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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 483 of 2016**

1. South Eastern Coalfields Limited Through The Chairman- Cum- Managing Director, Basant Vihar, Seepat Road, Bilaspur, (Chhattisgarh)
2. The Chief General Manager, S. E. C. L., District Korba, (Chhattisgarh)
3. The Deputy Chief Personnel Manager, S. E. C. L., District Korba, (Chhattisgarh)

---- Appellants**Versus**

1. Prabhat Kumar Mishra S/o Satya Narayan Mishra, Aged About 32 Years Occupation- Student, R/o Quarter No. 342/2, Near Sub Section, Shivaji Nagar, District Korba, (Chhattisgarh)
2. The Collector, Korba, District Korba, (Chhattisgarh)

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---- Respondents

For Appellants	:	Shri H.B.Agrawal, Senior Advocate with Shri Shashi Kushwaha, Advocate
For Respondent No.1	:	Shri Ashok Kumar Shukla, Advocate.
For Respondent No.2	:	Shri Y.S. Thakur, Addl. Advocate General

Hon'ble The Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order / Judgment On Board

09/11/2016

This case is stark example of how huge Companies can force the poor citizens of the Country to repeatedly approach this Court denying the relief which they are legally entitled to.

2. Both these writ appeals arise out of one judgment and hence, they are being disposed of by this common judgment.

3. The undisputed facts are that the respondent No.1/petitioner – Prabhat Kumar Mishra was owner of land in village Rajgamar in Korba District. It is apparent from the record that his land was occupied by the appellants – South Eastern Coalfields Limited (for brevity, 'the S.E.C.L.') prior to 31.05.1994 as is apparent from letter dated 31.05.1994 issued by the Deputy CME, Sub Area Manager, Rajgamar Colliery, which reads as under:

“South Eastern Coalfields Limited
O/o the Sub Area Manager, Rajgamar Colliery,
P.O. Rajgamar Colliery Dist. Bilaspur (M.P.)”

Ref.:SECL:RAJ:SAM;94:354

Date: 31:05:1994

To,

All Land Hostees of Rajgamar Village
Khasra No.119/4 to 119/9 (0.75 Area)
Ompur, Rajgamar.

Sub.: - Occupation land at Rajmagar Village, Khasra No.119/4 to 119/9 by S.E.C.L.

Dear Sir,

Your land sitauted at Village Rajgamar, Khasra No.119/4 to 119/9, Area 0.75 Acre has been occupied by S.E.C.L. on 16/4/1994 for opening of PAWAN INCLINE (1&2) and the legal process for compensation and other benefits is under process.

Therefore all the above Land hostees are requested to please do not create any disturbance to the Contractor/workers who are working at the site.

Thanking you,

Yours faithfully

Sd/-

(S.P. Shukla)

Dy. CME Sub Area Manager,
Rajgamar Colliery.

Copy to :
All Land Hostees

- | | | | | |
|---|---|-------|---|--------|
| 1. Prabhat Kumar Mishra, Khasra No.119/4 Area 0.05 acre | | | | |
| 2. Kanhaiya Singh Yadav | " | 119/5 | " | 0.05 " |
| 3. Umesh/Goma | " | 119/6 | " | 0.05 " |
| 4. Harihar Singh Yadav | " | 119/7 | " | 0.05 " |
| 5. Ku. Sarwati D/o Dharnidhar | " | 119/8 | " | 0.05 " |
| 6. Manoga Thakur/Jagbali Thakur | " | 119/9 | " | 0.50 " |

4. It would be pertinent to point out that in this communication sent by the S.E.C.L., it is clearly mentioned that the S.E.C.L. has already taken over the possession of the land and that the legal proceedings for compensation and other benefits are under process. The land owners were requested not to create any disturbance. Copy of this letter has been sent to the land oustees and the first name is that of the petitioner – Prabhat Kumar Mishra, owner of the land bearing Kh.No.119/4 measuring 0.05 acres. Therefore, it is beyond any ken of doubt that the possession of the land of the petitioner/respondent No.1 was taken by the S.E.C.L. prior to 31.05.1994. Thereafter, the S.E.C.L. wrote to the State Government to initiate acquisition proceedings. It appears that in May – June, 1994, acquisition proceedings were also initiated and the award was passed on 11.06.1996. However, it is the admitted case of the parties that the land of Prabhat Kumar Mishra was actually not included in the notification issued in 1994-95. Thereafter, the S.E.C.L. sent another communication to the State Government that certain lands had not been acquired though they were in occupation of the S.E.C.L. Thereafter, fresh notification was issued for acquisition of the land of the petitioner/respondent No.1 on 25.03.2006. The fact remains that though the land of the writ petitioner was occupied by the S.E.C.L. in the year 1994, the notification under Section 4 of the Land Acquisition Act was issued only in the year 2006.

5. It would be pertinent to mention that prior to the year 1994, there was a rehabilitation policy formulated by the S.E.C.L. and approved by the State

Government that one member of every family, whose land is acquired, shall be provided employment in the S.E.C.L. In the year 1995, the scheme of rehabilitation policy was amended and now another stipulation was laid down that only those persons, who had been in continuous occupation of the land for at least 20 years prior to its acquisition, are entitled to the job in the S.E.C.L. It is not disputed that Prabhat Kumar Mishra had not been in occupation of the land for 20 years.

6. The sole issue is whether the case of the respondent No.1/petitioner – Prabhat Kumar Mishra would be governed by the unamended policy as it stood prior to 1995 or is governed by the amended policy.

7. The petitioner/respondent No.1 first approached this Court by filing writ petition being WP(C) No. 4273/2009 praying that he may be granted employment as per the rehabilitation policy. This petition was disposed of on the statement made by the learned counsel for the S.E.C.L. that representation of the petitioner shall be considered in accordance with law. The representation was rejected vide order dated 29.03.2010.

8. Thereafter, the writ petitioner filed another writ petition being WP(C) No.5187/2010. In this writ petition, the same question was raised as to what was the date which would determine the entitlement of the petitioner to claim employment. This petition was disposed of by a detailed judgment and the relevant portions of the said judgment read as under:-

“3.The further case of the petitioner is that one similarly situated person namely; Nagendra Thakur, dependent of one Manoga Thakur, who is the purchaser of the land on the same date with that of the petitioner, has been provided employment in the S.E.C.L. by order dated 15/16.01.2004 (Annexure – P/4). The petitioner had filed a copy of sale deed executed between Jethu Ram and Manoga Thakur as Annexure -P/5. The petitioner sought certain information, under the provisions of the Right to Information Act, 2005, which was provided to the petitioner by communication dated 16.06.2008 (Annexure -P/6). From the said documents, it is manifest that in case of the petitioner, the amended rehabilitation policy 1995 has been applied whereas the case of the petitioner was dealt with under the rehabilitation policy, 1991.

4. According to the petitioner, the claims of all the land oustees prior to 1994 has been considered and they have

been provided with the employment, but the case of the petitioner has not been considered only on the ground that his case has been forwarded to the appropriate authority in the year 1998. In fact, there is no fault on the part of the petitioner in making the claim. Even, the petitioner made a representation before Chairman-cum-Managing Director, S.E.C.L. on 10.01.2009 (Annexure -P/8) and when the same was not considered, the petitioner preferred a writ petition before this Court, being W.P.(C) No.4273 of 2009, which was disposed of by this Court on 12.08.2009 with the observation to consider and decide the representation of the petitioner within a period of four weeks from the date of receipt of a copy of the order. Thereafter, the respondent authorities rejected the claim of the petitioner and communicated the same to the petitioner by impugned letter dated 29.03.2010 (Annexure – P/10). When the representation of the petitioner was not considered properly, the petitioner preferred a contempt petition, being Contempt Case (C) No.74 of 2010, which was disposed of by this Court as withdrawn by order dated 12.04.2010 (Annexure -P/11) with liberty to file a writ petition against the order passed by the concerned authority on 29.03.2010 and also for redressal of the other grievances. Hence, this petition.

6. Shri Shukla would next submit that the stand of the S.E.C.L. in stating that unless there is continuous ownership for last two decades, the candidate would not be entitled for appointment is absolutely baseless, because in case of Nagendra Thakur, the appointment had been granted on the basis of sale deed of the year 1993. The representation of the petitioner has been rejected in a cavalier manner, without application of mind and without considering the facts and circumstances of the case in its later and spirit.

xxxx xxxx xxxx xxxx xxxx xxxx xxxx

11. In case of the petitioner, as per the return filed by the State, land of the petitioner was acquired in the year 1995 and compensation was paid and, as such, the provisions of the Rehabilitation Policy, 1991 would be applicable.

12. In view of the above, there is a dispute with regard to the date of the acquisition of land as to when the land of the petitioner was acquired. However, in the representation dated 10.1.2009 (Annexure – P/8), the petitioner has taken a stand that though the land was acquired in the year 1995, however, while passing the award of compensation by mistake the name of the petitioner was left out. Though, copy of the award, despite granting sufficient opportunities, has not been filed in this petition.

13. Having regard to the facts situation of the case, the Collector, Korba, is directed to find out the date of taking over the possession of the land of the petitioner and consider the application of the petitioner after affording

opportunity of hearing to the SECL as well as the petitioner, and decide the issue as to which rehabilitation policy would be applicable. The Collector is further directed to consider as to whether the petitioner is entitled to employment also under the, then, prevailing rehabilitation policy at the time of acquisition of the land of the petitioner and pass an appropriate order, in accordance with law and on its own merits, as early as possible, preferably within a period of six weeks.”

9. In the aforementioned petition also, stand of the State was that the land of the petitioner was acquired prior to the amendment of the policy, and therefore, he would be governed by unamended policy. In para-12, the learned Single Judge while disposing of the writ petition clearly held that there is a dispute with regard to the date of the acquisition of land as to when the land of the petitioner was acquired. The stand of the petitioner was that though the possession of the land of the petitioner was taken over by the S.E.C.L. prior to the year 1995, due to mistake his land was not mentioned in the acquisition notice, and therefore, fresh acquisition proceedings had to be started in respect of his land. The learned Single Judge, therefore, issued directions to the Collector, Korba, to find out the date of taking over the possession of the land of the petitioner and also to consider whether the petitioner is entitled to any employment. The Collector enquired into the matter and submitted his report and as per the report of the Collector, initially proposal was sent by the S.E.C.L. on 12.05.1994 for acquisition of all the lands including the land of the petitioner/respondent No.1, but, by mistake, the lands of five land holders including the petitioner – Prabhat Kumar Mishra, were not included in the acquisition proceedings. Therefore, the land of 12 land holders was acquired but the land of remaining 5 land holders was already in possession of the S.E.C.L., but, acquisition proceedings were started only in the year 2006. It would be pertinent to mention that there is also finding that one family member of Manoga Thakur was granted employment by the S.E.C.L. itself, even though the land of Manoga Thakur had not been acquired under the acquisition proceedings of 1994, but, was acquired by the S.E.C.L. later on after the amendment of the policy in the year 1995. The member of the family of Manoga Thakur was granted employment

only on the ground that possession of the land from the family of Manoga Thakur had been taken over on 12.05.1994.

10. After the Collector submitted his report, the petitioner filed another writ petition claiming employment, in view of the report of the Collector and the S.E.C.L. also filed a writ petition challenging the correctness of the report of the Collector. The learned Single Judge held that in view of letter dated 31.05.1994, which we have reproduced hereinabove, it is apparent that the possession of the land of the petitioner was taken over by the S.E.C.L. prior to that date and it is more than obvious that possession of the land was taken on 12th May, 1994. The learned Single Judge, relying upon the judgments of the Apex Court in the cases of ***E.P.Royappa v. State of Tamil Nadu and another*, (1974) 4 SCC 3, *Subramanian Swamy vs. Director, Central Bureau of Investigation and another*, (2014) 8 SCC 682, *Tukaram Kana Joshi and others through power-of-attorney holder vs. Maharashtra Industrial Development Corporation and others*, (2013) 1 SCC 353 and *Smt. Indira Nehru Gandhi (In C.A. No.887 of 1975) Shri Raj Narain (In C.A. No.909 of 1975) vs. Shri Raj Narain and Another (In C.A. No.887 of 1975) Smt. Indira Nehru Gandhi (In C.A. No. 909 of 1975), 1975 (Supp) SCC 1* held that Article 14 prohibits discrimination and since a member of family of Manoga Thakur has been granted employment, the petitioner could not be refused employment, and therefore, directed that the S.E.C.L. to provide employment to the petitioner under pre-amended 1991 policy within a period of 3 months from the date of judgment/order.**

11. Shri H.B.Agrawal, learned Senior Advocate appearing for S.E.C.L. submits that the petitioner has been adequately compensated with regard to the wrongful possession taken from him without acquisition proceedings because in the award of the Land Acquisition Officer, he has been granted compensation @ 12% per annum as damages w.e.f. 16.06.1996 to 16.05.2006, i.e., for the period of 9 years 11 months.

12. The second contention of Shri H.B.Agrawal, learned Senior Advocate is that

it is the date of notification under Section 4 of the Land Acquisition Act of 1894, which is the prime factor to be taken into consideration for determination as to which rehabilitation policy is applicable. It is submitted by Shri Agrawal that since under Section 4 of Land Acquisition Act, 1894, notification was issued in the year 2006, the policy as it stood in the year 2006 will be applicable and not any policy prior to the said date. His third submission is that the learned Single Judge erred in issuing direction to the S.E.C.L. to provide employment to the petitioner – Prabhat Kumar Mishra. He submits that the Court can only direct consideration of the case and cannot direct to provide employment.

13. As far as the first submission of Shri H.B.Agrawal, Senior Advocate, is concerned, we are not at all in agreement with him. From the facts stated in preceding paragraphs and from the material, which has been placed on record it is more than obvious that the S.E.C.L. took over the possession of the land of the petitioner – Prabhat Kumar Mishra on 12th May, 1994. The S.E.C.L. is a Public Sector undertaking and we expect that every citizen of the country should obey the law. As far as the Government and Public Sector undertakings are concerned, it is expected that they will be even more careful and shall ensure that the rule of law is followed. The rule of law is the golden thread which runs through the Constitution. If there is no rule of law, there will be anarchy and chaos. If the rule of law was to be followed, then the S.E.C.L. had no business to take over the possession of the land of any citizen of this country including the land of the petitioner without following the procedure prescribed by law. No Corporation, Company or conglomerate can take over the land or enter into the possession of the land of even the poorest of the poor citizens of the country without following the procedure prescribed by law. If it does so, then it does so at its own peril. We cannot approve the action of the S.E.C.L. in taking over the possession without paying any compensation and then claiming that the petitioner/respondent No.1 is governed not by any policy as he has been adequately compensated by giving him interest @ 12% per annum for the period when the land was acquired before the initiation

of proceedings. That is measly compensation being paid for illegal possession.

14. We are dealing with a petitioner who belongs to the poorest section of society, whose small land holding was taken over by the huge business empire and they are not even adequately compensating the petitioner. We, therefore, reject the first submission of Shri Agrawal that the petitioner has been adequately compensated by awarding interest @ 12% per annum by the Land Acquisition Officer.

15. Coming to the second submission of Shri Agrawal with regard to the date of applicability of the acquisition. At the outset, we may point out that in the rehabilitation policy dated 25th September, 1991, there is no mention of the date of acquisition. The rehabilitation only talks of the date of displacement. The relevant factor to be taken into consideration is the date of displacement. In this case, date of displacement is 12th May, 1994 or at least 31st May, 1994.

16. We have no quarrel with the proposition that normally it would be the date of notification issued under Section 4 of the Land Acquisition Act, which will decide what is the relevant rehabilitation policy applicable to the case. However, each case has to be decided on its own facts. This is a case where it stands proved on the admission of the S.E.C.L. contained in letter dated 31st May, 1994 that it took over the possession of the land of Prabhat Kumar Mishra prior to 31st May, 1994. As observed by us earlier, this was a totally illegal entry by the S.E.C.L. into the land of Prabhat Kumar Mishra. Even if notification under Section 4 of the Land Acquisition Act, 1894, was issued, no person can enter into the land of any person unless the award is announced or urgent proceedings under Section 17 are simultaneously started. Under Section 17, a percentage of the compensation as assessed has to be paid immediately before entering into the land of the land owners.

17. This Court cannot interpret the provisions of law in such a manner that it gives premium to dishonesty. We also cannot interpret any provision in such a manner that the person, who violates the rule of law, who breaks the specific

provisions of the Act, who commits criminal offence of trespass can later claim that because of his illegal activities, he is not liable to give benefit to the displaced person because the acquisition of land is done later. It may be true that the S.E.C.L. had asked the State for acquiring the land of Prabhat Kumar Mishra and the mistake may be on the part of the State in not including the land of the petitioner in the acquisition notice. However, whether the fault was on the part of the S.E.C.L. or on the part of the State, the petitioner – Prabhat Kumar Mishra should not suffer. Possession of his land could not have been taken over without following the due process of law. Though the right to property may not be a fundamental right, but it is still Constitutional right under Section 300A of the Constitution of India. No man can be deprived of his property without payment of adequate compensation. Here, we are dealing with a case where a huge company entered into the land, sets up an industry does not pay compensation to the land holders and continues to remain in possession of the land and acquisition proceedings are started 12 years later in the year 2006. In such a situation, the normal date of issuance of notification may not apply. This is an exceptional case where the possession was taken over prior to the amendment of rehabilitation scheme in the year 1995, and therefore, the case of the petitioner was governed by the unamended scheme of 1991.

18. In addition thereto, we are in agreement with the view of the learned Single Judge that the S.E.C.L. cannot have two different parameters in this regard; one in the case of Manoga Thakur and second in the case of Prabhat Kumar Mishra. Although both their cases were identical, employment was offered to one of the relatives of Manoga Thakur but denied to Prabhat Kumar Mishra.

19. Coming to the third argument that the Court should not have given a direction to provide employment, we are not at all in agreement with the counsel. No doubt, normally, a writ Court does not issue a direction of this nature, but, this is the third round of litigation. The contention that the petitioner was denied employment merely on the ground that the petitioner was adequately compensated

for acquisition of his land in the year 1995 and provisions of the rehabilitation policy 1991 would be applicable is not at all acceptable. We must remember that the writ petitioner was deprived of his land in the year 1994 and the writ petition was decided 22 years later in the year 2016. Therefore, in such a situation, the learned Single Judge was absolutely justified in giving a direction that the S.E.C.L. should provide employment to Prabhat Kumar Mishra or one of his family members. In fact, according to us, the appellants have been dealt with very leniently. This is a case where the appellants using its money power was forcing the poor petitioner to approach this Court time and again and even after the Collector had given clear cut report in favour of the petitioner, ignoring the findings of the Collector, the appellants have again approached this Court in appeal. Therefore, we impose exemplary cost of Rs.1,00,000/- upon the S.E.C.L. to compensate the petitioner for illegal occupation of his land and denying him employment for more than 22 years. The order of the learned Single Judge be complied with by the S.E.C.L. within 30 days from the date of receipt of copy of this order and the costs shall be payable to the petitioner within the same period.

20. In view of what has been stated above, the appeals must fail and are hereby dismissed.

Sd/-

(Deepak Gupta)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge