

\2251

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

IA NOS.42,43,50-51 & 52-53

IN

WRIT PETITION(C) NO. 328/2002

Narmada Bachao Andolan ..Petitioner

versus

Union of India and others ..Respondents

In the Matter of:

Kailash Awasya and others etc. etc. ..Applicants

WITH

SPECIAL LEAVE PETITION(C) NO.7663/2016

O R D E R

JAGDISH SINGH KHEHAR, CJI

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

2

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).

3

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

4

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:

5

â- S (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. â- \235 (emphasis is ours)

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

â- S 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

6
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.â- \235
(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

7
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

8 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.

9 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.

â- |.....CJI
[JAGDISH SINGH KHEHAR]

â- |.....J.
[N.V. RAMANA]

NEW DELHI; â- |.....J.
FEBRUARY 08, 2017. [Dr. D.Y. CHANDRACHUD]

10
ITEM NO.10 COURT NO.1 SECTION PIL(W)
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
I.A. Nos. 42, 43, 50-51 & 52-53 in Writ Petition(s)(Civil) No(s).
328/2002

NARMADA BACHAO ANDOLAN Petitioner(s)
VERSUS
UNION OF INDIA AND ORS. Respondent(s)

In The Matter of:
Kailash Awasya and others etc. etc. Applicant(s)
(for directions, permission to file addl. documents & exemption
from filing O.T. and office report)
WITH
SLP(C) No. 7663/2016
(With appln.(s) for permission to file lengthy list of dates and
Interim Relief and Office Report)
Date : 08/02/2017 These applications/petition were called on for
hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Applicant(s) Mr. Sanjay Parikh, Adv.
Mr. Clifton Doozario, Adv.
Ms. Anitha Shenoy, Adv.
Ms. Nini Susan Thomas, Adv.
Ms. Surabhi Aggarwal, Adv.
Ms. Srishti Agnihotri, Adv.
Ms. Medha patkar, in person
For Petitioner(s) Mr. Prashant Bhushan,AOR
in WP 328/2002

For Petitioner(s) Mr. P.S. Patwalia, ASG
in SLP 7663/2016 Mr. C. D. Singh,Adv.
& for respondent(s) Ms. Sakshi Kakkar, Adv.
in WP & IAs
For Respondent(s) Mr. Mukul Rohatgi, AG
(Narmada Control Mr. Tushar Mehta, ASG
Authority) Mr. Syed Naqvi, Adv.
Mr. Rajesh Kumar, Adv.

11
for MOEF Mr. Tushar Mehta, ASG
Mr. A.K. Ganguli, Sr. Adv.
Mr. N.K. Karhail, Adv.
Ms. Manita Verma, Adv.
for Mr. G.S. Makker, AOR
For MOWR Mr. Tushar Mehta, ASG
Mrs. V. Mohana, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Mr. Rajat Nair, Adv.
for Mr. M.K. Maroria, AOR
State of Gujarat Mr. Ashok Desai, Sr. Adv.
Ms. Hemantika Wahi, Adv.
Ms. Jesal Wahi, Adv.
Ms. Mamta Singh, Adv.
State of Mr. Arvind V. Savamt. Sr. Adv.
Maharashtra Mr. Nishant R. Katneshwarkar, Adv.
State of Rajasthan Mr. S.S. Shemshery, AAG
Mr. Amit Sharma, Adv.
Mr. Ankit Raj, Adv.
for Mr. Milind Kumar, AOR

UPON hearing the counsel the Court made the following

O R D E R

Interlocutory applications/petitions stand disposed of,
in terms of the Reportable signed order.
(Renuka Sadana) (Parveen Kumar)

Assistant Registrar

AR-cum-PS

[Reportable Signed Order is placed on the file]