

PETITIONER:
BANWASI SEVA ASHRAM

Vs.

RESPONDENT:
STATE OF U.P. AND ORS.

DATE OF JUDGMENT 19/02/1992

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
SAWANT, P.B.
KASLIWAL, N.M. (J)

CITATION:
1992 AIR 920 1992 SCR (1) 857
1992 SCC (2) 202 JT 1992 (2) 421
1992 SCALE (1) 407

ACT:
Public Interest Litigation:
National Thermal Power Corporation:
Rihand Super-Thermal Power Project-Rehabilitation of
evictees-Directions issued.

HEADNOTE:

This Court, by its order dated 20.11.1986, while disposing of Writ Petition (Crl.) No. 1061 of 1982, gave comprehensive directions for rehabilitation of Adivasis/landholders affected by the Rihand Super-Thermal Power Project to be set up by the National Thermal Power Corporation Limited (NTPC), and appointed a Board of Commissioners to supervise the implementation of the said directions. Since then this Court was monitoring the project.

Disposing of the proceedings and the monitoring-process so far as the NTPC was concerned, this Court,

HELD: In order to ensure that the rights of the oustees are determined in their respective holdings and they are properly and adequately compensated, the NTPC shall take, in collaboration with the State Government, the following measures to rehabilitate the evictees who were in actual physical possession of the lands/houses etc. :-

(i) The NTPC shall submit a list of the evictees-claimants to the District Judge, Sonbhadra who shall be the final authority to finalise the list.

(ii) One plot of land measuring 60' x 40' to each of the evictee-families be distributed for housing purposes through the district administration.

(iii) Shifting allowance of Rs. 1500 and in addition a lumpsum rent of Rs. 3000 towards housing be given to each of the evictee-families.

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(iv) Free transportation shall be provided for shifting.

(v) Monthly subsistence allowance equivalent to loss of net income from the acquired land to be determined by the District Judge Sonbhadra subject to a maximum of Rs. 750 for a period of 10 years. The said payment shall not be linked with employment or any other compensation.

(vi) Unskilled and semi-skilled posts in the project shall be reserved for the evictees.

(vii) The NTPC shall give preference to the oustees in employment in class III and IV posts under its establishment.

(viii) The evictees be offered employment through the contractors employed by the NTPC.

(ix) Jobs of contractors under the administration of the NTPC be offered to the evictees.

(x) The shops and other business premises within the NTPC campus be offered to the evictees.

(xi) The NTPC shall operate for the benefit of the evictees selfgenerating employment schemes such as carpentry training (free tools to be provided after completion of training) carpet weaving training, sericulture, masonry training, dairy farming, poultry farming and basket weaving training etc.

(xii) The NTPC shall provide facilities in the rehabilitative area such as pucca roads, pucca drainage system, handpumps, wells, portable water supply, primary school, adult education classes, health centre, Panchayat Bhavan, sports centres, electricity connections, bank and sulabh Sauchalaya complex etc.

The Deputy Commissioner Sonebhadra shall supervise and ensure that the rehabilitation measures are fully complied with.

(xiii) As regards compensation for crops and land, the provisional compensation at the rate of Rs. 850 per acre per year for crops and Rs. 10,000 per acre for the land be paid to the oustees.

[pp.861B-H; 862A-H; 863A-B]
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The District Judge Sonebhadra shall be the authority to determine the compensation. The orders passed by the District Judge shall be treated as orders under s. 17 of the Indian Forest Act, as amended by U.P. Act 25 of 1965. [p.863B,F]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Crl.) No. 1061 of 1982.

(Under Article 37 of Constitution of India)

Prem Bhai and Prem Singh, Commnr. Supreme Court, Justice B.L. Loombha, Chairman, Legal Aid, Advisory Board, U.P., M.K. Ramamurthi, B. Datta, Yogeshwar Prasad, Ms. Chandan Ramamurthi, M.A. Krishnamoorthy, Ms. Rachna Joshi, D.D. Sharma, A.S. Pundir, R.P. Srivastava, S.N. Terdol, Hemant Sharma, Ms. Anil Katiyar, C.V.S. Rao and Ms. Sangeeta Aggarwal for the appearing parties.

The following Order of the Court was delivered:

On the basis of a letter received from Banwasi Seva Ashram operating in Mirzapur District of Uttar Pradesh Writ Petition (Criminal) No. 1061/82 under Article 32 of the Constitution of India was registered. Meanwhile the National Thermal Power Corporation Limited (NTPC) decided to set up a super-thermal plant on part of the lands which were subject matter of the writ petition. NTPC got itself impleaded as a party in the writ petition and claimed that the completion of the project was a time bound-programme and as such the land earmarked for the project be made free from prohibitive directions of this Court in the writ petition. The writ petition was disposed of by an order dated November 20, 1986. This Court issued comprehensive directions and

appointed a Board of Commissioners to supervise the implementation of the said directions. This Court has been monitoring the project during all these years in terms of the directions issued on November 20, 1986.

By this order we are finally disposing of the proceedings and the monitoring-process so far as the NTPC is concerned. The directions dated November 20, 1986 relevant for this purpose are as under:-

"(1) So far as the lands which have already been declared as reserved forest under Section 20 of the Act, the same would not form part of the Writ Petition and any direction made by this Court earlier, now or in future in this case would not relate

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to the same. In regard to the lands declared as reserved forest, it is, however, open to the claimants to establish their rights, if any, in any other appropriate proceeding. We express no opinion about the maintainability of such claim."

"(5) The land sought to be acquired for the Rihand Super-Thermal Power Project of the NTPC shall be freed from the ban of dispossession. Such land is said to be about 153 acres for Ash Pipe Line and 1643 acres for Ash Dyke and are located in the villages of Khamariya, Parbatwa, Jheelotola, Dodhar and Jarha. Possession thereof may be taken,....., but such possession should be taken in the presence of one of the commissioners who are being appointed by this order and a detailed record of the nature and extent of the land, the name of the person who is being dispossessed and the nature of enjoyment of the land and all other relevant particulars should be kept for appropriate use in future. Such records shall be duly certified by the Commissioner in whose presence possession is taken and the same should be available for use in all proceedings that may be taken subsequently.

The NTPC has agreed before the Court that it shall strictly follow the policy on "facilities to be given to land oustees" as placed before the Court in the matter of lands which are subjected to acquisition for its purpose. The same shall be taken as an undertaking to the Court."

Mr. Datta learned senior advocate appearing for the NTPC has stated that the NTPC has already taken actual/symbolic possession of 1375 acres of land. In respect of 1004 acres of the said land a notification under Section 4 of the Indian Forest Act, 1927 (hereinafter called 'the Act') was issued and the proceedings for declaring the said area as reserved forest were undertaken. The remaining 371 acres were part of Gaon Sabha land and ownership in the said land vested in the State Government. According to Mr. Datta this land measuring 1375 acres is under the possession of NTPC and the project-construction is in progress. Mr. Ramamurthy, on the other hand, has contended that the actual possession of whole of the area is not with the NTPC and the Adivasi/land owners are still in possession of their respective holdings.

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Mr. Datta further states that apart from 1375 acres, mentioned above, the NTPC has yet to obtain possession of 465 acres of land which is reserved forest under Section 20 of the Act. In view of the directions quoted above the lands which have been declared as reserved forest under the Act

are not the subject matter of the writ petition and as such no direction can be issued by this Court in that respect. In this order, we are concerned with 1004 acres of land which is subject-matter of Section 4 Notification under the Act. We have to ensure that the rights of the oustees are determined in their respective holdings and they are properly rehabilitated and adequately compensated.

According to the summary of rehabilitation-package filed on the record by Mr. Datta there are 678 families which have been ousted from the land. Mr. Ramamurthy, however states that there are more than 1500 families which are likely to be affected by the take-over of 1004 acres of land by the NTPC.

We direct that the following measures to rehabilitate the evictees who were in actual physical possession of the lands/houses etc. be taken by the NTPC in collaboration with the State Government.

1. The NTPC shall submit a list of the evictees-claimants to the District Judge, Sonebharda before April 15, 1992. Mr. Prem Singh shall also submit the list of the evictees to the District Judge by April 15, 1992. The District Judge Sonebhadra shall be the authority to finalise the list of the evictees.

2. One plot of land measuring 60' x 40'' to each of the evictee-families be distributed for housing purposes through the district administration. Mr. Datta has informed us that the plots of the said measurements have already been given to 641 families. We direct that the remaining evictees be also given the plots.

3. Shifting allowance of Rs. 1500 and in addition a lumpsum rent of Rs. 3000 towards housing be given to each of the evictee-families.

4. Free transportation shall be provided for shifting.

5. Monthly subsistence allowance equivalent to loss of net income from the acquired land to be determined by the District Judge Sonebhadra subject to a maximum of Rs. 750 for a period of 10 years. The said

payment shall not be linked with employment or any other compensation.

6. Unskilled and semi-skilled posts in the project shall be reserved for the evictees subject to their eligibility and suitability.

7. The NTPC shall give preference to the oustees in employment in class III and IV posts under its administration subject to their suitability and eligibility.

8. The evictees be offered employment through the contractors employed by the NTPC.

9. The jobs of contractors under the administration of the NTPC be offered to the evictees.

10. The shops and other business premises within the NTPC campus be offered to the evictees.

11. The NTPC shall operate for the benefit of the evictees selfgenerating employment schemes such as carpentry training (free tools to be provided after completion of training), carpet weaving training, sericulture, masonry training, dairy farming, poultry farming and basket weaving training etc.

12. The NTPC shall provide facilities in the rehabilitative-area such as pucca roads, pucca drainage system, hand pumps, wells, portable water supply, primary school, health centre, Panchayat Bhavan, electricity connections, bank and Sulabh Sauchalaya complex etc.

13. The NTPC shall also provide hospitals, schools, adult education classes and sports centres for the evictees.

The Deputy Commissioner Sonebhadra shall supervise and ensure that the above rehabilitation measures directed by us are fully complied with by the NTPC and other authorities.

As regards compensation in respect of lands, crops etc. Mr. Datta states that crop compensation at Rs. 850 per acre per year has been paid to the oustees. He states that a sum of Rs. 16,44,529.68 paise has been paid to the oustees in this respect. He further states that Rs. 1 crore and Rs. 507500 have further been deposited by the NTPC with the State

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Government on March 13, 1991 and January 20, 1992 respectively. According to him out of the said amount, Rs. 48,35,649.17 paise have so far been paid to the oustees as land-compensation at the rate of Rs. 10,000 per acre. It is not disputed that Rs. 850 per acre per year for the crops and Rs. 10,000 per acre for the land has been determined as provisional compensation. We direct that the provisional compensation at the above rates be paid to the oustees, if not already paid, within 8 weeks from today. In this respect we further issue the following directions:

(a) The District Judge, Sonebhadra shall be authority to determine the compensation in respect of land, crop, house and any other legitimate claim based on existing-rights of the oustees.

(b) Mr. Prem Singh, Commissioner along with the Project Officer of the NTPC and Sarpanch of the area concerned shall verify the extent of the property of the oustees who have been or are likely to be evicted from the actual physical possession of the lands/houses etc. It has been stated before us that such verification can be done within a period of two months. We direct that the verification be completed before April 15, 1992. The rights determined by Mr. Prem Singh and party shall be subject to the final approval of District Judge, Sonebhadra.

(c) The District Judge, Sonebhadra shall issue notices to all the claimants before May 15, 1992 asking them to file their respective claims for compensation. The evictees, may also on their own, whether they have received provisional compensation or not prefer their claims for compensation to the District Judge Sonebhadra before August 1, 1992.

(d) The District Judge Sonebhadra shall finally decide all the compensation claims expeditiously preferably before March 31, 1993. The orders passed by the District Judge in each case shall be treated as the orders under Section 17 of the Act as amended by the Uttar Pradesh Act 25 of 1965.

(e) Any party, not satisfied with the order of the District Judge, may have recourse to any remedy available under law.

With the above directions we finally close the proceedings in respect of the lands in possession of the NTPC.

R.P.

Petition disposed of.

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