep para 5.1 of the policy; para 64(i) of the Division Bench decision of this Court and para 86 of the order of the Supreme Court in juxtaposition to W.P. No.6703/2013 17 each other, which are quoted as under:- Para 5.1 of Para 64(i) of Relevant extract R & R policy (Annexure Division Bench of para-86 of the order P-6) decision of of the Supreme Court this Court At least fifty percent The displaced In view of the above, amount of families and the direction given by compensation for the encroachers are the High Court in acquired land shall entitled to allotment paragraph 64 (i) of the be retained as initial of agricultural land as judgment, is modified installment towards far as possible in to the extent that the the payment of the terms of paragraphs displaced families who cost of the land to be 3 and 5 of the R&R have not withdrawn allotted to the oustee policy of 1993 SRG benefits/ family. However, if an amended in 2002, compensation oustee family does and we accordingly voluntarily and submit not wish to obtain direct the respondent applications for land in lieu of the No.1 to locate allotment of land submerged land and Government land or before the Authority wishes full payment private land and allot concerned, shall be of the amount of such land as far as entitled to the compensation, it can possible, to the allotment of do so by submitting displaced families agricultural land as far an application to this and encroachers, if as possible. in terms effect in writing to the they opt for such land of the R & R Policy, concerned Land and refund 50% of and for that purpose, Acquisition Officer. In the compensation the appellants must such cases, oustee amount received by make some families will have no them to be retained government or private entitlement over towards the land available for allotment of land and instalments of price allotment to such shall be paid full of land, and if they oustees if they opt for amount of agree to other terms such land and agree to compensation in one stipulated in ensure compliance installment. An option paragraphs 5 of the with other terms and once exercised under R&R policy of 1993.

. conditions stipulated this provision shall be therein. final, and no claim for allotment of land in lieu of the allotted land can be made afterwards. If any oustee family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry certify that this will not adversely W.P. No.6703/2013 18 affect the interests of the oustee family. Such application of the Scheduled Tribes oustee families will be accepted only after the above said certification by the Collector.

. The purpose of quoting the aforesaid para of the R & R policy, the Division Bench decision of this Court and that of the Apex Court and by keeping them in juxtaposition to each other is that if we read the aforesaid three clauses conjointly, luminously it is clear that para 64(i) of the Division Bench decision of this Court is in consonance to para 5.1 of the R & R policy. But, the Supreme Court has expressly modified the para 64(i) of the order of the Division Bench of this Court, which would mean that not the displaced families are not required to return back the 50% of the compensation amount received by them. To me, no argument in this context is required and the doctrine of Cadit quaestio would come into play. I have also paid heed to paragraphs 48 and 50 of the aforesaid Supreme Court decision Narmada Bachao Andolan (supra) and I find that it has been categorically held by the Apex Court that not even a single oustee had submitted any application giving option for the acceptance of the compensation and not claiming land for the land acquired. Earlier to these paragraphs firmly it has been held by the Supreme Court that the oustees are entitled for the W.P. No.6703/2013 19 alternative suitable land. Indeed, the finding of learned GRA is that the amount of compensation has been thrusted to the petitioner and similarly situated oustees and they have not voluntarily accepted the same. Hence, I do not have any scintilla of doubt in my mind that the petitioner has not voluntarily accepted the compensation amount rather it has been thrusted to him.

14. Law is nothing but common sense. Here, the Supreme Court has already settled the law in the aforesaid decision Narmada Bachao Andolan (supra) and has specifically modified the order of the Division Bench of this Court in para 64(i) whereby the pre-requisite condition of deposition of 50% of the compensation amount has been levied.

15. John Mortimer has said that: No brilliance is needed in the law.....

. . Sir Edward Coke has also spoke that: Reason is the life of the law: nay, the common law itself is nothing else but reason... The law which is the perfection of reason.. Oliver Wendell Holmes also says: The life of the law has not been logic; it has been reason.. Similarly, Samuel Johnson has said: The law is the last result of human wisdom acting upon human experience for the benefit of the public..

16. The contention of Shri R.N. Singh, learned senior counsel for the respondents 1 and 2 that the Supreme Court itself in aforesaid para 86 has held that the allotment of the W.P. No.6703/2013 20 agricultural land is to be provided to the oustees as far as possible in terms of R & R policy and therefore, Clause 5.1 of the aforesaid R & R policy (Annexure P-6) is triggered and set in motion. It has also been put forth by him that if the oustees or displaced families like the petitioner do not deposit 50% of the compensation amount, the cost of the land would be free of cost and flood of the applications will be filed and thus, a chaos situation would arise. However, I do not find any merit in this contention of learned senior counsel for the respondents 1 and 2. Indeed, the only purpose of quoting clause 5.1 of the R & R policy (Annexure P-6), para 64(i) of the Division Bench decision of this Court and para 86 of the decision of the Supreme Court Narmada Bachao Andolan (supra) at one place is that if the said contention is accepted, it will be the verbatim argument of the decision of the Division Bench of this Court envisaged in para 64(i) and which is in consonance to para 5.1 of the R & R policy, but, by modifying the decision and the direction given by the Division Bench of this Court in para 64.1 of its order, the Supreme Court has specifically deleted the aforesaid condition of deposition of 50% of the compensation amount. Hence, according to me, it is not permissible to the respondents to make out a case of fortune for themselvevcs out of misfortune caused to the oustees since they are still starving and struggling for their livelihood to earn dry bread (without butter) and further to debar the valuable constitutional right of the peasants (like petitioners W.P. No.6703/2013 21 and other oustees) as enshrined under Article 300-A of the Constitution of India. If I accept the said contention of learned senior counsel, it would mean to restore the aforesaid order of the Division Bench of this Court which has already been modified by the Apex Court and thus, I cannot do it.

Eventually, I set aside the said condition of deposition of 50% of the compensation amount as directed by the GRA in its order dated 9.7.2012 (Annexure P-1).

17. Ex consequenti, this petition and the connected petitions succeed and are hereby allowed. The impugned order dated 9.7.2012 (Annexure P-1) so far as imposing the condition of deposition of 50% of the compensation amount is hereby quashed and the said order is modified to that extent. No costs. Let a copy of this order be also kept in the record of connected petitions. (A.K. Shrivastava) Judge Sach

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