CASE NO.:
Appeal (civil) 6218-6219 of 1999

PETITIONER:
Satluj Jal Vidyut Nigam Ltd. & Anr.

RESPONDENT:
Dila Ram & Ors.

DATE OF JUDGMENT: 05/01/2005

BENCH:
Shivaraj V. Patiln & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

The appellant is a statutory corporation and a joint venture of the Government of Himachal Pradesh. For execution of a power project of 1500 MW the appellant corporation acquired lands in different areas of Himachal Pradesh. The land was acquired for the appellant by the State Government acting under the Land Acquisition Act, 1894. On 5.3.1988 a preliminary notification under the Act was issued for acquiring a large tract of land in the State of Himachal Pradesh for the purpose stated therein. The Land Acquisition Collector made an award on 27.2.1991 and paid the compensation payable to the land owners including the present respondents.

On 27.11.1991 the appellant corporation formulated a scheme for resettlement and rehabilitation of persons whose land had been acquired. This was intended as an additional measure of relief for the persons whose land had been taken away. The scheme adopted by the Board of Directors of Corporation is in the following terms:

"The Board discussed at length and approved the plan for Resettlement and Rehabilitation of persons being displaced due to construction of NJPC at indicated below:

a) To allot developed agricultural land, to each family, who is rendered landless, equivalent to the area acquired or 5 bighas, whichever is less. This 5 bighas would include any land left with the family after acquisition. This would be done only after the certificate of his having become landless is submitted duly signed by Sub-Divisional Magistrate, Rampur.

b) To provide a house with a building up plinth area of 45 sqm. to each landless family whose house is acquired alternatively to pay Rs. 45,000/- to each landless family, whose house is acquired, and constructs his house at his own cost, with a plinth area of 45 sqm. or more. In case of such persons constructs less than 45 sqm. plinth area, then the amount to be given will be worked out in direct proportion to the area of house constructed vis-'-vis Rs.45,000/- as the cost of 45 sqm.plith area.

c) To provide water supply, electricity, street light and approach paths in the rehabilitation colonies at project cost.

d) To provide transportation at project cost for physical mobilization of all the displaced families, as soon as the houses get constructed premises/shops allotted to any oustee on preferential basis shall be utilized by the oustee for his bonafide use only.

e) To provide suitable employment to one members of each displaced family according to his capability and qualifications subject to availability of vacancies. However, persons who are allotted shops would not be eligible for benefit of employment and vice-versa.

f) To incur the estimated expenditure of Rs.184 lacs on rehabilitation (Annexure VIII of the Rehabilitation Plan)against an ad hoc provision of Rs.18 lacs in Detailed Project Report (September, 1986 price level)."

During 27.2.1991 to 4.7.91 the appellant acquired about 28 bighas of land which belonged to the family of the respondents for the purpose of the project. The said land was held jointly by the family of the respondents which consisted of the following :

BALA RAM
Sarani Ram (Son) Joban Das (Son)
Hari (Wife)

Durga Singh (Son) Leela Devi (Daughers) Dila Ram (Respondent) Son Sunder Singh (Respondent) Son Tikam Devi (daughter) Chitra Devi (daughter)

Dila Ram and Sunder Singh, the respondents in these appeals, are the sons of Joban Dass, while Durga Singh is the son of Sarni Ram. Sarni Ram and Joban Das are brothers and their father was Bala Ram. Both Sarni Ram and Joban Dass were married to the same wife, Hari. The revenue record showed the names of all the members of the family as joint holders holding shares. It also showed that the land was held for self cultivation by Sunder Singh, Dila Ram Chitra Devi etc., co-sharers. This was the situation of the holding as on the date of the notification under Section 4 of the Land Acquisition Act.

Durga Singh obtained "landless certificate" from the Sub-Divisional Magistrate of the concerned area and applied to the Resettlement and Rehabilitation Officer for benefits under the Rehabilitation scheme. His application was scrutinized and accepted. Consequently, the appellant corporation granted to Durga Singh all the benefits under the scheme, including the benefit of employment to his wife, in June 1996 itself. On 2.9.1996 the present respondents Dila Ram and Sunder Singh, applied to the SDM Rampur for issuance of "landless certificate" and sought from the appellant-corporation the benefits under the Rehabilitation Scheme. They also issued a legal notice to the appellant in this behalf. Their claims were rejected by the corporation on the ground that only one member of the landless family could be given the benefits under the Scheme. The appellant contends that since the land acquired was a joint holding consisting of 12 members, and one of them had been given the benefit under the scheme, there was no further obligation to make available such benefits to any other member of the landless family.

The respondents filed two writ petitions before the High Court praying for writs of Mandamus to direct the appellant to make available the benefits of the Rehabilitation Scheme to the two respondents Dila Ram and Sunder Singh.

On 5.12.1998 the Board of Directors of the appellant Corporation passed a further resolution, which put the matters beyond cavil. This resolution defines 'landless family' as under:
"Landless family means and includes all members of the family of the individual, joint holders co-sharers whose name(s) appeared in one revenue account as on the date of issuance of notification under Section 4 of the Land Acquisition Act, 1894 and whose agricultural land is acquired for Nathpa Jhakri Hydroelectric Project making them completely landless or their balance agricultural land left after acquisition is less than 5 bigha. For this purpose agricultural land held anywhere by the all such persons and their family members shall be recokonedand members of the family shall include his spouse (s) parents, sons, daughters, step sons and step daughters. If more than one family is entered as joint holders in land revenue record all of them shall be treated as one landless PAF (Project Affected Family). Person loosing land on acquisition of building and land appurtenant thereto shall not be treated as landless PAF. The landless PAF shall be certified by SDM, Rampur."

The High Court allowed the writ petitions by taking the view that the benefits under the resettlement and rehabilitation plan had to be given to the present respondents as they were living separately from the family, and granted the reliefs sought.

Hence, these appeals.

The learned counsel for the appellant took us through the details of the resettlement and rehabilitation scheme dated 27.11.91 as amended by the Resolution dated 5.11.1998 and submitted that the corporation had discharged its obligations under the resettlement and rehabilitation scheme way back in 1996 when Durga Singh, admittedly a member of the family, had applied for and had been granted the benefits thereunder. He contended that once such benefits were made available to one member of the family which was jointly holding the land acquired, there was no further obligation to give such benefits to any other member of the family.

The learned counsel for the respondents supported the findings of the High Court and urged that, as evidenced by the Panchayat Pariwar register, Durga Singh was residing separately for the last 11 years and, therefore, was in a separate family. Consequently, he urged that the respondents belonged to a different family even on the date of notification under Section 4 of the Act, and therefore, the benefit of the scheme had to be provided separately to the respondents.

In our view, the High Court erred in accepting the contention of the respondents that since Durga Singh was residing separately for the last 11 years he could not be treated as a part of the family and his holding had to be reckoned as if it was a holding of a separate family. The High Court relied on some judgments referred with reference to the concept of family under Section 4 of the Partition Act, 1893. In our view, it was wholly unnecessary to refer to the statutory definition of family given under the Partition Act. As far as the benefit under the scheme is concerned, the only question which the High Court had to determine was whether the respondents were eligible to any benefits in terms of the scheme. The scheme is made applicable to "each family which is rendered landless". The revenue records indicate that the land was held jointly by Sunder Singh, Dila Ram and other members of the family. Whether Durga Singh was residing separately or not is wholly irrelevant and besides the issue. The test to be adopted under the scheme was whether there was joint holding and relationship as a family. The High Court seems to have understood that the scheme was intended to give benefits to each member of the landless family. If this interpretation were to be accepted, then the corporation would have to provide more land for distribution to each member of the landless family than, perhaps, even the total land acquired. In the instant case, the corporation would have to provide 35 bighas of land, 7 houses and employment to 7 members of the family, for acquiring only 28 bighas of land and one house. The High Court seems to have fallen into an error in adopting the meaning of 'family' from judgments, which were rendered in relation to Section 4 of the Partition Act and under the Rent Control Acts.

The scheme emphasizes joint holding and family relationship. As long as these existed, the fact that any particular person was residing separately, is of no consequence. Adjudged by this test, Durga Singh was a part of the landless family whose land has been acquired. Consequently, he having been first to apply, was given the benefit under the resettlement and rehabilitation scheme. There was no further obligation on the part of the corporation to provide any more benefits thereunder.

The learned counsel for the Respondents contended that, Durga Singh being a step brother, he had taken all the benefits under the resettlement and rehabilitation scheme and deprived the other members of the family. That is a matter of dispute inter se within the family with which the appellant corporation is not concerned in any way, nor could the High Court grant any relief based thereupon. It is open to the other members of the family to take appropriate legal action as they may be advised to seek a share in the benefits of the resettlement and rehabilitation scheme which were made available by the appellant to Durga Singh.

In the result, we find that the appellant is entitled to succeed. The appeals are hereby allowed and the impugned judgments of the High Court are set aside, but without costs.