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HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 487 of 2001**

1. Santlal S/o Molai, R/o Village Badara, Tahsil Anuppur, P. O. Badara, District Shahdol (Madhay Pradesh).
2. Hanish Kumar Tripathi, S/o Shri A. P. Tripathi, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
3. Basantlal, S/o Bala Prasad Sahu, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
4. D. Sarveshwar Rao, S/o D. Kameshwar Rao, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
5. Arun Kumar S/o Ram Kumar Sharma, Village Latar, Tahsil Anuppur, P. O. Badara, District Shahdol (Madhya Pradesh).
6. Shambhu Prasad S/o Balram, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
7. Ramgopal, S/o R. Singh, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
8. Sujeet Kumar S/o Tulsicharan, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
9. Prabhat Kumar S/o Shiv Kumar, Village Kotma, P. O. Kotma, Tahsil Kotma, District Shahdol (Madhya Pradesh).
10. Rajaram S/o Jagdish, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
11. Ramswaroop S/o Swamidin, Village Badara, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
12. Mahesh Kumar S/o Ramnivas Mishra, Village Latar, P. O. Badara, Tahsil Anuppur, District Shahdol (Madhya Pradesh).
13. Balram, S/o Asha Ram, At / P. O. Badara, Tahsil Anuppur, District Shahdol, (Madhya Pradesh).
14. M. P. Koyla Mazdoor Sabha (H M S), Through Its General Secretary Shri N. L. Pandey At / P. O. South Jhagrakhand Colliery, District Korea, Chhattisgarh.

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through Its Chairman-Cum-Managing Director, Seepat Road, Bilaspur, Chhattisgarh.
2. General Manager (Man Power), South Eastern Coalfields Limited, Seepat Road, Bilaspur
3. Dy. Chief Personnel Manager, South Eastern Coalfields Limited, Jamuna-Kotma, Area, P. O. Jamuna Colliery, District Shahdol (Madhya Pradesh).

---- Respondent

And

WPS No. 2074 Of 2013

- Rajesh Kumar Tiwari S/o Shnakar Prasad Tiwari, Aged About 38 Years R/o Village Balara, Post Badara, P.S. Anuppur, Tah Anuppur, District Shahdol, Madhya Pradesh

---- Petitioner

Vs

1. South Eastern Coalfields Limited Through Its Chairman Cum Managing Director, Seepat Road, P.S. Seepat, District Bilaspur, Chhattisgarh
2. General Manager (Man Power) South Eastern Coalfields Limited, Seepat Road, P.S. Seepat, District Bilaspur, Chhattisgarh
3. Dy. Director Personnel Manager South Eastern Coalfields Limited, Jamuna Kotma Area, Post Jamuna, P.S. Jamuna Kotma, District Shahdol, Madhya Pradesh

---- Respondents

For Petitioners	Ms. Sharmila Singhai, Advocate in WP No.487/2001 and Shri C.J.K. Rao, Advocate in WPS No.2074/2013
For Respondent/SECL	Shri H. B. Agrawal, Senior Advocate with Ms. Meera Jaiswal, Advocate and Shri Vivek Verma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

28/03/2016

1. The petitioners are aggrieved by the order (Annexure-P-8) passed by the Deputy Chief Personnel Manager, Jamuna Kotma Area, SECL on 30.09.2000 refusing to extend the facility of employment to the petitioners in lieu of acquisition of surface rights over their land.
2. The petitioners would contend that the SECL initiated dipillaring operation on their land prior to July, 1995, therefore, their cases would be governed by the rehabilitation policy as it stood prior to 21.12.1995 and since the entire land belonging to the petitioners has been acquired for surface rights for carrying out mining operation, their cases are covered within the rehabilitation policy of the year 1991, therefore, the respondents have committed serious error of law and jurisdiction by refusing to extend the facility of employment. It is also contended by the learned counsel for the petitioners that the date of dipillaring would amount to date of acquisition and the said happening being much prior to 21.12.1995, the petitioners are entitled for employment.
3. Per contra, Shri H. B. Agrawal, learned Senior counsel appearing for the SECL and Shri Vivek Verma, learned counsel also appearing for the SECL would contend that in the cases in hand, the notification for acquisition was issued on 30.09.1997 and the order under Section 247 of the MP/Chhattisgarh Land Revenue Code, 1959 (for short 'the Code, 1959') was passed by the concerned SDO on 17.07.1998, therefore, the acquisition was much later after coming into force of the amended policy on 21.12.1995. Thus, in above view of the matter, the petitioners would be governed by the amended policy and they having not remained in possession for a period of 20 years prior to the date of

acquisition, their cases have rightly been rejected by the SECL.

4. Indisputably, most of the petitioners have purchased small pieces of land from its previous owner sometimes in July, 1995 except one or two petitioners, who have purchased the land sometimes in the year 1993. The rehabilitation policy of the State of Madhya Pradesh provided that such land holders, whose residential houses have been acquired or whose agricultural land to the extent of more than 1/3rd area has been acquired, would be entitled for preferential treatment in the matter of rehabilitation by providing employment in the SECL. The State of Madhya Pradesh issued an amendment in the rehabilitation policy by an order dated 21.12.1995 mentioning that the facility of employment in lieu of acquisition of land would be extended to such land holders, whose land has been acquired and on such land, the holder was in continuous possession for at least 20 years immediately prior to the date of acquisition. It is not in dispute that the petitioners were not in possession of the land in question for a period of 20 years, therefore, the only question to be considered is whether their cases would be governed under the rehabilitation policy as amended on 21.12.1995 or they would be governed by the policy, which was in existence immediately prior to the said date.
5. Learned counsel for the petitioners would refer to a Single Judge's order of Madhya Pradesh High Court in WP No.5254/2010 (**Rajendra Kumar Singh v. South Eastern Coal Fields Ltd and others**), wherein the date of di-pillaring has been taken as the date of acquisition and the facility of employment in lieu of acquisition of surface rights has been extended in favour of those petitioners,

however, this order has been stayed by the Division Bench of Madhya Pradesh High Court in its order dated 17.07.2013 in Writ Appeal No.398/2013 (**South Eastern Coal Fields Ltd and others v. Rajendra Kumar Singh and others**).

6. The petitioners have placed reliance on a Division Bench's order of this Court in Writ Appeal No.435/2013 (**Lakhan Lal Rathore v. State of Chhattisgarh and others**), decided on 23.07.2013. In this matter, the appellant therein was a joint owner of the property as the land belonged to the joint family, however, since before the date of acquisition, there was a partition and his name was recorded as exclusive owner for the period less than 20 years, he was held not entitled to employment by the SECL. The Division Bench concluded that even as a member of the joint family, the petitioner was in occupation of the land for more than 20 years, therefore, such occupation would be treated to be his exclusive occupation on the share belonging to him as member of joint family. The facts of the case are, thus, clearly distinguishable, therefore, it is not much of the assistance to the petitioners.
7. In the matter of **Sanjeev Kumar Singh and others v. Union of India and others** passed in WPS No.6701/2007, decided on 28.10.2014, this Court has elaborately considered the fact of the acquisition proceedings *vis-a-vis* applicability of the amended policy or the previous policy. In the said case also, the claimants purchased the land few months prior to the issuance of amended rehabilitation policy. This Court held thus in paragraphs 9 & 13:-

“9. Proceedings for acquisition of the petitioners'

lands were initiated by issuing the notification under Section 4 (1) of the Act, 1957 on 13-1-1996 and the final notification for acquisition under Section 9 (1) of the Act, 1957 was issued on 30-5-1998. Thus, it appears each of the petitioners, except the petitioner namely Raj Narayan Yadav, have purchased the land just prior to issuance of notification under Section 4 (1) of the Act, 1957. It would also appear that the notification under Section 4 (1) of the Act, 1957 was issued on 26-6-1995 although the same was published in the Gazette of India on 13-1-1996. Thus, all the petitioners, except the petitioner Raj Narayan Yadav, have purchased the lands after the notification was issued by the Government of India and the same was in the process of being published in the Gazette of India.

13. The petitioners have not assailed the legality and validity of the terms and conditions governing right of employment under the amended rehabilitation policy issued in December, 1995. While deciding WP No.131 of 2001, this Court directed the SECL to decide the petitioners' cases in accordance with law. Since provisions governing rehabilitation upon acquisition of land is to be decided under the amended rehabilitation policy, which was in force on the date of acquisition of land and under the said policy one of the requirement is that the holder of the land should be in continuous possession of 20 years preceding the date of acquisition, the respondent SECL has not committed any illegality in rejecting the petitioners' applications for employment in lieu of acquisition of their respective lands under the rehabilitation policy."

8. The aforesaid order has been affirmed by the Division Bench in the matter of **Sanjeev Kumar Singh and another v. Union of India and others** reported in AIR 2015 Chhattisgarh 139 holding thus in paragraphs 3 to 9:-

"3. Learned counsel for the Respondents opposing the appeal submits that the Appellants have purchased the lands in question on different dates commencing from 04.01.1995 to 15.12.1995. They have thus not been owners of the lands in question for 20 years prior on the date of the notification for acquisition. The notification for acquisition takes effect only on the date that it is published in the gazette. The

amendment in the policy was made before it on 21.12.1995. There was no challenge to the policy.

4. We have considered the submission on behalf of the parties. The primary and statutory right of a person whose lands are acquired is to receive compensation. There is no right for rehabilitation per se enforceable in a Court of law. If there is a policy for rehabilitation, individual claimants shall have to be considered strictly in terms of the policy only.
5. The land acquisition proceedings commenced only after publication in the gazette up to which time the Respondents could have withdrawn from the acquisition itself. The amendment in the policy was carried out on 21.12.1995. It contained three conditions:
 - (A) The person must have been born in the area,
 - (B) He must have acquired education within the area, and
 - (C) He must have been owner of the land for at least 20 years.

There is no challenge to the policy. There is no pleading on behalf of the Appellants that they fulfill the other two conditions.

6. The right to be considered was under the policy as it stood amended on 21.12.1995 before the gazette publication. We, therefore, find no infirmity in the order under appeal calling for interference.
7. The arguments of hostile discrimination has also been adequately considered by the Learned single Judge holding that if the benefit had wrongly been given to an ineligible person, Article 14 could not be invoked to perpetuate illegality.
8. Section 4 of the Act provides for publication of a preliminary notification. Objections are to be filed under Section 8 after which the final notification is issued under section 9 and possession may be taken under section 10 of the Act. It is not the case of the Appellants in their pleadings that the land was acquired under the emergency provisions of section 9A much less have they disclosed the date on which actual possession has been taken under Section 12.
9. We, therefore, find no reason to interfere with the order under appeal. The writ appeals are dismissed."

9. In the cases in hand also, there is some evidence that the dipillaring activity commenced sometimes in the year 1995, however, that by itself would not amount to acquisition of land prior to 21.12.1995. The issue concerning grant of surface rights is dealt with under the provisions of the Code, 1959. Section 247 of the Code, 1959 provides that the government has the exclusive right to all the minerals and the rights to all the mines and quarries including the right to access to land for the purpose of mining and quarrying shall also lie with the government. However, the said rights can be assigned to any person subject to payment of compensation by such assignee to the holder of the land. Sub-sections (4) to (8) of Section 247 of the Code, 1959 provide thus:-

“(4) If, in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, the Government or its assignee shall pay to such persons compensation for such infringement and the amount of such compensation shall be calculated by the Sub-Divisional Officer, or, if his award is not accepted, by the Civil Court, as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894).

(5) No assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed.

(6) If an assignee of the Government fails to pay compensation as provided in Sub-section (4), the Collector may recover such compensation from him on behalf of the persons entitled to it, as if it were an arrear of land revenue,

(7) Any person who without lawful authority extracts or removes minerals from any mine or quarry, the right to which vests in, and has not been assigned by the Government shall, without prejudice to any other

action that may be taken against him, be liable, on the order in writing of the Collector, to pay penalty not exceeding a sum calculated at double the market value of the minerals so extracted or removed;

Provided that if the sum so calculated is less than one thousand rupees, the penalty may be such larger sum not exceeding one thousand rupees as the Collector may impose.

(8) Without prejudice to the provisions in Sub-section (7), the Collector may seize and confiscate any mineral extracted or removed from any mine or quarry, the right to which vests in, and has not been assigned by the Government.”

10. A plain reading of the above extracted provisions would manifest that the compensation to the land holder is calculated as per the provisions of the Land Acquisition Act, 1894 (for short 'the Act, 1894'). The matters to be considered in determining compensation has been provided under Section 23 of the Act, 1894, whereas Section 34 provides for grant of interest from the date of taking possession until it is paid to the land holder or deposited in the Court.
11. A perusal of the order passed by the SDO (Revenue), Shahdol under Section 247 of the Code, 1959 does not indicate that the amount of compensation has been calculated by adding the amount of interest from the date of dipillaring. Thus, the award does not recognize that the petitioners were dispossessed any time prior to 21.12.1995. The award passed by the SDO has clearly mentioned that the petitioners did not raise any objection to the amount of compensation or the calculation thereof at the time of hearing. Since the amount of compensation has been determined by calculating the same on the date of issuance of notification i.e. 30.09.1997, it is the said date or the date of award, which will be reckoned for ascertaining the date of

acquisition and not any other date prior to that.

12. In view of the above discussions, this Court has no hesitation in holding that the cases of the petitioners would be governed by amended rehabilitation policy as amended on 21.12.1995 and not under the previous policy, therefore, there being no dispute that they were not in possession of the land for a continuous period of 20 years prior to the date of acquisition, the order (Annexure-P-8) does not suffer from any infirmity.
13. Accordingly, both the writ petitions deserve to be and are hereby dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala