Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2082 of 2011

Narmada Bachao Andolan ....Appellant

Versus

State of Madhya Pradesh & Anr. ....Respondents

WITH

Civil Appeal Nos.2083-2097 of 2011

State of Madhya Pradesh ....Appellant

Versus

Narmada Bachao Andolan & Anr. ...Respondents

AND

Civil Appeal Nos. 2098-2112 of 2011

Narmada Hydro-Development Corporation ...Appellant

Versus

Narmada Bachao Andolan & Ors. …Respondents

WITH

Civil Appeal No. 2115 of 2011

State of Madhya Pradesh ..Appellant

Versus

Narmada Bachao Andolan & Anr. ..Respondents

AND

Civil Appeal No. 2116 of 2011

Narmada Hydro Electric Development Corporation Limited ..Appellant

Versus

Narmada Bachao Andolan & Anr. ..Respondents

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. All these appeals relate to the establishment of the Omkareshwar Dam on the Narmada river in Madhya Pradesh. As these appeals are inter-connected and have been filed against interim orders passed by the High Court in the same writ petition, they have been heard together and disposed of by a common judgment. However, for convenience Civil Appeal Nos. 2115-2116 of 2011 are dealt with first.

Civil Appeal Nos. 2115-2116 of 2011

2. These appeals have been preferred against the judgment and order dated 21.2.2008 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 4457 of 2007, 'Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.', wherein the High Court as an interim measure, has issued directions, *inter-alia,* for allotment of agricultural land to the displaced persons in lieu of the land acquired for construction of the dam in terms of the Rehabilitation and Resettlement Policy (hereinafter called as 'R & R Policy') as amended on 3.7.2003. The High Court direction applied even to those oustees who had already withdrawn the compensation, if such oustees opt for such land and refund 50% of the compensation amount received by them. The balance cost of the allotted land would be deposited by the allottees in 20 equal yearly installments as stipulated in clause (5.3) of the R & R Policy, and to treat a major son of the family whose land has been acquired as a separate family for the purpose of allotment of agricultural land.

3. **FACTUAL MATRIX :**

Facts and circumstances giving rise to these cases are as follows:

(A) The Narmada river starts at Amarkantak. It flows through Madhya Pradesh for 1077 km, then forms a common boundary in Maharashtra for 74 km (35 km with MP and 39 km with Maharashtra) and then passes through Gujarat for 161 km before meeting the Arabian Sea after a total length of 1312 km. The Narmada Water Disputes Tribunal apportioned the water in the Narmada between Madhya Pradesh, Gujarat, Maharashtra and Rajasthan, subject to review after 45 years.

(B) The State of Madhya Pradesh, conducted a survey in 1955 for the establishment of hydro-power projects in the Narmada basin at different sites including Barwaha (Omkareshwar Project). In 1983, Narmada Valley Development (Irrigation) Department (hereinafter called NVD) was set up and further studies were conducted for the establishment of hydro-power projects.

(C) The Omkareshwar Dam - an intra-state project for generating 520 mega watts of power, which also involved the irrigation of 1.47 lakh hectares of agricultural land, was approved by the State

Government, with an assessment that on the completion of the project, 30 villages would be submerged at the full reservoir level i.e. 196.60 mtrs.

(D) The Government of Madhya Pradesh framed a rehabilitation and resettlement policy in 1985 (hereinafter called `R & R Policy') for the oustees of all the Narmada projects in the State. The said policy was amended from time to time as is evident from the R & R Policies dated: 9th June, 1987; 5th September, 1989; 7th June, 1991; and 27th August 1993.

The said policy provided for the allotment of a minimum of 2 hectares of agricultural land; irrigation facilities at government cost; grant-in-aid for small and marginal farmers and SC/ST families; and to meet the entire cost of the allotted land. The policy further provided that the allotment of agricultural land would be carried out much in advance, before dam construction reached crest level. The land required for allotment would be procured in the common area from the farmers having holdings of more than 4 hectares of land.

The State authorities obtained environmental clearance for the Omkareshwar project from the Ministry of Environment and Forest on 13.10.1993. The Ministry of Welfare granted clearance on

8.10.1993. The Planning Commission also granted clearance on condition of compliance with welfare and environmental clearances vide order dated 25.5.2001.

The Central Electricity Authority accorded techno-economic clearance under the provisions of Electricity (Supply) Act, 1948 on 24.7.2001. The Government of India approved and granted financial concurrence from Public Investment Board of the Planning Commission for this project on 17.5.2002. Forest clearance was granted on 20.8.2004 under the provisions of Section 2 of the Forest (Conservation) Act, 1980 for the diversion of 5829 hectares of forest lands. Therefore, there had been various statutory and non-statutory clearances from the authorities.

(E) The R & R Policy further stood amended on 3.7.2003, to the effect that agricultural land would be offered to the oustees "as far as possible"; and not to those who would make application in writing to receive compensation for their acquired land.

(F) Construction of the Omkareshwar dam began in 2002 and stood completed in October, 2006. A large number of families had been uprooted on construction of the dam upto its 190 mtrs. height. For the

dam site, a huge area of land had been acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter called as 'Act 1894'). The displaced persons were allegedly not offered the land under the R & R Policy, as amended on 3.7.2003, rather compensation for their land was deposited in their accounts.

(G) Narmada Bachao Andolan, respondent No.1 (hereinafter referred to as `NBA'), an action group, had been espousing the grievances of displaced persons by filing Public Interest Litigations (hereinafter called `PIL') before the High Court/further to this Court from time to time and a large number of orders had been passed by the courts to redress the grievances of the oustees. When the decision was taken to raise the height of the dam, NBA filed writ petition No.4457 of 2007 before the High Court seeking a number of reliefs, *inter-alia,* to stop all eviction; directions for serving of life supplies such as drinking water and electricity; not to take any other coercive measures, to stop closure of the radial gates of the Omkareshwar dam above crest level of EL 179.60 M; and to stop the blocking of the sluice gates below crest level, until all Project Affected Families (hereinafter called `PAFs') were rehabilitated as per the R & R Policy. Further reliefs sought included the issuance of appropriate

directions for an assessment by the Grievance Redressal Authority (hereinafter called `GRA') for the Omkareshwar Project of the status of relief and rehabilitation of the oustees affected at Full Reservoir Level (hereinafter called `FRL') and Back Water Level (hereinafter called `BWL') within a stipulated period.

(H) During the pendency of the writ petition in pursuance of the orders passed by the High Court from time to time, a large number of reports/interim reports were furnished by the authorities concerned. The High Court after considering the said reports and submissions advanced on behalf of the parties passed the impugned judgment and order dated 21.2.2008. The High Court issued a large number of directions as interim measures, including the direction for allotment of land in lieu of land acquired and to treat the major sons of the family, as independent families for the purpose of allotment of agricultural land. Hence, these appeals.

4. S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned senior counsel appearing for the appellants have submitted that the High Court ought not to have entertained the writ petition as it did not have material facts/particulars disclosing any cause of action to the writ

petitioners even in the PIL. Not a single order passed by any statutory authority had been challenged and the writ petition was filed after inordinate delay without furnishing any explanation for the same. The GRA had been constituted to consider individuals' grievances and not a single oustee approached the GRA before filing of the writ petition. The Court ought to have relegated the parties for redressal of their grievances to the GRA. An efficacious alternative remedy was available to the oustees. The High Court further committed an error in issuing directions for allotment of land in lieu of land even in those cases where the oustees have voluntarily accepted the compensation amount; that such oustees would deposit 50% of the said amount and would be entitled to allotment of land. It is further submitted that the High Court erred in treating the major son of such an oustee as a separate family for the purpose of allotment of agricultural land, though he did not have any independent right to claim compensation for the land acquired. Land for allotment to such oustees is not available. The State authorities cannot be asked to do an impossible task. The State authorities have provided a package for their re-settlement and rehabilitation, giving all facilities and financial aid. Making the allotment of land mandatory in lieu of land acquired

would force the State to displace other persons to settle such oustees, which is impermissible in law. In case each major son of such oustees is treated as a separate family, acquisition of his family land would prove to be a bonanza for such persons as the tenure holding of such a family would multiply several times and State would suffer irreparable losses. The State Government vide amendments of the Revenue Code, reduced the area of the grazing land, but the land so made available is not enough to meet the needs of such a large number of oustees. Cases decided by this Court, earlier on two occasions, have no bearing on the issue in these cases, as the true and correct facts could not be brought to the notice of this Court. Most of the oustees had taken benefit of the Special Rehabilitation Grant (hereinafter called as `SRG') and withdrawn the amount and surrendered the possession of their land. The SRG amount has been more than the compensation amount for acquisition of land. The High Court did not issue any direction in regard to the amount taken by the oustees as SRG, either to refund the same or for adjustment of the same. Therefore, directions issued by the High Court are liable to be set aside. The appeals deserve to be allowed.

5. On the contrary, Dr. Rajeev Dhavan, learned senior counsel and Shri Sanjay Parekh, Advocate representing the oustees, have vehemently opposed the appeals contending that displacement of oustees without proper implementation of the rehabilitation scheme is violative of Article 21 of the Constitution of India. In a matter of this nature where a very large number of illiterate, inarticulate and poor people have suffered at the hands of the statutory authorities, no technical objections e.g. want of proper pleadings or delay etc., can be allowed to be raised. Statutory and non-statutory authorities have granted clearances for the Omkareshwar Dam Project on the clear understanding that the State authorities would carry out and implement, in letter and spirit, all the terms and conditions of the R & R Policy. Therefore, it is not permissible for the State authorities to say that it would not strictly adhere to the terms incorporated therein. The appellant-State and its instrumentalities never made any serious attempt to acquire land for such oustees and the compensation amount has been deposited in respective accounts of the oustees. Not a single oustee had ever opted for compensation for land in lieu of land acquired. Amendment made in the R & R Policy vide order dated 3.7.2003 is ultra vires and illegal and is liable to be ignored for the

reason that the R & R Policy had been approved by the State Government, though the amendment had not undergone the same process. If a major son of the family, whose land has been acquired, is not treated as a 'separate family' for the purpose of allotment of land for land acquired, the definition of 'displaced family' under clause 2(b) of the R & R Policy would be rendered nugatory. Therefore, such an interpretation is not permissible. This Court, while interpreting the other schemes in respect of Narmada Projects itself has given effect to the said policy and directed for allotment of land for land acquired and upheld the entitlement of the major son of an oustee to an independent allotment of agricultural land. Denial of such a right would be discriminatory and thus violative of the equality clause enshrined in Article 14 of the Constitution of India. Thus, the appeals lack merit and are liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

PLEADINGS:

7. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the

averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas.

In **Bharat Singh & Ors. v. State of Haryana & Ors.**, AIR 1988 SC 2181, this Court has observed as under:-

> "*In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point,* ***if he is the writ petitioner, must plead and prove such facts by evidence*** *which must appear from the writ petition and if he is the respondent, from the counter affidavit.* ***If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition*** *or the counter-affidavit, as the case may be,* ***the Court will not entertain the point****. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."* (Emphasis added)

8. A similar view has been reiterated by this Court in **Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors.,** AIR 1998 SC 1608; **M/s Atul Castings Ltd. v. Bawa Gurvachan Singh,** AIR 2001 SC 1684; and **Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors.**, AIR 2010 SC 2221.

9. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice. (Vide: **Ram Sarup Gupta** (dead) by L.Rs. **v. Bishun Narain Inter-College & Ors.,** AIR 1987 SC 1242; and **Kalyan Singh Chouhan v. C.P. Joshi,** AIR 2011 SC 1127).

10. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the Court. (Vide: **Rural Litigation and Entitlement Kendera v. State of U.P.,** AIR 1988 SC 2187).

11. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which Court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. Information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the Court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide: **A. Hamsaveni & Ors. v. State of Tamil Nadu & Anr.**, (1994) 6 SCC 51; **Ashok Kumar Pandey v.**

State of West Bengal, AIR 2004 SC 280; **Prabir Kumar Das v. State of Orissa & Ors.,** (2005) 13 SCC 452; and **A. Abdul Farook v. Municipal Council, Perambalur,** (2009) 15 SCC 351).

12. In the instant case, in the writ petition, an impression had been given, that some drastic steps would be taken by the authorities which would cause great hardship to a large number of persons. However, the writ petition did not disclose the factum of how many persons had already vacated their houses and handed over the possession of their land. It was contended that urgent measures were required to be taken by the Court in order to mitigate the sufferings of the people. In view of the fact that there was no material before the Court to adjudicate upon the issues involved therein, the High Court passed the order dated 30.3.2007 directing the GRA to submit the report on the rehabilitation work already done and still to be done; and to disclose the consequences of the closure of radial gates of the dam and blocking of the sluice gate of the dam on the people residing in the area which would be submerged. In pursuance of the said order, the GRA submitted the report dated 7.4.2007, explaining that a huge amount of several thousand crores of rupees had already been invested. The SRG had already been disbursed. Out of a total

number of 4513 families to be adversely affected by the project, 2787 families had already shifted and 1726 families remained there. An amount of Rs.9924 lacs had already been disbursed among the claimants and only a sum of Rs.589 lacs remained to be disbursed. The report further explained that land in lieu of land acquired would be allotted to oustees "as far as possible" and as most of the oustees had accepted the compensation, it was not required on the part of the State to allot the land for land acquired. The other benefits of the R & R Policy had already been given. In fact, it is in view of this report, the High Court started examining the grievances of the oustees. Several reports were submitted by the GRA before the High Court from time to time and whatever has been disclosed in those reports provided the basis for raising further queries and that, in fact, became part of pleadings of the case. In fact, the present appellants had been asked to lay factual foundation to adjudicate the issues raised by the writ petitioners.

13. In view of the above, it is evident that there were no pleadings before the High Court on the basis of which the writ petition could be entertained/decided. Thus, it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper

pleadings and material to substantiate the averments/allegations contained therein. Even in the case of a PIL, such a course could not be available to the writ petitioners.

DELAY/LACHES:

14. In the instant cases, the construction of the dam started in October 2002 and was completed in October 2006. No objection had ever been raised by NBA at any stage. The Narmada Development Authority vide order dated 28.3.2007 gave permission to National Hydraulic Development Corporation to raise the water level of the dam to 189 meters upon showing that rehabilitation of oustees of 5 villages adversely affected at 189 meters, had already been completed. The writ petition was filed praying for restraining the appellants from closing the sluice gates of the dam contending that resettlement and rehabilitation was not complete. There was no explanation as to under what circumstances the Court had been approached at such belated stage.

15. In **Narmada Bachao Andolan v. Union of India & Ors.,** (2000) 10 SCC 664, (hereinafter called as `Narmada Bachao Andolan-I'), this Court dealt with a similar issue of laches and observed that in spite of the fact that the clearance for construction of the dam was

given in 1987, the same was challenged in 1994 on the ground that there was a lack of studies available regarding the environmental aspects and also because of seismicity. Thus, the clearance should not have been granted. The rehabilitation package was dissimilar and there had been no independent study or survey done before the decision to undertake the project was taken and construction started. This Court held that clearance and undertaking to construct the dam had been given and hundreds of crores of rupees had already been invested, before the writ petitioner had chosen to file the writ petition in 1994. Thus, the petitioner was guilty of laches in not approaching the court at an earlier point of time. The Court, however, observed as under:

> *"When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project……..*
>
> *This Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures ……. In short, it was only the concern of this Court for the protection of the fundamental rights of the oustees under Article 21 of the Constitution of India which led to the*

> *entertaining of this petition.* ***It is the relief and rehabilitation measures that this Court is really concerned with and the petition in regard to the other issues raised is highly belated****."* (Emphasis added)

In **State of Maharashtra v. Digambar**, (1995) 4 SCC 683, this Court had taken a similar view.

16. In fact for redressal of any grievance regarding implementation of the R & R Policy, the oustees ought to have approached the GRA. There is nothing on record to show how many oustees remained unsatisfied/aggrieved of the orders passed by GRA till the filing of the writ petition.

17. Thus, in view of the above, the High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of the R & R Policy.

ALTERNATIVE REMEDY:

18. While dealing with a similar issue in **Narmada Bachao Andolan v. Union of India & Ors.,** (2005) 4 SCC 32, (hereinafter called as `Narmada Bachao Andolan-II'), this Court observed as under:

"Several contentions involving factual dispute had, we may notice, not been raised before GRA. GRA had been constituted with a purpose, namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. GRA being headed by a former Chief Justice of the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extraordinary situation emerges."

19. Thus, in view of the above, the High Court ought to have directed the oustees to approach the GRA for redressal of their grievances and if any person was further aggrieved of the directions issued by the GRA, he could have approached the High Court after full fledged adjudication of the factual issues by the GRA.

AMENDMENT OF R & R POLICY:

20. There are claims and counter-claims on the issue as to whether the validity of the amendment of the R & R Policy was under challenge before the High Court. However, it is evident from the pleadings that the validity of the amendment dated 3.7.2003 had been raised while filing the rejoinder affidavit. The rejoinder affidavit reveals that as the R & R Policy had been approved by the State

Government and statutory and non-statutory clearances had been obtained on the basis of the R & R Policy, the amendment dated 3.7.2003 ought to have been brought for the approval of the authorities who had granted approval at initial stage. The amendment cannot be given effect to. The impugned judgment makes it explicit that the issue had been raised and only taken note of by the Court but not decided.

21. The appellants have placed documents on record to show that amendment in issue had been duly approved by the Cabinet of the Madhya Pradesh government and suggestion has been made that amendment did not require approval of the authorities who had granted clearances. It has been opposed by the respondents.

22. In case a plea is raised and not considered properly by the court the remedy available to the party is to file a review petition. (Vide: **State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.**, AIR 1982 SC 1249; **Transmission Corporation of A.P. Ltd & Ors. v. P. Surya Bhagavan,** AIR 2003 SC 2182; and **Mount Carmel School Society v. DDA,** (2008) 2 SCC 141).

23. Be that as it may, in view of the fact that neither the writ petitioner asked the High Court to quash the said amendment dated 3.7.2003, nor the court has suo motu quashed it, nor the writ petitioner has filed Special Leave Petition raising the said point, it is not permissible for us to deal with the issue.

LAND ACQUISITION AND REHABILITATION: **Article 21**:

24. It is desirable for the authority concerned to ensure that **as far as practicable** persons who had been living and carrying on business or other activity on the land acquired, **if they so desire**, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to **rehabilitation.** Rehabilitation is meant only for those persons who have been **rendered destitute** because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the

avenues of rehabilitation by way of employment, housing, investment opportunities, and **identification of alternative lands**. "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens." For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

(Vide: **State of U.P. v. Smt. Pista Devi & Ors.,** AIR 1986 SC 2025; **Narpat Singh etc. etc. v. Jaipur Development Authority & Anr.**, AIR 2002 SC 2036; **Special Land Acquisition Officer, U.K. Project v. Mahaboob & Anr.,** (2009) 14 SCC 54; **Mahanadi Coal Fields Ltd. & Anr**. v. **Mathias Oram & Ors.,** JT (2010) 7 SC 352; and **Brij Mohan & Ors. v. Haryana Urban Development Authority & Anr.**, (2011) 2 SCC 29).

25. The Fundamental Right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source

for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in the social system." However, in case of land acquisition, **"the plea of deprivation of right to livelihood under Article 21 is unsustainable.***"* (Vide: **Chameli Singh & Ors. v. State of U.P. & Anr.**, AIR 1996 SC 1051; and **Samatha v. State of A.P. & Ors.,** AIR 1997 SC 3297).

26. This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide: **Lachhman Dass v. Jagat Ram & Ors.,** (2007) 10 SCC 448; and **Amarjit Singh & Ors. v. State of Punjab & Ors.** (2010) 10 SC 43).

27. However, in **Jilubhai Nanbhai Khachar & Ors. v. State of Gujarat & Anr.,** AIR 1995 SC 142, this Court held**:**

> *"Thus, it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right… …The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles…."*

28. This Court in **Narmada Bachao Andolan – I** held as under:

> *"62. The displacement of the tribals and other persons* ***would not per se result in the violation of their fundamental or other rights.*** *The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress."*

29. In **State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors.,** (2009) 8 SCC 46, this Court held as under:

> *"**102.** Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question?*
>
> ***103. If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired.*** *Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired vis-à-vis a prohibition imposed upon the State from doing so at all."*

Thus, from the above referred to judgments, it is evident that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to

resettlement and rehabilitation as per the policy framed for the oustees of the concerned project.

FINDINGS OF THE HIGH COURT:

30. The High Court after considering the submissions and examining the documents on record, so far as the issue of land in lieu of land acquired is concerned, came to the following conclusions:

(i) An area of 2508.14 hectares of agricultural land was required for allotment to the displaced families as per the R & R Policy for the Omkareshwar Project. Such land was proposed to be acquired from big cultivators having more than 4 hectares of land in the command area of the project under Section 11(4) of the Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Adhiniyam, 1985, (herein after called `Adhiniyam 1985').

(ii) Vide order dated 4th March, 1998, the area of the grazing land (required under the M.P. Land Revenue Code) was reduced from 10 per cent to 5 per cent in every village. Subsequently, vide order dated 19th September, 2002, area of grazing land was further reduced to 2 per cent so that some part of such land could be allotted to the oustees of the project.

(iii) No efforts had been made by the Government for allotment of land in lieu of land acquired to the displaced families under the R & R Policy as amended on 3.7.2003.

(iv) The State instrumentalities had not made any effort to purchase private lands, for allotment to oustees under the R & R Policy. On the contrary, the Government made available a huge area of land required for a Special Economic Zone by acquiring private land under the Act 1894 for setting up of industries in the State of Madhya Pradesh.

(v) The submission of the State authorities that on account of scarcity of cultivable land in the State, it was impossible for the State Government to purchase private land for allotment, was not acceptable.

(vi) Only 11 per cent of the displaced families were able to purchase private agricultural land themselves without any aid or assistance of the State authorities.

(vii) None of the oustees has given option in writing to receive compensation in lieu of land acquired.

(viii) The State deposited the amount of compensation in the accounts of the oustees irrespective of whether they wanted land in lieu of land acquired.

(ix) None of the protections/facilities provided for persons belonging to Scheduled Castes and Scheduled Tribes under the R & R Policy had been accorded. The District Collector did not make any verification in regard to their claim for land in lieu of land acquired as required under the R & R Policy.

(x) The Government had not made any attempt to provide any grant-in-aid to cover up the gap between the amount of compensation and the actual cost of land available for the purpose, particularly to all displaced Scheduled Castes and Scheduled Tribes families.

(xi) The State authorities had hastily proceeded to complete the rehabilitation process and started the power project of the Omkareshwar Dam contrary to the assurances given under the said policy for Scheduled Castes and Scheduled Tribes families, as none of such oustees was interested in receiving compensation for agricultural land.

(xii) Grant-in-aid to cover up the difference of costs of the land purchased and amount of compensation was not paid to marginal

farmers having upto 2 hectares of land, as provided in the R & R Policy.

31. We have to examine whether any of the findings recorded by the High Court on the issue of entitlement for land in lieu of land acquired suffers from perversity and thus, warrants interference by this Court.

32. The relevant part of the R & R Policy, for the purpose of determination of first issue, reads as under:

(I) <u>Principles for rehabilitation of displaced families</u>:

1. The aim of the State Government is that all displaced families as defined hereinafter would after their relocation and resettlement improve, or at least regain, their previous standard of living within a reasonable time.

xx xx xx

4. **Special care would be taken of the families of Scheduled Castes, Scheduled Tribes, marginal farmers and small farmers.**

xx xx xx

1. The displaced families would be encouraged and assisted in purchase of lands from voluntary sellers of the host villages.

II. - **State Government Policy regarding rehabilitation and resettlement of families affected due to submerging in Narmada Projects**:

1. **Definitions**:

(1.1) **Displaced person**:

a. Any person who has been ordinarily residing or carrying on any trade or vocation for his livelihood or has been cultivating land for at least one year before the date of publication of notification under Section 4 of the Land Acquisition Act in the area which is likely to be submerged permanently or temporarily due to project.

xx xx xx

3. **Allotment of Agricultural land**:

xx xx xx

3.2 (a) Every displaced family from whom more than 25 percent of its land holding is acquired in revenue villages or forest villages shall be entitled to and **as far as possible**

will be allotted land to the extent of land acquired from it, subject to the provision of para 3.2(b) below.

(b) *As far as possible*, a minimum area of 2 hectares of land would be allotted 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 hec. of land is acquired from a family, it will be allotted equal land **as far as possible, subject to a ceiling of 8 hec**. (Portion in italics was added vide amendment dated 3.7.2003)

xx xx xx

5. Recovery of cost of allotted land:

(5.1) At least fifty per cent amount of compensation for the acquired land shall be retained as initial installment towards the payment of the cost of land to be allotted to the displaced family. *However, if a displaced 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 in writing to the*

concerned Land Acquisition Officer. In such cases displaced families will have no entitlement over allotment of land and shall be paid full amount of compensation in one installment. As option once exercised under this provision shall be final, no claim for allotment of land in lieu of the acquired land can be made afterwards. (Portion in italics was added vide amendment dated 3.7.2003).

If any displaced 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 displaced family. Such application of the Scheduled Tribes displaced families will be accepted only after the above said certification by the Collector.

(5.2) ……..

(5.3) There will be no recovery of this loan for the first 2 years. Thereafter, the loan would be recovered in 20 equal yearly installments.

(5.4) **Grant-in-aid would be paid to cover up the gap between the amount of compensation and the cost**

of allotted land in the cases where the cost of allotted land is more than the amount of compensation. This grant would be payable to all displaced land owning Scheduled Caste and Scheduled Tribe families and other families losing upto 2 hec. of land. For other families from whom more than 2 hec. and upto 8 hectares of land is acquired, grant-in-aid in addition to amount of compensation will be given by the Narmada Valley Development Authority on the rates prescribed therein.

POLICY DECISIONS:

33. In **State of Punjab & Ors. v. Ram Lubhaya Bagga etc. etc.,** AIR 1998 SC 1703, this Court while examining the State policy fixing the rates for reimbursement of medical expenses to the government servants held :

> **"……***When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility,*

beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints……..

For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority…….No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."

34. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See: **Ram Singh Vijay Pal Singh & Ors. v. State of U.P. & Ors.**, (2007) 6 SCC 44; **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors.,** (2009) 7 SCC 561; and **State of Kerala & Anr. v. Peoples' Union for Civil Liberties, Kerala State Unit & Ors.**, (Supra).

35. Thus, it emerges to be a settled legal proposition that Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.

AS FAR AS POSSIBLE :

36. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion**.** There is no hard and fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide: **Iridium India Telecom Ltd. v. Motorola Inc.,** AIR 2005 SC 514; and **High Court of Judicature for Rajasthan v. Veena Verma & Anr.**, AIR 2009 SC 2938).

37. Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

DOCTRINE OF IMPOSSIBILITY:

38. The Court has to consider and understand the scope of application of the doctrines of "**lex non cogit ad impossibilia**" (the law does not compel a man to do what he cannot possibly perform); "**impossibilium nulla obligatio est**" (the law does not expect a party to do the impossible); and **impotentia excusat legem** in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law **Nemo Tenetur ad Impossibilia** (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: **Chandra Kishore Jha v. Mahavir**

Prasad & Ors., AIR 1999 SC 3558; **Hira Tikkoo v. Union Territory, Chandigarh & Ors.**, AIR 2004 SC 3648; and **Haryana Urban Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr.**, AIR 2005 SC 1491).

39. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein.

LAND FOR LAND:

40. In **Gramin Sewa Sanstha v. State of M.P. & Ors.,** 1986 Supp SCC 578, this Court held **:**

> ***"2.*** *We are also informed that though land has been earmarked by the State Government for re-settlement of the displaced tribals, such land is not available because it is already occupied by other persons who themselves will be uprooted if such land is acquired and made available for the tribals displaced on account of the Hasdeo Bango Dam Project.* ***If this is true, the remedy might be worse than the disease because in order to re-settle one set of displaced persons the State Government would be displacing another set of persons.*** *We would, therefore direct the State Government to consider in the meanwhile as to whether the*

cultivable land at any other place or places can be made available for the tribals who are displaced on account of the present project." (Emphasis added)

41. This Court in **Narmada Bachao Andolan-I,** held as under:

"58……. when the removal of the tribal population is necessary as an exceptional measure, ***they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully compensated for any resulting loss or injury****. The rehabilitation package contained in the Award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned."* (Emphasis added)

42. In **State of Kerala v. Peoples' Union for Civil Liberties** (Supra), this Court held as under:

"121. We must also make it clear that while allotting land to the members of the Scheduled Tribes, ***the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose****. The lands, which are to be allotted,* ***must be similar in nature*** *to the land possessed by the members of the Scheduled Tribes. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands* ***which are fit for agricultural purposes****. Such a process should be undertaken and completed as expeditiously as*

possible and preferably within a period of six months from date." (Emphasis added)

43. The issue has to be decided taking into consideration the totality of the circumstances. For deciding this issue, the terms and conditions incorporated in the Narmada Water Disputes Tribunal Award (hereinafter called as `NWDT Award') cannot be taken into consideration for the simple reason that the Tribunal had been constituted under the provisions of Inter State Water Disputes Act, 1956 (hereinafter called Act 1956), and Award had been given in a case where several States, i.e., the States of Madhya Pradesh, Gujarat and Maharashtra were involved. The said Award has no application in the instant cases **nor can it be a Bench Mark**. More so, in the Sardar Sarovar Project, land for land was mandatory. These cases are to be decided giving strict adherence to the R & R Policy, as amended on 3.7.2003, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off. Our Constitution requires removal of economic inequalities and provides for provision of facilities and opportunities for a decent standard of living and protection of economic interests of the weaker segments of the society and in particular Scheduled Castes and Scheduled Tribes.

Every human being has a right to improve his standard of living. Ensuing people are better off is the principle of socio-economic justice which every State is under an obligation to fulfill, in view of the provisions contained in Articles 37, 38, 39(a), (b), (e), (f), 41, 43, 46 and 47 of the Constitution of India. (Vide: **Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.** (1995) Suppl. 2 SCC 549; and **N.D. Jayal & Anr. v. Union of India & Ors.,** AIR 2004 SC 867)**.**

44. Mere payment of compensation to the oustees in such a case may not be enough. In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all.

In **K. Krishna Reddy & Ors. v. Spl. Dy. Collector, Land Acqn. Unit II**, **LMD Karimnagar,** AIR 1988 SC 2123, this Court expressed grave concern on the issue observing as under:

> *"....After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even half of it. It is a common experience that the purchasing power of rupee is dwindling with rising inflation.....The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves*

> *nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work.* ***They may even face starvation unless rehabilitated****."*(Emphasis added)

45. It is a matter of common experience that the "person interested" gets the actual amount of compensation in reference under Section 18 and appeal under Section 54 of the Act 1894. Award made by the Land Acquisition Collector is merely an offer by the State through its agent. The Collector acts in dual capacity. It is in fact, for this reason that local authority/company for whom the land is acquired cannot question the Award of the Collector except on the ground of fraud, corruption or collusion, as provided under Section 50 of the Act 1894. The Award in the enquiry by the Collector is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands, and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court. (See **Ezra v. Secretary of State for India**, (1905) 32 Ind App 93; and **Santosh Kumar v. Central Warehousing Corporation & Anr.**, AIR 1986 SC 1164).

46. In the instant cases, admittedly, in spite of the fact that there has been a consent Award under Section 11(2) of the Act 1894, the appellants had agreed before the High Court that the oustees would be entitled to have reference under Section 18 of the Act 1894, a large number of references are pending before the courts for consideration. Thus, there is still a possibility of enhancement of compensation, but such a course would take time. By that time there will be such a hike in the price of land that the oustees will not be able to purchase the land. For lack of any experience or skill, such oustees would not be able to engage themselves in any other alternative occupation/vocation. Thus, it would be difficult for them to survive.

47. The record of the case reveals that about 56% of the oustees involved in these cases are members of Scheduled Castes and Scheduled Tribes. Land had never been offered to any of these oustees. The amount of compensation as determined under the Act 1894 had been deposited in their bank accounts. No attempt had ever been made by the appellant-State to either acquire land from other persons having a larger area of land resorting to the provisions of Act 1894 or purchase the same by agreement/negotiation for resettlement of the oustees. Only 11% of the oustees could purchase the land of

their own from other persons without any assistance from the State Authorities. The submission raised on behalf of the State that it had been impossible for authorities to acquire/purchase the land cannot be accepted as this is a pure question of fact and in absence of any material to show that any attempt had ever been made to acquire the land to rehabilitate the oustees, such a submission remains unsubstantiated.

48. Same appears to be the position in regard to the amended provisions of the R & R Policy. The phrase "as far as possible" would come into play, in case an attempt is made to acquire/purchase lands and then to make allotment of land to oustees. The other added term i.e. giving the option to oustees to make application for acceptance of compensation and not claiming land for land acquired, remained inapplicable, as it is alleged that not a single oustee made such an application. If it is so, the question remains merely academic. None of the obligations on the part of the authorities as clearly stipulated by the R & R Policy had been fulfilled. The Adhiniyam 1985 had not been made applicable in respect of the Omkareshwar Dam Project taking into account the past experience in other projects. Undoubtedly, the acquisition of land and displacing other persons for

resettling these oustees could have a chain reaction and the remedy/cure might have been worse than the disease itself and could further give rise to the question as to whether such an action was permissible in law. The State authorities ought to have assisted the oustees in purchasing the land of their choice from other agriculturists and met the difference of cost, if any, over and above the amount of compensation and the cost of land so purchased. While determining such issues, the State authorities could take into consideration the fact that the land should be not less than of the same quality and nature which the oustees were originally having with them. This exercise could have been done "*pari pasu*" which means "equably" or "ratably" to the construction of the Dam and could have been completed much in advance of completion of the Dam to the Full Water Level.

In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the

tribal areas are today in the grip of extremism, as the tribal youths have become easy prey to the extremists' propaganda.

49. While dealing with I.A. No. 42086/2008 in Writ Petition No. 4457 of 2007 (PIL), the High Court on 16.3.2009 considered the grievance of the oustees that the land available with the State for allotment was not cultivable and had been encroached upon, thus, the oustees were not willing to accept the land offered to them. The Court directed the Indian Council of Agricultural Research (Bhopal) to depute a sufficient number of experts to inspect the land offered to the displaced families and to find out as to whether it was suitable for agricultural purposes and submit its report and further directed the authorities to file an affidavit as to whether the encroachment could be removed expeditiously within a period of two months. The expert committee of Indian Council of Agricultural Research (Bhopal) had submitted the report that the land was cultivable. The matter was directed to be listed on 13.9.2009 and in the meanwhile, the GRA was directed to dispose of all applications/objections of the oustees for allotment of land in lieu of land acquired except those where the dispute related to entitlement of major sons for allotment of land and where the oustees had withdrawn the entire amount of

compensation/SRG amount. Report dated 13.1.2010 submitted by the GRA before the High Court makes it clear that all objections filed before it by the oustees had been decided and directions issued by the GRA had been complied with by the State authorities.

50. Before the High Court, the State put forward the explanation that the Authorities had Awarded the benefit of SRG to the oustees. In fact, the PAFs had complained that with the amount of compensation for their lands they were not able to buy land elsewhere and that instead of purchasing the land by Government, the additional cost involved may be made available to the PAFs to enable them to purchase land of their choice. The State Government after consultation with all concerned and approval by Hon'ble Chief Minister devised a scheme whereby the PAF is given substantial additional amount over and above the compensation for his land in order to enable him to purchase arable and irrigable land at the location of his choice. This scheme has come to be known as SRG or Special Rehabilitation Package (SRP). The rate of the irrigated land in the nearest command area is worked out on the basis of sale deeds and the cost of land going under submergence is calculated. 30% of this amount is again added to this cost and a sum is worked out which is

known as the determined value. Difference between the determined value and compensation already paid is called SRG and is paid to the PAF. The problems inherent in Government purchase are totally eliminated and the PAF is fully empowered and competent to decide things for himself. The additional amount made available to the PAF as SRG is not recoverable from him. The purchase of land made by the PAF is exempt from the stamp duty and registration fee.

51. The offer of SRG is over and above the Rehabilitation Policy. SRG enables the PAF to purchase land suitable to him at a place of his choice as he is neither willing to accept the land offered by the government nor to start the life at the new place by mortgaging the land for the loan. Under the SRG, the extra amount paid over and above the compensation is not recoverable. Due to the advantage of free hand, the SRG is well accepted by the PAFs. Registration fees and stamp duty are also paid. As the SRG comes into operation after the PAFs showed unwillingness to accept the land from the land bank and the PAFs want complete freedom for getting land of their choice, so land for land option has not been exercised by the PAFs and instead they have preferred and accepted cash compensation. So land for land has not been allotted to PAFs as the policy. It is, however,

erroneous to say that not a single PAF of Omkareshwar Project was allotted agricultural land because the PAFs were empowered to purchase land of their choice by paying SRG.

52. SRG is an additional amount paid to an oustee to enable him to purchase land in the command area to the extent of his land acquired. Normally, an oustee who looses land in submergence area gets an amount determined under the Act 1894. When a project is envisaged in an area, the sale and purchase in that area decrease and the prices also get depressed. By the time, the notification under Section 4(1) of the Act 1894, is issued, the sale deeds, if any, executed in that area, do not represent the correct price. Similarly, the prices in the command area also increase as a result of declaration of the project. Hence, it is difficult for an oustee to purchase land in command area from the amount given to him under the Act 1894. SRG is designed to nullify both the above effects and to enable the oustee to get an amount by which he can purchase land to the extent of his land acquired, in command area.

SRG= Award Amount calculated for equal land in command area as per Act 1894 including solatium **- (minus)** Award Amount calculated for the land acquired from oustee in submergence area as per Act 1894 including

solatium

or

SRG= Award with assumption that land is in command area **-** **(minus)** Actual Award for the basis land in submergence area.

The aforesaid relief granted by the appellants to the oustees as SRG is much more than the amount of compensation or amount entitled in R & R Policy as amended on 3.7.2003. In fact, to certain extent, it is in consonance with the provisions contained in Clause (5.4) of R & R Policy, wherein the State is under an obligation to meet the gap of amount between the amount of compensation and the value of the land purchased by the oustees.

53. The appellants have submitted that all the oustees have voluntarily accepted SRG and withdrawn the amount and they stand fully satisfied. In absence of appropriate pleadings and evidence on record, it is not possible for this Court to adjudicate upon the individual claims or issue a direction of sweeping nature. Thus, if an oustee feels aggrieved of what he has received, he may approach the GRA. In case the GRA after adjudication of facts, comes to the conclusion that a particular oustee has not been granted the relief, he is entitled for; the GRA itself would grant the appropriate relief

taking into account the provisions of R & R Policy. In case, either of the parties is aggrieved, it may approach the High Court for appropriate directions.

ENTITLEMENT OF MAJOR SONS FOR AGRICULTURAL LAND IN THE R & R POLICY 1993:

54. So far as the 2nd issue is concerned, the R & R Policy provides for definition clause:

> **Displaced Family:**
>
> "(i) A family composed of displaced persons as defined above shall mean and include husband, wife and minor children and other persons dependent on the head of the family e.g. widowed mother, widowed sister, unmarried sister, unmarried daughter or old aged father.
>
> (ii) Every son/unmarried daughter who has become major on or before the date of notification under Section 4 of the Land Acquisition Act, will be **treated as a separate family.**" (Emphasis added)

55. This Court in **Narmada Bachao Andolan-I,** dealt with the issue of entitlement of major sons of oustees of the Sardar Sarovar Project and held that as it had been provided in the NWDT Award, the sons who had become major one year prior to the date of issuance

of the notification under Section 4 of the Act 1894, for land acquisition, had become entitled to allotment of land.

56. In **Narmada Bachao Andolan – II,** this Court had taken note of the said observation/finding in the aforesaid case and held**:**

> ***"62. Once major son comes within the purview of the expansive definition of family, it would be idle to contend that the scheme of giving "land for land" would be applicable to only those major sons who were landholders in their own rights****. If a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr Vaidyanathan, the definition of "family" would to an extent become obscure. As a* ***major son constitutes "separate family"*** *within the interpretation clause of "family", no meaning thereto can be given*." (Emphasis added)

57. In the instant case, the High Court on this issue held as under :-

> *"There is no separate definition of displaced family given in para 3 of the R&R Policy of 1993. Hence, the same definition as has been given in sub-para 1.1(b) of the R&R policy of 1993 would be applicable to para 3 of the R&R policy and the displaced family in para 3.2 will include husband, wife, minor children and other persons dependent on the head of the family and every son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act but who* ***was part of the larger land owning family***

from whom land was acquired will have to be treated as separate displaced family from whom land is acquired under the Land Acquisition Act. While calculating however the extent of landholding of a displaced family for the purposes of determining the area of land to be allotted to the displaced family, the share of the displaced family without the major son may only be taken. Similarly, while calculating the extent of land to be allotted to the separated family of such major son, the share of the major son in the land may be taken into consideration……we hold that every adult son and his family who was part of ***the bigger family*** *from whom land was acquired would be entitled to allotment of agricultural land in accordance with paras 3 and 5 of the R&R Policy of 1993 for the Omkareshwar Dam project."* (Emphasis added)

58. In view of the above, this Court has to consider as to whether the NWDT Award provided for any entitlement of major sons to allotment of agricultural land, and if not, whether the judgment in **Narmada Bachao Andolan –I** could have been considered as a precedent in **Narmada Bachao Andolan –II**, and whether the High Court has rightly interpreted the terms and conditions of the R & R Policy, as the High Court has proceeded with the assumption that the R & R Policy provides that major sons of oustees i.e. the "large land owning families" and those who had been "part of the bigger family" would be entitled for allotment of agricultural land.

PRECEDENCE -Doctrine:

59. The Court should not place reliance upon a judgment without discussing how the **factual situation fits** in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the **material facts** and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some **distinguishing features**. A little difference in **facts or additional facts** may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in **setting of the facts of a particular case**. **One additional or different fact may make a world of difference between the conclusions in two cases**. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide: **Municipal Corporation of Delhi v. Gurnam Kaur,** AIR 1989 SC 38; **Govt. of Karnataka & Ors. v. Gowramma & Ors.**, AIR 2008 SC 863; and **State of Haryana & Anr. v. Dharam Singh & Ors.** (2009) 4 SCC 340).

PER INCURIAM – Doctrine:

60. Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered, in ignorance of a Statute or other binding authority. While dealing with observations made by a seven Judges' Bench in **India Cement Ltd. etc. etc. v. State of Tamil Nadu etc. etc.**, AIR 1990 SC 85, the five Judges' Bench in **State of West Bengal v. Kesoram Industries Ltd. & Ors.**, (2004) 10 SCC 201, observed as under:-

> *"A doubtful expression occurring in a judgment,* ***apparently by mistake or inadvertence,*** *ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the* ***apparent error should be ignored, far from making any capital out of it****, giving way to the correct expression which ought to be implied or necessarily read in the context, ……. **A statement caused by an** apparent typographical or* ***inadvertent error*** *in a judgment of the Court* ***should not be misunderstood as declaration of such law by the Court.****"* (Emphasis added)

(See also **Mamleshwar Prasad & Anr. v. Kanhaiya Lal** (Dead) by Lrs., AIR 1975 SC 907; **A.R. Antulay v. R.S. Nayak**, AIR 1988 SC

1531; **State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr.,** (1991) 4 SCC 139; and **Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.**, (2011) 1 SCC 694).

61. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

62. Admittedly, the NWDT Award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions/relief over and above the said Award. Thus, the **Narmada Bachao Andolan-I** has been decided with presumption that such a right had been conferred upon major sons by the NWDT Award and **Narmada Bachao Andolan-II** has been decided following the said judgment and interpreting the definition of "family" contained in the R & R Policy. When the two earlier cases were being considered by the Court, it had

not been brought to its notice that the NWDT Award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word "family" at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

63. The Courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in **Hotel Balaji & Ors. etc. etc. v. State of A.P. & Ors. etc. etc.**, AIR 1993 SC 1048 observed as under:

> *"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18: 'a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".*

(See also **Nirmal Jeet Kaur v. State of M.P. & Anr.**, (2004) 7 SCC 558; and **Mayuram Subramanian Srinivasan v. CBI,** AIR 2006 SC 2449).

64. **In re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting,** (1995) 3 SCC 619, this Court observed ***:***

"...None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

DISCRIMINATION:

65. We also have to consider the submissions made on behalf of the respondent No.1 that the denial of allotment to major sons of agricultural land would amount to hostile discrimination as in earlier cases, it had been granted.

66. Unequals cannot claim equality. In **Madhu Kishwar & Ors. v. State of Bihar & Ors.**, AIR 1996 SC 1864, it has been held by this Court that every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.

67. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. (Vide: **Kathi Raning Rawat v. State of Saurashtra**, AIR 1952 SC 123; and **M/s Video Electronics Pvt. Ltd. & Anr. v. State of Punjab & Anr.**, AIR 1990 SC 820).

68. However, in **Vishundas Hundumal & Ors. v. State of Madhya Pradesh & Ors.,** AIR 1981 SC 1636; and **Eskayef Ltd. v. Collector of Central Excise,** (1990) 4 SCC 680, this Court held that when discrimination is glaring, the State cannot take recourse to inadvertence in its action resulting in discrimination. In a case where denial of equal protection is complained of and the denial flows from such action and has a direct impact on the fundamental rights of the complainant, a constructive approach to remove the discrimination by putting the complainant in the same position as others enjoying favourable treatment by inadvertence of the State authorities, is required.

69. The High Court while passing the order had given a much wider interpretation to the R & R Policy making reference to the terms as "**bigger family**" and the "**large land owning family".**

The Court while interpreting the provisions of a Statute, can neither add nor subtract a word. The legal maxim "*a verbis legis non est recedendum*" means from the words of law, there must be no departure. (See: **S.P. Gupta & Ors. v. Union of India & Ors.,** AIR 1982 SC 149; **P.K. Unni v. Nirmala Industries & Ors.,** AIR 1990 SC 933; and **Commissioner of Income Tax, Kerala v. Tara Agencies,** (2007) 6 SCC 429).

<u>INTERPRETATION OF STATUTE</u>:

70. In Principles of Statutory Interpretation by Justice G.P. Singh (12 Edn. 2010), the learned Author has stated as under:

> *"In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things'……A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results." (pp. 131-132)*

71. In **Directorate of Enforcement v. Deepak Mahajan**, AIR 1994 SC 1775, this Court held as under:

> *"Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.*
>
> *In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:*
>
> *'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.'*
>
> *But to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislative inane."*

72. Therefore, an interpretation having a social justice mandate is required. The statutory provision is to be read in a manner so as to do justice to all the parties. Any construction leading to confusion and

absurdity must be avoided. The Court has to find out the legislative intent and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provision of the existing law nugatory. The construction that results in hardship, serious inconvenience or anomaly or gives unworkable and impracticable results, should be avoided. (Vide: **Corporation Bank v. Saraswati Abharansala & Anr**. (2009) 1 SCC 540; and **Sonic Surgical v. National Insurance Co. Ltd.,** (2010) 1 SCC 135).

73. A reasonable construction agreeable to justice and reason is to be preferred to an irrational construction. The Court has to prefer a more reasonable and just interpretation for the reason that there is always a presumption against the law maker intending injustice and unreasonability/irrationality, as opposed to a literal one and which does not fit in with the scheme of the Act. In case the natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction. (Vide: **Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar,** AIR 2008 SC 595; and **Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India** (2009) 2 SCC 1**)**.

74. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it. (Vide: **Union of India v. Ranbaxy Laboratories Ltd.**, AIR 2008 SC 2286).

75. In **Narashimaha Murthy v. Susheelabai**, AIR 1996 SC 1826, this Court held :

> *"The purpose of the law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful."*

76. In **Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate,** AIR 1958 SC 353, it has been held thus:

> *"..the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act."*

77. In **Sheikh Gulfan v. Sanat Kumar Ganguli,** AIR 1965 SC 1839, it has been held as follows:

> *"19…Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in*

which the provision is included, and the policy underlying the statute assume relevance and become material…"

78. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the Court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.

79. Thus, it is evident from the above referred law, that the Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation.

INSTANT CASE:

80. **REHABILITATION PROVISIONS AS PER NWDT AWARD AND STATE-WISE COMPARATIVE PROVISIONS**

S.No.	Item	NWDT Award	Madhya Pradesh	Gujarat	*Maharashtra*
1.(a)	Tenure Holder	xx	xx	xx	xx
(b)	Xx	xx	xx	xx	xx
(c)	Xx	xx	xx	xx	xx
(d)	*Major sons of above all categories of oustees*	***No provision for land allotment.***	*Major son will be treated as separate family. They will be entitled to cash compensation according to the category to which they belong.*	*2 hec. of land to each major son of all categories.*	*1 hec. of land to each unmarried daughter and major son of all categories of oustees with – as cut- off date for major sons and unmarried daughters.*

81. **IMPLICATIONS IF IMPUGNED JUDGMENT IS UPHELD**

Category of oustees	*In case each of the following Categories of oustees lose only one hectare of land*					
	Mr. A (land less)	Mr. B (Losing less than 25% of holding)	Mr. C (Single Khatedar)	Mr. D (Single Khatedar)	Mr. E (E1+E2+ E3) Joint Khate-dars	*Mr. F (F1+F2+F3) Joint Khatedars*
No. of major sons/ daughters	3	3	0	3	0	*F1: 3 sons* *F2: 3 sons* *F3: 4 sons*
Entitlement if contention of Respondent is accepted						
For Self	0	0	2 hect.	2 hect.	3@2 hect. = 6 hect.	3@2 hect. = 6 hect.
For Major sons/ daughters	0	0	0	3@2 hect. = 6 hect.	0	10 @ 2 hect. = 20 hect.
Total Entitlement	*0*	*0*	*2 hect.*	*8 hect.*	*6 hect.*	*26 hect.*

It is apparent that the directions of the Hon'ble High Court regarding land-for-land would lead to grave inequity, and thereby likely to cause undue enrichment of some categories of oustees:

a. Sons of land owning class get better rights than their fathers.

b. Sons of land owning class get better rights than those of land less class.

c. Even though everybody loses same measure of land, some are not entitled to any land while for some it becomes an unimaginable bounty or proves to be bonanza.

82. In case, the view taken by the High Court is upheld, it would have very serious repercussions for the reason that no land had been acquired wherein a major son can independently claim compensation as a matter of right. In such an eventuality, the question of retaining 50 per cent of the compensation could not arise. If it were allowed, it would create hostile discrimination against others like landless persons who have been found to be non-suited by the High Court in the impugned judgment. The High Court has added words like **"larger land owning family"** and **"bigger family"** to justify the relief given to major sons even though such terms do not appear in the R & R Policy or either of the judgments given by this Court earlier.

The charts hereinabove make it crystal clear that there was no provision for allotment of land to major sons in the NWDT Award. Obviously, it has wrongly been mentioned in the earlier judgments of this Court by inadvertence. This requires correction as such an error cannot be perpetuated. The claims of the respondents, if accepted, and the High Court judgment if upheld, would lead to unwarranted results. For some of the families having a large number of major sons, it would lead to a level of unjust enrichment that could never have been envisaged by the Government of Madhya Pradesh. The view taken by the High Court gives rise to pre-supposition (a fiction) of partition of agricultural land amongst the tenure-holder and his major sons. Such a concept would defeat the right of minor sons for partition or claiming the share in the agricultural land and also lead to uncertainty as to whether 75% of the total land of the major son, after partition stood acquired. The plea of discrimination is not available to such major sons of the families, whose land has been acquired for this project, as they cannot be put at par with the major sons of the oustees of the Sardar Sarovar Project. Even if the plea is tenable, such discrimination cannot be held to be conscious or intentional as the State is willing to rectify the mistake. The State has filed an

application to rectify the mistake in the judgment of 2005, as I.A. No. 37 of 2009 for clarification/modifications of the said judgment which is pending consideration.

The view expressed earlier, inadvertently, on a wrong assumption may result in great public loss and would be against larger public interest. There is no prohibition under the law on this Court to locate the error and adopt a correct approach if the Court is convinced that the error exists and its avoidance is necessary to prevent any baneful effect on the general interest of the public or the State. The mistake is manifestly wrong and has a direct impact on the procedure to be adopted for rehabilitation. The impact of allotment cannot be against public good and has to be balanced with an appropriate grant to the oustees. It is, therefore, essential to rectify the mistake.

83. Compensation in the present context has to be understood in relation to right to property. The right of the oustee is protected only to a limited extent as enunciated in Article 300-A of the Constitution of India. The tenure holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area

cannot get expanded or reduced by any fictional definition of the word "family" when it comes to awarding compensation. Compensation is Awarded by authority of law under Article 300-A of the Constitution read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired.

Rehabilitation on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for the State when it relates to the rehabilitation of the already depressed classes like Scheduled Castes, Scheduled Tribes and marginal farmers in order to meet the requirements of social justice.

As noted above, benefit given to a major son was not within the terms of the Award. It was rather a concession given by the States who were parties to the NWDT Award. The said Award, therefore, as

understood in the previous decisions was not at all applicable for the purpose of extending any such grant of benefit to a major son. The concession given by the respective States after the Award was delivered during the course of subsequent negotiations therefore, could not be a part of the Award. The aforesaid decisions, therefore, would not be a binding precedent for the purpose of the present case as it was under some mistaken belief that the Award was understood to have extended the said benefit to major sons also. The High Court therefore, fell into an error by proceeding to assume that a major son would be treated to be a separate family for the purpose of allotment of land also.

84. The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the Act 1894. There was no intention on behalf of the State to have awarded more land treating a major son to be separate unit. This would otherwise bring about an anomaly, as is evident from the chart that has been gainfully reproduced

hereinabove. The idea of rehabilitation was, therefore, not to distribute largesse of the State that may reflect distribution totally disproportionate to the extent of the land acquired. The State has, therefore, rightly resisted this demand of the writ petitioners and, in our opinion, for the High Court to presuppose or assume a separate unit for each major son far above the land acquired, was neither justified nor legally sustainable.

In effect, the major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fictional definition as stated in the impugned judgment. The major son would, however, be entitled to his share in the area which is to be allotted to the tenure holder on rehabilitation in case he is entitled to such a share in the law applicable to the particular State.

85. More so, the view taken by the High Court that the land to be allotted to major sons shall be determined on the basis of his share in the land prior to its acquisition, does not appear to be compatible or in consonance with the terms of R & R Policy which provides for a minimum allocation of 2 hectares. Thus, the policy must be

interpreted to the effect that the major sons of oustees will be entitled to all the benefits under the R & R Policy, except allocation of agricultural land. Each State has a right to frame the rehabilitation policy considering the extent of its resources and other priorities. One State is not bound if in a similar situation, the other State has accorded additional facilities even over and above the policy. The definition of "displaced family" cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in Clause (5) of the R & R Policy. To that extent, the judgment of the High Court is liable to be set aside.

CONCLUSIONS:

86. In view of the above, the direction given by the High Court in paragraph 64 (i) of the judgment, is modified to the extent that the displaced families who have not withdrawn SRG benefits/ compensation voluntarily and submit applications for allotment of land before the Authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R & R Policy, and for that purpose, the appellants must make some government or private land available for allotment to such oustees if they opt for such

land and agree to ensure compliance with other terms and conditions stipulated therein.

In case suitable land is available in the land bank, the same would be offered to such oustees. In case, dispute of suitability of land is raised, it would be adjudicated upon and determined by the GRA. The authorities must render all possible assistance to the oustees to purchase the land by negotiations. In case the land is not available as mentioned hereinabove, the State must ensure compliance of Clause 5.4 of the R & R Policy to the full extent in the cases of the Scheduled Castes/Scheduled Tribes and to the extent of 2 hectares in case of other marginal farmers. In case the extent of the land acquired is more than 8 hectares, the same shall be paid according to the provisions contained therein.

The Government must continue to search for additional land than what is already available in the land bank and to find out the means of its purchase for allotment to the oustees. The Government should also ensure that the allocated land is not encroached upon by the unscrupulous persons.

Direction given by the High Court to allot agricultural land to major sons of the oustees in Paragraph 64 (iii) of the impugned judgment is hereby set aside.

In the instant cases, the R & R Policy or amendment thereto in 2003, has not been under challenge. There was no prayer by the respondents to quash the said amendment. Relief not sought by the party cannot be granted by the Court. More so, the direction has been issued by the High Court to grant relief in the impugned judgment and order taking into account the said amendment. The same is not under challenge at the behest of respondents before us. In such an eventuality, it was not desirable for the High Court to make any comment on the competence of the State to amend the policy and the finding so recorded in Para 38 of the judgment cannot be sustained in the eyes of law, and thus is set aside.

Civil Appeal No. 2082 of 2011

87. The present appeal has been preferred by the appellant/writ petitioners mainly on the 3 issues on which no relief has been granted by the High Court. Therefore, the appeal is limited to the extent of: whether landless oustees are entitled to allotment of agricultural land;

whether the NWDT Award dated 12.12.1979 is applicable to the present project of the Omkareshwar Dam; and, thirdly, whether the oustees of 5 villages which have already been submerged, are entitled to allotment of land in lieu of land acquired, in spite of the fact that the SRG had already been granted to them.

88. The facts and circumstances giving rise to this appeal have already been elaborately mentioned in connected Civil Appeal Nos.2115-2116 of 2011, thus, the same are not repeated here and we proceed to decide the issues involved herein.

89. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that R & R Policy does not provide for land for agricultural purposes to landless persons. However, the Office Memorandum issued by the Ministry of Forest and Environment dated 13.10.1993 granting clearance for the Omkareshwar Dam provided for allotment of land to landless labourers also. The NWDT Award is applicable in the case of the Omkareshwar Dam also for providing the resettlement and rehabilitation of all kinds of oustees of the five villages, whose land had already been submerged in view of the orders of the Court passed, from time to time, though paid

compensation under the Act 1894/SRG, are also entitled for allotment of agricultural land in terms of R & R Policy. Hence, to that extent, the judgment and order of the High Court impugned herein, is liable to be set aside.

On the contrary, the appeal had been vehemently opposed by S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned Senior counsel appearing for the respondents contending that R & R Policy does not provide for allotment of land to landless persons. More so, the clearance given by the Ministry of Forest and Environment stood qualified by the words "as permissible" meaning thereby, the landless labourer shall be entitled to allotment of land in case it is permissible in law for the time being in force or any other policy framed by the State to that effect. They have further submitted that NWDT Award was meant only for the Sardar Sarovar Dam as a water dispute had arisen among the States sharing the water of the Narmada river under the Award and thus the said Award has no application whatsoever so far as the Omkareshwar Dam was concerned. In view of the fact that 5 villages had already been submerged long back and the oustees thereof, had been paid compensation for their land acquired/SRG, the

question of reopening the issue is not permissible. Thus, the appeal is liable to be dismissed.

We have considered the rival submissions made by learned counsel for the parties and perused the record.

90. The Office Memorandum issued by the Ministry of Forest and Environment dated 13.10.1993 granting clearance for the Omkareshwar Dam Project with a condition, stated as under:

> *"(vii) The Rehabilitation Programme should be extended to landless labourers and the people affected due to canal by identifying and allocating suitable land* ***as permissible****. A time bound programme should be submitted by December, 1993."*

91. The High Court has held that the said condition so added stood qualified by the words `as permissible' and thus, the landless labourers would get the land even for agricultural purposes to the extent of 2 hectares (about 5 acres), if it is permissible in law or any other government policy. In addition thereto, the High Court had further taken note of the fact that all other reliefs including the transportation charges, plots for residential accommodation and preference for employment etc. etc., shall be available not only to landless labourers, but also to major sons of such oustees including

landless labourers. As the said condition imposed by the Ministry of Forest and Environment while granting clearance is as stood qualified, and has been subject to any other law for the time being in force or the government policy etc., we do not feel that landless labourers are entitled to allotment of land. More so, the R & R Policy itself provides a particular mode of retaining 50% of the compensation amount and 50% to be recovered in 20 years. As the landless labourers never had any land, they are not entitled to any compensation under the Act 1894, thus, the question of allotment of land to them would not arise. The R & R Policy itself provides that such persons are entitled to get Rs.49,300/- to buy productive employment creating assets etc., and such money can also be used for acquiring land. Such terms cannot be interpreted to mean that the landless labourers become entitled to allotment of land for agricultural purpose to the extent of 2 hectares. The policy is to be read as a whole, as it is not permissible for a party to pick up one word or phrase or one sentence and claim relief on the basis of the same. In case, the major sons, as we have already held hereinafter, are not entitled to allotment of agricultural land, the question of landless labourers being entitled to the same does not arise. More so, the

words `as permissible' cannot be given a complete go-bye. In **Gurbax Singh v. State of Punjab & Ors**., AIR 1967 SC 502, this Court while interpreting the provisions of Punjab Security of Land Tenures Act, 1953, interpreted the words `permissible area' while determining the surplus area and held that permissible area means that the land owner is entitled to reserve land not exceeding the said area and the balance remains surplus area. Therefore, permissible area was defined as an area which is permissible for a person to retain under the provisions of that Act. Thus, permissible area can legitimately be defined as the area reserved under the Act. Similarly, in **Municipal Committee, Patiala v. Model Town Residents Association & Ors.,** AIR 2007 SC 2844, this Court interpreted the phrase `permissible classification' to mean what is permissible in law. In **Jagjit Cotton Textile Mills v. Chief Commercial Superintendent, N.R. & Ors**., (1998) 5 SCC 126, while interpreting Rule 161A of the Indian Railways Conference Association Rules and Section 73 of Railways Act, 1989, construing the term "permissible carrying capacity", this Court held that the normal carrying capacity means, it cannot exceed the upper limits prescribed under the Statute/law.

92. The Government of Madhya Pradesh in Narmada Valley Development Project had issued its Omkareshwar Multipurpose Project, Rehabilitation and Resettlement Plan in August, 1993, according to which landless persons had been defined as:

> *"1.2(a) Landless Persons:*
> *A person, who, whether individually or jointly with members of his family, does not hold any agricultural land or does not have any land for agriculture....."*

Clause 6 thereof further provided for the families of landless agricultural labourers, a rehabilitation grant of Rs.11,000/-; transport assistance; allotment of plots in rural areas for residential purpose; and various other special financial assistance. The relevant part of Clause 9.1 and 9.2 reads as under:

> *"9.1 The Narmada Valley Development Authority will ensure appropriate arrangements for discharge these responsibilities within a stipulated time-frame. In the interim period special financial assistance will be given to supplement the income of the landless agricultural labourers and landless scheduled caste and schedule tribe oustee families for three year in descending order which shall be in addition to the grant in aid mentioned in Para 6.1. This period of three years will be calculated from the payment year of the grant in aid under Para 6.1. Thus, a landless oustee family will get a special income support amount of Rs.8,250/-, Rs.5,500/- and Rs.2,750/- in the second, third and*

fourth year of displacement respectively. In addition, a further sum of Rs.12,500/- shall be kept in reserve for every landless oustee family and shall be made available for executing an independent viable scheme for earning livelihood or for purchase of productive assets. The above support amounts will be 75%, 50% and 25% respectively of the poverty line and the amount to be kept in reserve is also linked with the poverty line. If the scale of the poverty line is revised, the amount of special support amount and the reserve shall also be proportionately increased accordingly. For other landless special financial assistance of Rs.19,500/- will be given for the purpose of productive assets.

9.2 Amount to be paid to the landless displaced families shown in Para 6.1 and 9.1 will be credited to a special fund by the NVDA and can be made available to the oustees for acquisition of a suitable productive asset, including land, in one or more installments as required."

93. It has been submitted by Shri Parekh that the word `land' mentioned in Clause 9.2 means that the government has to provide financial assistance for acquisition of suitable land in one or more installments, as required. Such an interpretation is not permissible for the simple reason that the area mentioned in Clause 9.2 is subject to the provisions of paras 6.1 and 9.1. Para 6.1 provides for a claim to the tune of Rs.11,000/- and para 9.1 deals with other grants as mentioned hereinabove. Therefore, such an interpretation is not

permissible. Had it been the intention of the Ministry of Forest and Environment to impose such a condition, the word 'permissible' would not have been used. More so, it would have asked the State Government to amend the R & R Policy accordingly. Thus, in view of above, we do not see any force in the contentions made by the appellant. The reliefs sought by the appellant for landless labourers are not permissible.

Applicability of the Award:

94. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that under the provisions of Act 1956, a Tribunal was constituted and it had made the Award on 12.12.1979 and it provides for various reliefs to the oustees and all the benefits granted by the said Award to the oustees are applicable in case of the oustees of the Omkareshwar Dam Project. The High Court has rejected the said contention of the appellant on the ground that the Tribunal had been constituted to resolve the water dispute as defined under Section 2(c) of the Act, 1956, for the reason that a dispute had arisen between various States i.e. the States of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. The matter was limited to resettlement and rehabilitation of 6147 oustee families spread over in 158 villages in

the State of Madhya Pradesh as a consequence of Sardar Sarovar Project. Therefore, the High Court after considering the entire arguments, has come to the conclusion that the Tribunal was considering only the resettlement of the aforesaid oustee families spread over 158 villages in the State of Madhya Pradesh and, therefore, the Tribunal was concerned only with those persons and it did not take in its ambit any other future plan or project. The findings recorded by the High Court read as under:

> *"Thus, all the aforesaid directions in the NWDT Award were in relation to the Sardar Sarovar Project and were not applicable to displaced families affected by the acquisition of land for the Omkareshwar Project."*

95. Shri Sanjay Parekh could not point out anything from the Award which may be explained or interpreted to suggest that the terms of the Award would be applicable to any project to be taken by the State of Madhya Pradesh in the future. More so, the Award itself provides for distribution of water among the States and to regulate the amount of water distributed by the Tribunal. Clause 11 thereof, dealt with the directions regarding acquisition of submerged land and rehabilitation of persons displaced by the Sardar Sarovar Dam. Sub-clause III(1) thereof, fastened the total liability of compensation for

land acquisition and rehabilitation etc. on the State of Gujarat, as it reads as under:

> *"Gujarat shall pay to Madhya Pradesh and Maharashtra all costs including compensation, charges and expenses incurred by them for or in respect of the compulsory acquisition of lands required to be acquired as aforesaid."*

96. Sub-clause IV provides for provisions for rehabilitation and it reads as under:

> *"IV(1) : According to the present estimates the number of oustee families would be 6147 spread over 158 villages in Madhya Pradesh, 456 families spread over 27 villages in Maharashtra, Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms hereinafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat. For oustee families who are unwilling to migrate to Gujarat, Gujarat shall pay to Madhya Pradesh and Maharashtra the cost, charges and expenses for establishment of such villages in their respective territories on the norms as hereinafter provided."*

97. Clause XIV thereof, provides for setting up of machinery to implement the decision of the Tribunal. Clause VIII(3) provides for future dams etc., only to the extent that any further projects in Madhya Pradesh shall not infringe the rights of the States created under the Award.

Thus, we do not find anything in the Award which provides any benefit to the oustees of the Omkareshwar Dam or suggests that the Award is applicable in the present case also. We do not find any reason to take a contrary view than what has been taken by the High Court on the issue.

Entitlement to land in lieu of submerged land:

98. In the instant case, we are concerned with the rights and entitlements of the oustees of the 5 villages which had already been submerged. In fact, the project has affected the residents of 30 villages. Five villages had already been submerged. Before the High Court, the question arose as to whether the oustees of those 5 villages which have already been submerged, were entitled to the benefits of R & R Policy and they had been Awarded only the compensation/ SRG and the area of these 5 villages has been submerged during the pendency of litigation before the High Court and this Court. This Court while disposing of the Civil Appeal Nos. 2115-2116 of 2011 against this very judgment vide order dated 14.5.2008, has issued a large number of directions and also asked the oustees to approach the GRA. However, Clause 4 thereof reads as under:

"The above interim direction will come in the way of the State Government making efforts to provide solution for land wherever required in terms of its R & R Policy."

99. The High Court decided the issue observing that as submerging of the 5 villages took place in view of the orders by the courts and the oustees had been paid compensation/SRG and this Court had passed the order not to submerge the remaining 25 villages till the completion of rehabilitation took place, it was not proper for the High Court to direct the respondents to restore the status quo ante for the 5 villages in issue.

100. There are claims and counter claims in regard to voluntary acceptance of compensation amount/SRG by the oustees of those 5 villages. S/Shri R.S. Prasad and P.S. Patwalia, learned senior counsel appearing for the respondents, have relied upon the report of GRA dated 28.4.2007 to show that all those persons have accepted the benefit of SRG and nothing remains to be adjudicated upon.

101. The record does not contain sufficient material to adjudicate upon the factual aspects involved herein. The GRA is the best forum to decide the claims of such persons. However, in view of the settled

legal proposition that no person should suffer from an act of the Court and to ensure that the oustees of the 5 villages which have already been submerged under the orders of the Courts, do not face hostile discrimination at the hands of the authorities; they shall be entitled to the relief to which the other oustees are entitled in Civil Appeal Nos. 2115-2116 of 2011.

In case, any of the oustees of these 5 villages is not satisfied with what he has been Awarded by the State Authorities and he approaches the GRA in his personal name and establishes his case, he would be entitled to the relief granted by us in Civil Appeal Nos. 2115-2116 of 2011.

Civil Appeal Nos.2083--2112 of 2011

102. These appeals have arisen out of the impugned order dated 23.9.2009, passed by the High Court of Madhya Pradesh at Jabalpur, in Interlocutory Application Nos. 4679 and 4804 of 2009 in Writ Petition No. 4457 of 2007, by which the High Court has allowed the said applications and directed the appellants to rehabilitate the oustees so far as the land measuring 284.03 hectares in the 5 villages, namely, i.e. Dharadi, Nayapura, Guwadi, Kothmir and Narsinghpura is

concerned, and not to withdraw the acquisition proceedings in respect of the said area.

103. S/Shri R.S. Prasad and P.S. Patwalia, learned senior counsel appearing on behalf of the appellants, have submitted that the High Court has committed an error by directing the rehabilitation of the occupants of the land in dispute in the said 5 villages, recording a wrong finding; that as the possession of the land had been taken by the government the acquisition proceedings cannot be reversed. The land stood vested in the State; the land in dispute would stand submerged actually and, therefore, withdrawal of the acquisition proceedings was not permissible, though the land acquisition proceedings had not been completed and the actual physical possession of the land in dispute has not been taken. The persons/tenure holders interested are still in possession of their respective lands. Therefore, the appellants have a right, not to acquire the land. Entries in revenue records after mutation do not confer any title or interest in the property. The land in dispute would not be submerged even temporarily unless the flood situation occurs on back water level. Therefore, the authorities had taken a decision on

2.4.2009 to abandon the land acquisition proceedings. The land in dispute would be water locked unless the height of the road is enhanced. However, considering the cost of rehabilitation as very high, the authorities have taken a decision to raise the level of the road to the extent that no part of the land in dispute would ever be submerged or water locked and people residing there or occupying the land would have access to the said land. Therefore, the appeals deserve to be allowed and the impugned order of the High Court is liable to be set aside.

104. On the contrary, Shri Sanjay Parekh, learned counsel appearing for the respondents, has submitted that land stood vested in the State free from all encumbrances as actual physical possession of the land in dispute had been taken in December, 2007; tenure holders thereof stood evicted; not a single tenure holder is in possession of its holdings today; mutation entries had been made in the revenue records; Award had been made by the Land Acquisition Collector; money had been deposited in the treasury by the appellant, as it was not accepted by the oustees for the reason that they wanted rehabilitation rather than compensation or SRG, some people had got

the amount of compensation enhanced by filing references under Section 18 of the Act 1894. Hence, the question of denotifying the said land under Section 48 of the Act 1894, at this stage does not arise. The appeals are devoid of any merit and are liable to be dismissed.

105. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

106. In the instant case, a huge chunk of land was notified under Section 4 of the Act 1894, in these five villages on 9.11.2007 and 10.11.2007. Section 6 declarations were issued on 20.11.2007, 22.11.2007 and 23.11.2007. Notices under Section 9 were issued on 22.11.2007 and 23.11.2007 and the date of hearing fixed on 7.12.2007 and 8.12.2007. Awards were made on 20.12.2007, 22.12.2007 and 26.12.2007. Subsequent thereto, a letter was written by the NHDC, the company on 3.8.2007 to the Member (Rehabilitation), Narmada Valley Development Authority for approval of land acquisition of these five villages, which reveals that after having surveyed the area, there were certain practical difficulties in raising the level of the roads above BWL in respect of certain areas (land in dispute) because the

level of the agricultural lands is lower than the BWL. Therefore, the land would be submerged in the back water submergence and it would require an amount of 11 crores to raise the level of the roads upto BWL. Thus, acquisition of remaining 284.03 hectares of land of these five villages was requested to be approved for acquisition.

However, it is evident from the letter dated 5.10.2007 of the NVDA that the land in dispute measuring 284.03 hectares in the said five villages would not be submerged, in fact, it would be water locked, as it reads that "some area of a village becoming island or houses surrounded by flood or a village which has become an unviable unit". The acquisition of 284.03 hectares of land of five villages was approved and grant of an amount of Rs.550 lakhs was made.

107. By letter dated 2.4.2009, the previous plan was reconsidered in respect of acquiring the said land for five villages considering that the cost of rehabilitation would be much more than raising the level of the road at the cost of 11 crores, which would prevent this area from being water locked.

108. Therefore, the case of the State had been that the land in dispute measuring 284.03 hectares would not be submerged temporarily or permanently, rather it may at the most become in-accessible at the time of highest flood situation exceptionally and in case the level of the road is raised, it may work as embankment and this land would not be submerged. Thus, on this premise, the authorities thought it proper to abandon the acquisition proceedings.

109. The State authorities have pleaded before the High Court by filing rejoinder affidavit that the standard practice in dam projects involving submergence in India as prescribed by Central Water Commission (CWC) that all lands and properties or the houses are acquired upto full reservoir level (FRL) and only properties or the houses are acquired above FRL upto the Back Water Level (BWL). The lands above FRL will no doubt, be under water upto BWL for a few hours during floods due to back water and the lands will be benefited due to silting during that period. The land which remains temporarily under water above FRL and upto BWL is not acquired as after a few hours the backwater recedes and the land is available for normal agricultural purposes. The lands about 5 to 10 feet below FRL should also not be acquired as these lands are likely to come out of

water by 15th December every year as the water is gradually used from the dam for irrigation and/or power generation. Presently the practice is that the land which remains submerged under water temporarily is generally given on pattas to farmers as it is fit for agricultural purpose.

110. The order of the High Court dated 22.6.2007 in the interim application filed by the respondents reads as under:

> "*....The consequence is that the five villages namely Gunjari, Paladi, Sailani, Bakhatgarh and Rampura could be affected by the submergence at 189 M and its back water on account of the closure of the radial and sluice gates of Omkareshwar Dam.*
>
> *Regarding the other villages, the case of the petitioner as well as the respondents contesting before us is that rehabilitation measures are yet to be completed in these villages and that these villages were not to be submerged at 189 M on account of the closure of the radial and sluice gates of Omkareshwar dam. We are of the considered opinion that Court takes up the matter and finally decides the grievance of the petitioner with regard to rehabilitation measures. The respondents should not severe electricity and water supply and demolish pubic buildings such as schools etc. in these 25 other villages or take up any coercive step which would force the oustees to leave the villages during the pendency of the writ petition and until the oustees receive all their rehabilitation benefits. We accordingly restrain the respondents from severing electricity and water supplies and demolishing public buildings such as schools etc. in the other 25 villages and*

from taking any coercive step which will force the oustees to leave these villages during the pendency of the writ petition or until further orders passed by this Court."

111. So far as the acquisition of land in such a situation is concerned, even the rehabilitation schemes under the NWDT Award, provided that the BWL at the highest flood level in the Sardar Sarovar would be worked out by the CWC in consultation with the States of Madhya Pradesh and Gujarat. The other relevant part reads specifically "the lands which are to be compulsorily acquired".

112. A reference Award made in this case on 4.8.2009 also particularly reveals that "the property acquired under the project will not be covered by water, but after filling of water, it will be difficult for the villagers to reach upto that level" and the symbolic possession had been taken on 8.12.2007 as is evident from para 29 of the said Award.

113. In the instant case, the issue to be determined is whether it is necessary to acquire this land compulsorily, likely to be submerged temporarily or permanently and also, whether the acquisition proceedings had reached the stage of no return, i.e. it cannot be abandoned. Undoubtedly, most of the land in these five villages

which was likely to be submerged temporarily and permanently below the FRL plus MWL and land affected by back water resulting from MWL plus 141.21 mtrs. (460 ft.) had already been acquired and there is no dispute in respect of the same. The dispute remains only in respect of 284.03 hectares of land in these five villages, wherein BWL in exceptional floods etc., may make the said land water locked though it may not be submerged permanently.

Whether submergence temporarily for a very short period in an exceptional flood situation, warrants acquisition of the land in dispute?

114. The High Court while dealing with the said applications did not deal with the issue specifically as to whether the possession of the land has actually been taken or even symbolic possession has been taken by the State; as to whether the persons interested have been evicted from the said land; or they have voluntarily abandoned their possession; or they are still in physical possession of the land; or as to whether after being evicted they had illegally encroached upon the land in dispute. A direction has been issued observing as under:

> *"The lands in these 5 villages of the oustees were acquired by notifications issued under the Land*

Acquisition Act, and the NVDA has now passed an order on 2.4.2009 saying that the land/property of these 5 villages shall not be acquired and the action taken till now be dropped as per the provisions of law…….The respondents, therefore, will have to provide all the rehabilitation benefits to the villagers of the 5 villages and for the purpose of rehabilitation, the order dated 2.4.2009 of the NVDA is of no consequence. The two IAs stand disposed of."

115. The appellants herein have raised an objection that the tenure holders of the said land are still in actual physical possession and they had never been evicted. However, on behalf of the respondent i.e. Narmada Bachao Andolan, Shri Alok Agrawal, Chief Activist of the organisation, has filed the counter affidavit dated 1.2.2010 before this Court, wherein it has specifically been mentioned as under:

> (a) The acquired lands/properties of these 5 villages stood already vested in the State. The State is not competent to withdraw the land acquisition proceedings.
>
> (b) The order dated 2.4.2009 as not to acquire the land of the five villages is a nullity and void *ab initio* because **the possession of the lands has already been taken**. The land has already vested in the State. This may be seen from the judicial orders of Reference Courts Devas; the land record of the revenue authorities of the State Government, the order of the Land Acquisition Officer and the affidavits of the concerned oustees which were placed on record before the said authorities.
>
> (c) The order of the Land Acquisition Officer dated 14.8.2008 to Tahsildar, Bagli district Devas asking for

mutation in favour of NVDA, makes it evident that as the land acquisition proceedings in question stood completed and possession of the land had been taken by the State.

(d) The order in mutation proceedings had never been challenged by NVDA and thus, attained finality and it makes it clear that the possession is with the NVDA.

(e) As per Section 117 of the M.P. Land Revenue Code, the record of rights entered in the land records is presumed to be correct, until the contrary is proved.

(f) Information received from the Tahsildar, Bagli under the Right to Information Act reads that the lands and houses of these 5 villages had already been transferred in favour of NVDA.

(g) The Reference Court recorded a judicial finding that the possession of concerned land/houses of these villages was taken on 8.12.2007. On this basis, the Reference Court directed the payment of interest on the compensation amount from the recorded date of possession, i.e. 8.12.2007 upto the date of payment @ 9% p.a. for one year and 15% p.a. after one year.

(h) The oustees of the five villages had filed a large number of affidavits before the authorities/courts concerned stating **that possession of their lands/properties acquired had been taken in December 2007.** (Emphasis added)

116. There are claims and counter claims regarding "taking possession of the land". It is submitted on behalf of the appellants that symbolic possession in the facts and circumstances of the case

does not meet the requirement of law and, therefore, the State has a right to withdraw the acquisition proceedings. On the contrary, learned counsel appearing for the respondents would submit that taking of actual physical possession of the land is not necessary and taking symbolic possession is enough. More so, such a submission has become merely academic, as the oustees are not in actual physical possession of the land in dispute.

117. The question does arise as to what is the meaning of taking possession – whether it is taking of actual physical possession or symbolic/paper possession which would be sufficient to meet the requirement of law.

118. In **Balwant Narayan Bhagde v. M.D. Bhagwat & Ors.**, AIR 1975 SC 1767, this Court while dealing with the issue, referred to various provisions of the Code of Civil Procedure, 1908 particularly Order XI Rules 35, 36, 96 and 97 and came to the conclusion :–

> *"19……. If the property is land over which does not stand any building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. A different mode of delivery is prescribed in the Code in the rules*

aforesaid in regard to a building, with which we are not concerned in this case."

119. In **State of T.N. & Anr. v. Mahalakshmi Ammal & Ors.**, (1996) 7 SCC 269, this Court held as under:

"Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm".

120. Similarly in **Balmokand Khatri Educational & Industrial Trust, Amritsar v. State of Punjab & Ors.**, (1996) 4 SCC 212, this Court held as under:–

"It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. ***The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession*** *of the land."*

(Emphasis added)

121. In **P.K.Kalburqui v. State of Karnataka,** (2005) 12 SCC 489, this Court held that if the land is vacant and unoccupied, taking symbolic possession by the State Government, would amount to taking possession. In the said case, in spite of the fact that symbolic possession of the vacant land had been taken, the Hon'ble Minister

directed the issuance of a Notification under Section 48 of the Act 1894 on the basis of his understanding of the law that symbolic possession did not amount to actual possession and that the power to withdraw from acquisition could be exercised at any time before actual possession was taken. This Court has held as under:-

> *"There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken… such possession would amount to vesting the land in the Government."*

122. In **National Thermal Power Corporation v. Mahesh Datta & Ors.**, (2009) 8 SCC 339, after resorting to the urgency clauses under Section 17 of the Act 1894, a possession certificate had been issued on behalf of the Collector, Ghaziabad on 16.11.1984 making it evident that possession of lands in question therein, had been taken. After making of the Award under Section 11 in some cases, references under Section 18 of the Act 1894 had also been decided by the District Judge, Ghaziabad, vide order dated 12.10.1993 and persons aggrieved approached the Allahabad High Court for enhancement of compensation. It was at this stage that the NTPC Ltd. realized that it

would not be possible for certain reasons for it to have the power plant on the land under acquisition and site thereof should be shifted. Thus, *inter-alia* on the premise that possession of the entire land notified under Section 4 of the Act 1894 had not been taken, the State of U.P. issued a Notification dated 11.11.1994 under Section 48 of the Act 1894, denotifying the land. The said notification was challenged by the "persons interested" therein by filing the writ petition before the High Court. The writ petition was allowed by the High Court holding that mere symbolic possession was enough to meet the requirement of taking possession under Section 16 of the Act 1894 and on taking such symbolic possession, the land vested in the State free from all encumbrances could not be divested.

This Court held that taking over of possession in terms of the **provisions of the Act would however, mean actual possession and not symbolic possession**. The Court further observed:

> "27. *When possession is to be taken over in respect of the fallow or parti land, a mere intention to do so may not be enough…….* ***If the lands in question are agricultural lands, not only actual physical possession had to be taken*** *but also they were required to be properly demarcated…."*
>
> *xx* *xx* *xx* *xx*

*"44……**The burden of proof could be discharged only by adducing clear and cogent evidence…..**"*

(Emphasis added)

123. In this regard, it may also be pertinent to deal with mutation proceedings heavily relied upon by the respondent no. 1. Mutation proceedings are much more in the nature of fiscal inquiries. "Mutation of a property in the revenue record does not create or extinguish title, nor has it any presumptive value of title. It only enables the person, in whose favour the mutation is entered, to pay the land revenue in question." (Vide: **Thakur Nirman Singh & Ors. v. Thakur Lal Rudra Pratap Narain Singh,** AIR 1926 PC 100; **Smt. Sawarni v. Inder Kaur & Ors.,** AIR 1996 SC 2823; **R.V.E. Venkata Chala Gounder v. Arulmign Ciswesaraswamy & V. Temple & Anr.**, AIR 2003 SC 4548; and **Suman Verma v. Union of India & Ors.**, (2004) 12 SCC 57).

Therefore, entries in the revenue record are of no assistance to determine the present controversy.

124. In view of the above, law on the issue can be summarized to the effect that no strait-jacket formula can be laid down for taking the possession of the land for the purpose of Sections 16 and 17 of the Act

1894. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land. In that case, actual physical possession is required to be taken. There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure holder would be sufficient.

125. In the instant case, in view of the fact that land in dispute is an agricultural land and has 167 dwelling houses, law in fact requires taking over the actual physical possession. The respondent no. 1 has asserted that the tenure holders are not in possession of the said land. We considered it proper to appoint a Commissioner and to have his report. Thus, vide order dated 24.2.2011, this Court requested the District Judge, Indore to have an inspection of the lands in dispute in five villages and submit the report as who is in actual physical possession of the same.

126. In pursuance of our direction dated 24.2.2011, Shri M.K. Mudgal, learned District and Sessions Judge, Indore (M.P.) has submitted a detailed report after having conducted spot inspections and examining all the tenure holders in respect of the land in dispute in presence of Shri Alok Agrawal, Chief Activist of Narmada Bachao Andolan, (who remained present in this Court throughout the proceedings also and had been instructing the learned counsel for the said party) and recorded the following findings of fact:

> (1) So far as the land in dispute in villages Dharadi, Guadi, Kothmir, Nayapura and Narsinghpura, having an area of 284.03 hectares is concerned, the original tenure holders are in actual physical possession;
>
> (2) The Bhumiswamis (tenure holder) had sown the crops on the said land;
>
> (3) They have admitted that they had been sowing the crops even after acquisition proceedings.
>
> (4) The tenure holders are in possession of the acquired land on the ground that they had still not been rehabilitated as per the scheme of the State Government. Therefore, they are compelled to continue growing the crops and also using the other parts of the land for habitation.

(5) They are in possession of their respective lands already acquired as they have not yet been offered the land in lieu of the land so acquired and they would make a shift from the acquired land after compliance of the said obligation by the State.

The report concludes as under:

> *"Therefore, on the spot inspection and the recorded evidence, there is no doubt in my mind to conclude that the standing crops have been sown by the former Bhumiswamis and the acquired lands of five villages in questions are actually in possession of the former Bhumiswamis even now. It has also got to be deduced further* ***that N.V.D.A. has never been in possession of*** *the aforesaid lands since the acquisitions of the same."* (Emphasis added)

127. We have seen the D.V.Ds. and C.Ds. of the videos, prepared during the time of inspection by District Judge, Indore in the presence of hundreds of tenure holders and officials. It is evident from the same that the tenure holders identified their land in presence of Shri Alok Agrawal, the social activist. The entire land is having wheat, cotton, maize and millet crops. The said tenure holders have admitted that they had been cultivating the land for last several years and they had never been dispossessed from the land in dispute by the State. Shri Agarwal had been shown advancing legal submissions before the District Judge,

Indore, justifying why the original tenure holders are still in actual/physical possession of the land.

128. The District Judge, Indore, has recorded the statements of all the tenure holders. For example, we quote the statement of one Shri Devi Singh S/o Pahar Singh r/o Village: Nayapura, Post: Ratanpur, Tehsil: Bagli, District: Devas, Madhya Pradesh. The same reads as under:

> *01 - My land is in Village Nayapura. The land is in Shamlati, its area is approximately twenty acres. The said land is affected by the Omkareshwar Dam Project. On 8th December, 2007, the then Land Acquisition Officer, Shri Chaturvedi came to Village Nayapura, gathered the farmers together and informed them alongwith me that the land no longer belongs to any of us and it has now become the State Government's land and the possession of the said land was with the State. At that time, the land was vacant.*
>
> *02- From that day onward, the Government has not been collecting land revenue for the said land and the concerned society has stopped extending the facilities of providing seeds and fertilizers. I alongwith other farmers have submitted an affidavit in this regard in the High Court at Jabalpur. Under the Resettlement & Rehabilitation Scheme, we were supposed to get land in lieu of land acquired. We had been shown land in village Khorda, Tehsil Harsud, but some other people had already encroached upon some of that land and some of it was grazing land which was unfit for agriculture. That is why we have not taken the land that was offered to us.*
>
> *03 - We have not yet been given land as under the Rehabilitation Policy, that is why we are cultivating the*

acquired land. At present our crop is standing on the site. As soon as we get land under the Rehabilitation Policy, we will vacate possession of the acquired land.

04 - Yesterday, my land was inspected by the District Judge, Indore. My crops were found to be standing at the site, which was taken on record and witnessed by me.

The record was read aloud to the deponent and he agreed that it was correct.

Signed at my instruction
Sd/-
(M.K. Mudgal)

129. In view of the above, this becomes crystal clear that none of the tenure holders, so far the land in dispute is concerned, has been evicted/dispossessed. All the tenure holders are enjoying the said land without any interference. The tall claims made by the respondents before the High Court were totally false. The High Court was not justified in entertaining their applications in this regard, without verifying the factual aspects.

130. In such a fact-situation, as the actual physical possession has not yet been taken by the authorities and the entries in the revenue records etc. are not the conclusive proof, therefore, the State Government is competent to exercise its power under Section 48 of the Act 1894. However, it will be subject to the decision on another

relevant issue regarding submergence of the land in dispute permanently or temporarily which is to be considered hereinafter.

131. Before adverting to the next issue, it is desirable to deal with the conduct of the NBA. The question is not of justification of the tenure holders to retain possession of the land, rather it had emphatically been argued by Shri Sanjay Parekh, learned counsel appearing for the said applicant/respondent, that powers under Section 48 of the Act 1894 could not be resorted to because the tenure holders had already been physically dis-possessed and land stood vested in the State. Therefore, the same could not be divested. The matter was argued by Shri Sanjay Parekh at great length to impress upon the Court that the tenure holders had been actually dis-possessed long ago. This fact was denied by the State. It was only after considering the rival submissions on behalf of the parties that this Court thought it fit and appropriate to have a spot inspection report and then the District Judge, Indore, was asked to make a local inspection and submit the report. The report has been made after making an inspection of the area and recording statements of the tenure holders in presence of Shri Alok Agrawal, Chief activist of NBA and thus, we accept the same. It is evident from the said report that statements

made by the said applicant/respondent in the Court, in this regard are factually incorrect and false. The Court has been entertaining this petition under the bona fide belief that NBA was espousing the grievance of inarticulate and illiterate poor farmers, with all sincerity and thus, would not make any misleading statement. However, our belief stands fully belied. Applicant/respondent made pleadings and advanced arguments without any basis only to secure unwarranted benefits to those tenure holders. In the instant case it stands discredited totally in the eyes of this Court. This Court had been a little careful and cautious in this regard, which has exposed the true picture.

132. In such a fact-situation, the NBA not having personal interest in the case, cannot claim to be *dominus litis*. Thus, it ought to have acted at every stage with full sense of responsibility and sincerity. Earlier also, this Court in **Narmada Bachao Andolan v. Union of India & Ors.,** (1998) 5 SCC 586, has disapproved the conduct of the Narmada Bachao Andolan and described it to be most unfortunate that it had celebrated the 4th anniversary of the stoppage of work of the dam under the interim orders of the Court. This Court found it to be an obstruction in the way of implementing the R & R Policy.

However, at that time this Court was assured by the said NBA that they "shall not directly or indirectly give any cause for concern by this Court." But, in our opinion, it has not been able to keep its solemn undertaking given to this Court.

PUBLIC INTEREST LITIGATION:

133. It has often been stated that PIL jurisdiction should be exercised cautiously in matters that primarily require the attention of the democratic process, or the State or those issues whose crevices and complexities the court may not easily unravel, and comparatively generously in cases involving public interest of sections of people for whom the administration of justice and its reach are not effective and the rights delivery processes, are shown to be weakened by power and influence. (Vide: **R. and M. Trust v. Koramangla Residents Vigilance Group & Ors.**, AIR 2005 SC 894).

134. Where the cause of action is genuinely in the general public interest, the court will relax the requirement of *bona fides* and appoint an *amicus curiae* to deal with the matter and keep the matter out of the power of the original applicant. [Vide: **M/s Holicow Pictures Pvt.**

Ltd. v. Prem Chandra Mishra & Ors. , AIR 2008 SC 913; and **A. Abdul Farook** (supra)].

135. The 'rights' of the public interest litigant in a PIL are always subordinate to the 'interests' of those for whose benefit the action is brought. The status of *dominus litis* could not be conferred unreflectively or for the asking, on a PIL petitioner as that would render the proceedings "vulnerable to and susceptible of a new dimension which might, in conceivable cases be used by persons for personal ends resulting in prejudice to the public weal". (vide: **Sheela Barse v. Union of India & Ors.,** AIR 1988 SC 2211).

136. The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the PIL process for were the litigant to act for other oblique considerations, the application will be rejected at the threshold. Measuring the 'seriousness' of the PIL petitioner and to see whether she/he is actually a 'champion' of the cause of the individual or the group being represented, is the responsibility of the Court, to ensure that the party's procedural behaviour remains that of

an adequate 'champion' of the public cause. (Vide: **The Janata Dal v. H.S. Chowdhary & Ors.**, AIR 1993 SC 892; **Kapila Hingorani v. State of Bihar**, (2003) 6 SCC 1; and **Kusum Lata v. Union of India & Ors.,** (2006) 6 SCC 180).

137. The constitutional courts have time and again reiterated that abuse of the noble concept of PIL is increasing day-by-day and to curb this abuse there should be explicit and broad guidelines for entertaining petitions as PILs. This Court in **State of Uttaranchal v. Balwant Singh Chaufal and Ors.**, (2010) 3 SCC 402, has given a set of illustrative guidelines, *inter alia*:

> (i) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
>
> (ii) The court should also ensure that there is no oblique motive behind filing the public interest litigation etc. etc.

Therefore, while dealing with the PIL, the Court has to be vigilant and it must ensure that the forum of the Court be neither abused nor used to achieve an oblique purpose.

MISLEADING STATEMENT AMOUNTS TO CRIMINAL CONTEMPT

138. A person seeking relief in public interest should approach the Court of Equity, not only with clean hands but also with a clean mind, clean heart and clean objective. Thus, he who seeks equity must do equity. The legal maxim *"Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem"*, means that it is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of oppression or abuse or means to subvert justice.

139. "The interest of justice and public interest coalesce. They are very often one and the same". Therefore, the Courts have to weigh the public interest vis-à-vis the private interest. A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the Court and such a litigant is not required to be dealt with lightly. Thus, a litigant is bound to make "full and true disclosure of facts". The Court is not a forum to achieve an oblique purpose.

140. Whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to

proceed further with the matter. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the concealed fact must be material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim *"Juri Ex Injuria Non Oritur"* means that a right cannot arise out of wrong doing, and it becomes applicable in a case like this. (Vide: **The Ramjas Foundation & Ors. v. Union of India & Ors.,** AIR 1993 SC 852; **Noorduddin v. Dr. K.L. Anand,** (1995) 1 SCC 242; **Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors.,** AIR 1997 SC 1236; **Sabia Khan & Ors. v. State of U.P. & Ors.,** (1999) 1 SCC 271; **S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.,** (2004) 7 SCC 166; and **Union of India & Ors. v. Shantiranjan Sarkar,** (2009) 3 SCC 90).

141. It is a settled proposition of law that a false statement made in the Court or in the pleadings, intentionally to mislead the Court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the Court, for the reason

that causing an obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity". (Vide: **Naraindas v. Government of Madhya Pradesh & Ors.,** AIR 1974 SC 1252; **The Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries & Anr.,** AIR 1980 SC 946; and **Afzal & Anr. v. State of Haryana & Ors.,** (1996) 7 SCC 397).

142. In **K.D. Sharma v. Steel Authority of India Limited & Ors.,** (2008) 12 SCC 481, this Court held that:

> *"Prerogative writs……. are issued for doing substantial justice. It is, therefore,* ***of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything*** *and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or* ***the petitioner is guilty of misleading the court****, his petition may be dismissed at the threshold without considering the merits of the claim."* (Emphasis added)

143. While deciding the said case this Court relied upon the leading case of **R. v. General Commissioners for the purposes of the**

Income Tax Act for the District of Kensington, (1917) 1KB 486, wherein it had been observed as under:

> *"...when an applicant comes to the court to obtain relief on an ex parte statement he should make* ***a full and fair disclosure of all the material facts****—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But* ***it knows nothing about the facts,*** *and the* ***applicant must state fully and fairly the facts****; and the penalty by which the court enforces that obligation is that* ***if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement****…….If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone ….. **The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.**"* (Emphasis supplied)

144. In such a case the person who suppresses the material facts from the court is guilty of *Suppressio Veri and Suggestio Falsi* i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud.

145. In view of the above, we reach the inescapable conclusion that the NBA has not acted with a sense of responsibility and so far succeeded in securing favourable orders by misleading the Court. Such conduct cannot be approved. However, in a PIL, the Court has to

strike a balance between the interests of the parties. The Court has to take into consideration the pitiable condition of oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the Court must view any presentation by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and in case it has any doubt, refuse to entertain the NBA. However, considering the interests of the oustees, it may be desirable that the Court may appoint an *Amicus Curiae* to present their cause, if such a contingency arises.

146. In view of the above, we are of the considered opinion that no order is required on the IA Nos. 196-210, 211-225 and 241-255 of 2011 filed under Section 340 of the Code of Criminal Procedure, 1973, by both the parties, as dealing with the said applications would not serve any purpose. More so, the IA Nos. 226-240 of 2011 filed for modification of the order dated 5.4.2011. Thus, all the said IAs stand disposed of.

147. In view of the serious controversy raised in these appeals, this Court vide order dated 24.2.2011, requested the CWC to make a local inspection and submit its report as to whether the land measuring

284.03 hectares in these 5 villages, would be submerged temporarily or permanently or merely water locked.

148. In pursuance of the aforesaid order, the CWC after having spot inspection submitted its report dated 22.3.2011. The relevant part thereof reads as under:

(i) **Village Kothmir-** .....

"115.53 hectare area (under reference) of this village falls between FRL and BWL. This will come under temporary submergence when water level exceeds FRL (196.60 m)."

(ii) **Village Narsinghpura-**……

"Out of the total 21.58 hectare area (under reference) of this village, 19.30 hectare falls between FRL and BWL and will come under temporary submergence when water level is between FRL (196.60 m) and BWL."

(iii) **Village Dharadi-** ……

"The 103.09 hectare area of village (under reference) falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(iv) **Village Nayapura-**……..

"The 33.83 hectare land (under reference) of village falls between FRL and BWL which will come under temporary submergence when water level exceeds FRL (196.60 m)."

(v) **Village Guwadi-**……

"The 10.00 hectare land (under reference) of village falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(vi) **Conclusion of the Committee**: *Out of the total land – subject matter of dispute ad-measuring 284.03 hectare in the aforesaid five villages; 281.75 hectare falls between FRL and BWL, which will come under temporary submergence due to back water effect. The remaining 2.28 hectare area will not come under submergence due to back water levels when water levels are up to BWL.*

149. The parties were given copies of the report and asked to submit their objections, if any. In response to the said order, the parties submitted their comments/objection to the report submitted by the CWC.

The State Government has submitted that the report suggested that 2.28 hectares of the area will never be submerged even when water levels are upto BWL. However, the remaining area of 281.75 hectares falls between FRL and BWL, would be under temporary submergence due to back water effect. In such a fact-situation, the CWC guidelines of 1997 provide that MWL at the dam site during maximum flood and BWL is the corresponding flood level at

maximum flood in the pondage area. Hence, when MWL occurs at the dam site, BWL will occur simultaneously in the vicinity of the reservoir further up stream. In such a case, agricultural land affected by back water is not acquired in a dam project, as that land is submerged only temporarily during floods hardly for 2-3 days which may occur rarely, once in a period of 1000 years. Rather the land is benefited due to silting during floods and is available for cultivation after the temporary flood recedes. The guidelines issued by the CWC had been adopted by the State that agricultural land temporarily coming under submergence between FRL and BWL need not be acquired. However, houses in the temporary submergence area must be acquired. In order to fortify its stand, the State Government had quoted paragraph 6.2.3. of the guidelines for preparation of project estimates for river valley projects of CWC March 1997. Further, State has placed reliance on Clause XI-II (2) of NWDT Award, which also provides for the same.

150. It has further been submitted by Shri Ravi Shankar Prasad, learned senior counsel appearing for the State that all the dwelling structures which are 167 in number would be acquired positively in terms of the R & R Policy and in spite of the fact that the agricultural

land would not be acquired, the benefits provided under the R& R Policy shall be granted to all such oustees who fulfill the requirement of the provisions of clause 1.1 which defines the 'displaced person' under the R & R Policy and such a course will be in consonance with the guidelines issued by the CWC.

151. In view thereof, it has been submitted that as per the CWC guidelines, only the land covered by structures must be acquired and not the entire land. Therefore, the report of the CWC should be accepted with this understanding and clarification.

152. On the other hand, the Narmada Bachao Andolan – the writ petitioner, has submitted that the report does not require any further explanation, there are 167 houses situated on the concerned lands of these five villages which are bound to be acquired. The remaining entire land has to be acquired in view of the decision taken by the NVDA in its 144th meeting dated 5.10.2007, wherein it was resolved that it was necessary to acquire the land in dispute and subsequent decisions taken by the parties, particularly, dated 25.3.2009 and 2.4.2009, are arbitrary, malafide and unconstitutional. Under the R & R Policy, even any land temporary submerged, is bound to be

acquired. In support of such a contention, reliance has been placed on the definition of "displaced person" contained in Clause 1.1 of R & R Policy which speaks of the person whose land is likely to come under submergence whether temporarily or permanently. Further reliance has also been placed upon the judgment of this Court in **Narmada Bachao Andolan – II** (Supra) providing for the same and in view thereof, it has been submitted that the land is compulsorily to be acquired.

153. An extract from guidelines for preparation of project estimates for river valley projects of CWC March 1997 is reproduced below:-

> *"6.2.3. …….*
>
> > *"Generally acquisition may be done upto FRL only. The area between FRL & MWL may be acquired only if the submerged land is fertile and the duration of submergence beyond FRL upto MWL is long enough to cause damage to crops i.e. over 15 days duration. (for acquisition of land the effect of back water need not be taken into consideration).*
> >
> > *xxx xxx xxx xxx*
> >
> > *All structures coming under submergence between FRL and MWL should be acquired. If the structures coming under submersion are of religious or archeological interest, provision must be made for re-establishing these structures above MWL".*

154. The Clause XI – II (2) of the NWDT Award for the Sardar Sarovar Project reads as under:

> *"Madhya Pradesh and Maharashtra shall also acquire for Sardar Sarovar Project under the provision of the Land Acquisition Act 1894, all buildings with their appurtenant land situated between FRL + 138.63 m (455') and MWL + 141.21 m (460') as also those affected by the Back water effect resulting from MWL = 141.21 m (460')."*

155. Reason for not acquiring land between FRL and BWL (MWL at dam site):-

(i) *The CWC guideline 1997 and clause XI.II(2) of NWDTA provision mentioned above clearly states that the agricultural land affected by BWL is not acquired in a dam project as a policy matter.*

(ii) *It will submerge only temporarily during maximum flood once in 1000 years.*

(iii) *The land gets benefited due to silting during flood and will be available for cultivation after flood recedes. It becomes more fertile.*

(iv) *The land gets only submerged temporarily in BWC due to flood (once in 1000 years) and should not be left unused. It will be a national loss.*

(v) *The land may get encroached if it is acquired and left without use as it is very fertile.*

(vi) *……."*

156. In **Narmada Bachao Andolan – II** (Supra), the Court has placed reliance upon the report of the Narmada Control Authority (NCA), dealing with the NWDT Award, wherein it has been mentioned as under:

> *"47. The Award, as noticed hereinbefore, contained two sub-clauses relating to the directions on the State Government for compulsory acquisition of the land by the States of Madhya Pradesh and Maharashtra under the provisions of the Land Acquisition Act. This obligation on the part of the State to acquire land is, thus, neither in doubt nor in dispute. The additional directions are that those persons whose 75 per cent or more land of a continuous holding is required to be compulsorily acquired, will have an option to compel compulsory acquisition of the entire contiguous holding;* ***and acquisition of buildings with their appurtenant land situated between FRL + 138.68 metres (455') and MWL + 141.21 (460') as also those affected by the backwater effect resulting from MWL + 1451.21 metres.*** *The submergence due to maximum water level and backwater would take place only after it reaches full height.*
>
> *xxx xxx xxx xxx*
>
> *50. …….*
>
> *Further it was decided as per decision in the last meeting of the Sub-group all possible arrangements for R&R should be made by the concerned State Govts. For completing the same in all respect both in regard to oustees affected by the permanent as well as temporary submergence six months ahead from submergence. Actual*

allotment of land, house plot and payment of compensation etc. and not merely offer of such facilities as per the R&R package should be made in respect of all PAFs (both categories of affected by permanent and temporary submergence) except in the case of hardcore PAFs who refuse to accept the package and unwilling to shift.

Temporary submergence even for a short period can affect the oustees badly and that it is desirable to keep this in mind while rehabilitating the oustees." (emphasis supplied)

157. If we read the above referred to provisions of the R&R Policy, findings in NWDT Award, project report prepared by CWC in March 1997 and observations made in **Narmada Bachao Andolan – II** (Supra) and analyse it properly, the following picture emerges:

(i) In case the land/dwelling unit of the tenure holder is submerged temporarily, he is entitled for the benefit of R&R Policy;

(ii) In case of temporary submergence of the agricultural land between FLR and MWL and those affected by the back water affect resulting from MWL, only the buildings with their appurtenant land would be acquired. But the agricultural land is not to be acquired; and

(iii) In case, the dwelling units are acquired because of temporary submergence, such persons shall be entitled for the benefits under R&R Policy.

158. We have not only considered the rival submissions made by learned counsel for the parties but in view of the fact that the matter is extremely technical, we requested the CWC to depute Mr. U.K. Ghosh, Chief Engineer (NDA – CWC), who had been the Chairman of the Committee, to render assistance as the Court wanted certain explanation/clarification from his team, thus called them in the Chambers on 27.4.2011 and again on 5.5.2011. We discussed various aspects of the report and objections filed by the parties. They have explained the concept of BWL and Dam Overtopping as under:

> **BWL** : BWL in the upstream of a dam is formed by incoming flood while passing through the reservoir created by artificial obstruction in a river channel by construction of an weir or a dam.
>
> **Dam Overtopping** : Dam overtopping implies water flow over the dam top. Flow of water over the dam top may occur due to:
>
> (a) Increase in water level in the reservoir higher than the top level of the dam due to an inflow volume greater than the project design flood, due to under-estimation of the same at the time of project planning and design.
>
> (b) Mechanical failure in reservoir operation or due to human negligence.

On the main issue as to whether the land in dispute is to be acquired or not, the relevant part of their written opinion dated 6.5.2011 reads as under:

> "*As per yearwise record of maximum flood discharge at Omkareshwar dam, since 1951 up to 2003 (53 years), the flood discharge never exceeded the design spillway capacity of 69,000 cumecs. The statement of yearwise maximum floor discharge is enclosed at Annexure – I. From the Standard Project Flood (SPF) hydrograph, as adopted for working out the backwater level in the Omkareshwar Reservoir, it is noted that duration of flood magnitude above design spillway capacity at FRL is about two days only. Therefore, during Monsoon season temporary submergence due to backwater effect above FRL will not be more than 4 to 5 days.*
>
> *In respect of non-Monsoon period it is to mention that there will be daily regulated release from both Indira Sagar Dam in the upstream of Omkareshwar dam as well as from Omkareshwar dam itself for power generation and other commitments. The reservoir level at Omkareshwar dam are likely to be maintained within FRL by suitable reservoir operation at all times during non-monsoon period.*
>
> *In the present case, the disputed land ad-measuring 284.03 hectares between FRL and BWL comes under temporary submergence for a duration of less than 15 days when a flood of SPF magnitude, which is 1 in 1000 years return period flood for this project impinges the reservoir at FRL. Therefore, keeping in view all the above points given in Para 2(i) to Para 2(iv), the Committee is of the view that the agricultural lands within FRL and BWL* ***need not be acquired*** *as per the guidelines for preparation of Project, Estimates for River Valley Projects prepared by Central Water Commission in March, 1997."*
>
> (Emphasis added)

159. In view of the expert opinions rendered by CWC and other materials on record, we reach the inescapable conclusion that the agricultural land of these five villages is not to be acquired as it may only be under temporary submergence for a very short period, which occurs throughout the country during floods in monsoon. Such a submergence is always beneficial to agricultural produce as the land gets enriched due to silting during the flood and becomes more fertile. More so, such an acquisition is not in the interest of the State as the land cannot be put to any use whatsoever, and there is a possibility that such land would be encroached upon by unscrupulous elements.

160. **CONCLUSIONS/RESULT**:

(i) Civil Appeal Nos. 2115-2116/2011 filed by the State of M.P. and NHDC

These appeals involved two issues namely, (i) allotment of land in lieu of land acquired; and (ii) entitlement of major son to get the allotment of land as a separate family. So far as the first issue is concerned, in respect of the same, we hold that in view of the provisions contained in R & R Policy, the State Authorities are under an obligation to allot the land to the oustees "as far as possible". In case an oustee has not accepted the compensation/SRG or has any

grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach the GRA and the GRA will adjudicate upon the issue and pass an appropriate order in individual cases after giving an opportunity of hearing to all the parties concerned. Needless to say, the person aggrieved by the order of GRA shall be entitled to approach the High Court for appropriate relief. However, in case of private person, the application/petition would be in the name of that individual person duly supported by his affidavit.

So far as the issue of entitlement of major son for allotment of land as a separate family is concerned, our conclusion is in the negative. In other words, there is no such entitlement.

(ii) <u>Civil Appeal No. 2082/2011 filed by NBA</u>

This appeal involved three issues namely (i) entitlement of land to the landless labourers; (ii) applicability of NWDT Award in the Omkareshwar dam project; and (iii) entitlement of allotment of land to the oustees of five villages already submerged. Our conclusion in respect of Issue Nos. (i) & (ii) is in the negative. However, on Issue No.(iii), the oustees shall be entitled for the relief as given to the oustees on Issue No. (i) in Civil Appeal Nos. 2115-2116/2011.

(iii) <u>Civil Appeal Nos. 2083-2097/2011 and 2098-2112/2011</u>

These appeals have been preferred by the State of M.P. and NHDC in respect of acquisition of land of five villages, wherein the State wants to withdraw the acquisition proceedings. Our conclusion is that in the fact-situation of the case, the State is entitled to abandon the land acquisition proceedings in exercise of its power under Section 48 of the Act 1894. However, it shall not apply to 167 dwelling units on the said land. Such persons whose dwelling units are acquired shall be entitled for the benefit of R & R Policy to the extent provided therein. The State shall establish the roads etc. after raising the height of the Bandh as proposed by the Authorities.

(iv) The IA. Nos. 196-210, 211-225, 241-255 of 2011 and 226-240 of 2011 filed by both the parties under Section 340 Cr.P.C., do not require to be dealt with in view of our observations made in para 146 of this judgment.

All the appeals and IAs. stand disposed of accordingly. No order as to costs.

161. We have been given to understand that on the Narmada River, in the State of Madhya Pradesh, in all 29 major and minor projects are

contemplated. Some of them have already been completed, but on account of stay order by the court/Authority some projects could not be completed. It is unfortunate that in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest.

162. Before parting with the case, we record our deep appreciation for the assistance rendered to this Court by Shri M.K. Mudgal, learned District Judge, Indore, and officials of the CWC, particularly Shri U.K. Ghosh, Chief Engineer (NBP), CWC, Shri M.P. Singh, Director (FCA), CWC, and Shri D.P. Singh, Director (ND&HW), CWC, New Delhi.

……..……J.
(J.M. PANCHAL)

……..J.
(DEEPAK VERMA)

……..J.
(Dr. B.S. CHAUHAN)

New Delhi,
May 11, 2011