

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP 2184/2015
IA(3/2015[01/2015])
IA(1/2016[01/2016])
IA(2/2015[02/2015])

Muhammad Khan & Others

...Petitioner(s)

Through: Mr. M.A. Wani, Advocate

Mr. Z.A. Wani, Advocate

Vs.

State of J&K and Others.

...Respondent(s)

Through: Mr. Alla-ud-din Ganai, AAG for R-1 to 3 and 8.

Mr. G.N. Monga, Advocate for R-4 to 7.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

ORDER

19.12.2023

ORAL:

1. In this petition, the petitioners who claim to be persons displaced on account of construction of power project i.e., NHPC-URI-I, have filed this petition *inter alia* seeking a direction to the respondents, particular NHPC Limited, to appoint forthwith one of their family members in NHPC Limited URI-I on a permanent basis. The petitioners also pray for a mandamus to the respondent NHPC, to pay a sum of Rs. 5.00 lacs to each family, in addition to the compensation already paid for the land, on account of mental agony and harassment they suffered due to dislocation.

2. Briefly stated, the facts as projected in this petition are that way back in the year 1997-98, NHPC Limited required a big chunk of land for construction of power project and, accordingly, an indent/request was placed by NHPC before the Collector Land Acquisition to issue an acquisition notification for acquiring the required land. The acquisition proceedings were

conducted by the concerned Collector Land Acquisition as per Jammu and Kashmir Land Acquisition Act, Svt. 1990 [“the Act”], and which culminated in passing a compensation award in favour of the interested parties, including the petitioners. The petitioners do not dispute the payment of compensation to them as per law. However, their grievance is that when their lands were acquired there was an understanding arrived at between the State Government and NHPC that apart from other facilities to be extended to the displaced persons, one member of each affected family would be provided employment.

3. The petitioners submit and assert that more than 50% of their total land holding was acquired by the NHPC, and, therefore, the petitioners were deprived of their only source of livelihood. Despite having represented before all authorities including NHPC, the assurance extended to them for providing employment was not adhered to. The petitioners rely upon an assurance certificate dated 29th March, 1989, issued by the Chief Engineer Uri Hydro Electric Project to indicate that apart from other promises, the NHPC had also extended assurance to the affected persons of providing employment to one member of each family. It is further projected by the petitioners that when a similar chunk of land was again acquired by NHPC for constructing power project i.e., NHPC-Uri-II, the owners of the land which came under acquisition were similarly extended assurance for providing employment. The NHPC acted upon the assurance and provided employment to sixty persons against various posts in NHPC-Uri-II in the year 2013. The petition is, therefore, primarily based on the analogy of the employment which was provided to sixty land losers of NHPC-Uri-II.

4. On being put on notice, Respondent No. 4 alone has come forward to contest the petition. The respondent NHPC in its reply affidavit has taken *inter alia* a preliminary objection to the maintainability of this writ petition on the ground that the petition is hit by delay and laches having been filed after a gap of twenty-five years. On merits, the respondents 4 to 7 submit that there was never ever any memorandum of understanding entered into or signed up between the NHPC and the Government of Jammu and Kashmir for providing employment to one member of the families of the petitioners and others who were affected by the acquisition for NHPC-Uri-I. Respondents have also denied the authority of the Chief Engineer to issue any assurance certificate in the face of the office memorandum dated 3rd February, 1986, issued by Ministry of Industry Department of Public Enterprises, Bureau of Public Enterprises, wherein it was made clear to all public enterprises not to extend directly or indirectly any assurance to the land owners in regard to the employment.

5. It is further submitted by the learned counsel for the respondents that, apart from making payment of compensation under the land acquisition, NHPC also prepared a Master Plan for rehabilitation of over 470 families who were affected by NHPC-Uri-I project and were, in pursuance thereto, paid cash compensation, provided water supply schemes, schools and hospitals for the benefit of the people who were affected by the land acquisition. The respondents submit that the NHPC-Uri-I project was commissioned in the year 1996-1997 and at this point of time they are left with no vacant posts to be offered to the petitioners. Reference is also made by the respondents in the reply to the judgment passed in OWP No. 658/1998 titled Abdul Hamid Mir and Ors, which was disposed of by a bench of this

Court on 5th August, 2015. On the strength of the aforesaid judgment, it is submitted that the aforesaid judgment was judgment in rem and, therefore, the present petition was hit by *res judicata*.

6. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that petition is badly hit by delay and laches. The land for construction of the NHPC-Uri-I project was acquired in 1988, and the project was inaugurated in the year 1996-97. The compensation, as was payable under the land acquisition law in force at the relevant time was duly disbursed, and there was no dispute ever raised by the petitioners with regard to the payment of compensation under the Land Acquisition Act. The petitioners felt satisfied and accepted the compensation, as also the measures of rehabilitation under taken by the respondents in the shape of providing water supply schemes, schools and hospitals etc. It was only in 2011 when the petitioners, for the first time approached the respondent NHPC for providing employment to a member of each of their family which was affected by the acquisition made for construction of NHPC-Uri-I project. Importantly, this was the time when the NHPC-Uri-II project was contemplated. The petitioners did not even pursue the aforesaid representation till in the case of affected persons of NHPC-Uri-II Hydro-Electric Project, employment was provided. As is contended by the petitioners that sixty families were provided such employment by appointing one member of their family as Class-IV posts in NHPC-Uri-II H.E. project. It is at this stage the petitioners thought that they too could be similarly treated by the NHPC and thought of filing a petition in the year 2018.

7. In these circumstances, the respondents are correct in their submission that this writ petition is highly belated and afterthought, having been filed

after a period of twenty-five years. This petition is thus hit by delay and latches.

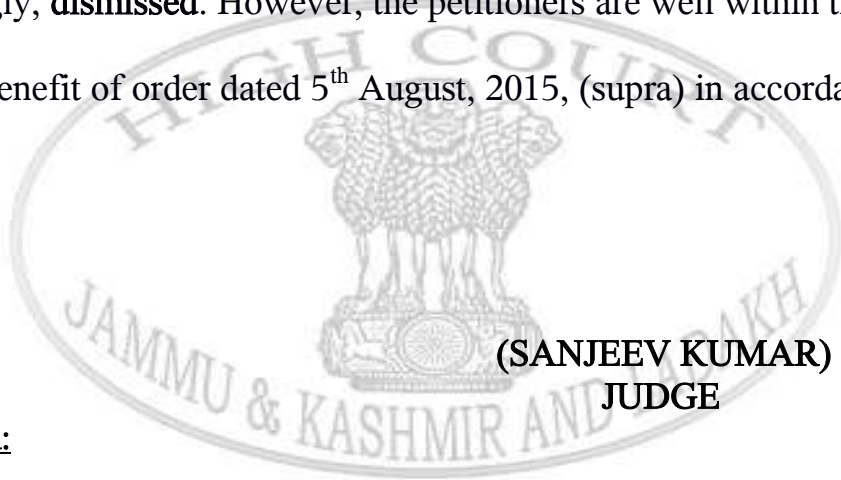
8. The contention of learned counsel for the petitioners that the respondent corporation had held out a promise to them that a member of their family will be adjusted in the project is not supported by any documentary evidence. Petitioners have not even placed on record any memorandum of understanding signed between the NHPC and the Government. The assurance certificate issued by the Chief Engineer also cannot be taken as a promise extended by the Corporation or the Government of India which could be enforced by issuance of writ of mandamus.

9. For the foregoing reasons, it is, therefore, difficult for this Court to accept the contention of the petitioners that respondents are held by the Promissory Estoppel and are liable to be directed to act upon its assurance of providing employment to the members of the family of the petitioners.

10. So far as plea of *res judicata* raised by the learned counsel for the NHPC is concerned, true it is that the people similarly situated with the petitioners i.e., the persons affected by the acquisition made for NHPC-Uri-I Hydro Electric Project had come to this Court in the year 1998, by way of OWP No. 658/1998. That petition was disposed of by a Bench of this Court vide Judgment dated 5th August, 2015, without deciding the issues raised in the petition. This Court, as is apparent from the judgment, left it to the Government of Jammu and Kashmir to convene a meeting of all stakeholders including the representative of the petitioners and take a decision in the light of the pleadings of the parties and the prayers made in the said writ petition. A careful reading of the entire order passed by this Court in OWP No. 658/1998 indicates that if the judgment is complied with by the respondents,

it would be in respect of all the persons affected by the acquisition. In that way, I am in agreement with the learned counsel for the respondent that the order dated 5th August, 2015, is to be construed as a judgment in rem and, therefore, the petitioners had no occasion to file the similar petition yet again. Rather they could have taken the benefit of judgment dated 5th August, 2015. The principle of *res judicata* is thus attracted in the matter.

11. For the aforesaid reasons, I find no merit in this petition and the same is, accordingly, **dismissed**. However, the petitioners are well within their right to take the benefit of order dated 5th August, 2015, (supra) in accordance with law.



SRINAGAR:

19.12.2023

“Mir Arif”

- | | | |
|------------|---|---------------|
| <i>i.</i> | <i>Whether the order is reportable?</i> | <i>Yes/No</i> |
| <i>ii.</i> | <i>Whether the order is speaking?</i> | <i>Yes/No</i> |