

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 6620 OF 2012**

Genba Laxman Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

WITH**WRIT PETITION NO. 6621 OF 2012**

Ramu Bhiwa Pawagi (deceased)		
by LRs. Ganpat Ramu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

WITH**WRIT PETITION NO. 6626 OF 2012**

Sopan Narayan Salunke (deceased)		
by LRs. Ananda Sopan Salunke	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

WITH**WRIT PETITION NO. 6627 OF 2012**

Shalan Dashrath More	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

WITH**WRIT PETITION NO. 6767 OF 2012**

Bhiku Ganu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7829 OF 2012**

Dattu Laxman Salekar	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7831 OF 2012**

Ananda Babu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7835 OF 2012**

Chandrakant Laxman Salekar	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7841 OF 2012**

Dhondiba Dagdu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7843 OF 2012**

Tanaji Dhondiba Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7969 OF 2012**

Nandkumar Dattatraya Deshpande	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7970 OF 2012**

Ramchandra Bhambaji Pawar	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7971 OF 2012**

Vithal Laxman Salekar	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7973 OF 2012**

Baban Dhondu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7974 OF 2012**

Laxman Baburao Wadkar	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 7975 OF 2012**

Maruti Balu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8863 OF 2012**

Hanumant Rambhau Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8865 OF 2012**

Hausabai Mahadev Ambike	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8870 OF 2012**

Shivram Tukaram Pawagi & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8937 OF 2012**

Dagdu Laxman Pilaware (deceased)		
by LRs. Kondiba Dagdu Pilaware & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8988 OF 2012**

Shankar Rumaji Pawagi (deceased)		
by LRs Namdeo Shankar Pawagi & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8989 OF 2012**

Prakash Dattatraya Deshpande	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8990 OF 2012**

Bhagu alias Bhagirath Sakharam Dighe	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 8991 OF 2012**

Shripati Kushaba Pawagi & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9019 OF 2012**

Dagdu Laxman Pawagi (deceased)		
by LRs Pandurang Dagdu Pawagi & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9020 OF 2012**

Pandurang Dhondiba Pawagi & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9023 OF 2012**

Dilip Dattatraya Deshpande	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9032 OF 2012**

Vishnu Laxman Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9033 OF 2012**

Bajirao Shankar Shedge	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9041 OF 2012**

Parvati Vishnu Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9051 OF 2012**

Nathu Umaji Dighe & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9089 OF 2012**

Maruti Bhiwa Pawagi (deceased)		
by LRs. Datta Maruti Pawagi & Ors.		Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9092 OF 2012**

Vithoba Bhiwa Kank (deceased)		
by LRs. Mahadev Vithoba Kank & Ors.	..	Petitioners
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9093 OF 2012**

Sonba Laxman Salunke	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 9607 OF 2012**

Dagdu Sagu Pawagi (deceased)		
by LRs. Laxman Dhondiba Pawagi	..	Petitioner
versus		
State of Maharashtra & Ors.	..	Respondents

Mr. Gaurav Potnis with Mr. Ashok Joshi i/b. Pallavi Potnis for Petitioners.

Mr. Nitin Deshpande – Additional Government Pleader for Respondents - State.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

Date of Reserving the Judgment : 20 September 2016

Date of Pronouncing the Judgment : 02 March 2017

COMMON JUDGMENT :

1] Since, common issues of law and fact arise in this batch of petitions, we propose to dispose them, with a common judgment and order. For this purpose, Writ Petition No. 6620 of 2012 is treated as a lead petition, since the pleadings have been mainly filed therein. Learned counsel for the parties also agree that this would be an appropriate course of action to adopt.

2] Between the years 1994 and 1999, the ancestral lands and houses held by the petitioners were acquired by the State Authorities since the same were to be submerged under the Nira Deoghar Irrigation Project Waters. In all, about 91 hectares land was acquired, for which, compensation, including solatium and interest was determined at Rs.57.25 lakhs, corresponding to Rs.63000/- per hectare. This was in the year 1996. Since the petitioners were to be rehabilitated in the lands due to receive the benefit of irrigation project, the petitioners were required to deposit 65% of such compensation with the State Authorities as a part of the occupancy price. This the petitioners did in the year 1996 itself. In the year 2001, when submergence was imminent, the petitioners alongwith their family members and cattle were physically uprooted and relocated in the

village **Shedgewadi** in the neighbouring district of Satara. Unfortunately, the State Authorities, quite insensitive to the trauma of such up-rootment from ancestral lands and houses, failed to provide any rehabilitation measures at **Shedgewadi**. In particular, the lands allotted to the petitioners were barren, on account of inadequate water supply and complete lack of irrigation facilities.

3] The Nira Deoghar Irrigation Project conceived in the year 1984 was to *inter alia* comprise the Nira Deoghar Dam, Left Bank Canal (length 21 kms) and Right Bank Canal (length 208 kms). **Shedgewadi**, where the petitioners have been allotted lands is located at a distance of about 5 kms. from the villages of Bhade and Andori, through which, the Right Bank Canal is meant to pass at kms. 48-49 from the starting point. Therefore, what was contemplated was that the construction of the Right Bank Canal would be at least substantially complete by the time the petitioners are uprooted from the affected zone and rehabilitated in the benefited zone by the year 2000-2001. However, the actual construction of the Right Bank Canal commenced only in the year 2001 and by the year 2008 the construction progressed only up to 19 kms. from the starting point. In the meantime, the petitioners were left to suffer their fate on account of deprivation of adequate water supply and irrigation facilities, which left them without any source of livelihood worth the name.

4] The petitioners, despite their unfortunate predicament made several representations to the State Authorities urging early completion of construction of the Right Bank Canal so that water supply and irrigation facilities are made available to the petitioners in compliance with the statutory mandate of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (said Act), as also the promise of

social and economic justice enshrined in the preamble to the Constitution of India. However, all that the petitioners met with, were assurances, which, despite lapse of several years, hardly translated into any action. The petitioners contend that there is callous inaction, lethargy and apathy on the part of the State Authorities, which has resulted in depriving the petitioners, not just their statutory entitlements but also their basic human rights and in particular their right to livelihood as guaranteed by Article 21 of the Constitution. After exhaustion of remedies by address of several representations, the petitioners have instituted these petitions under Article 226 of the Constitution complaining about the gross violation of their right to livelihood. By way of redressal, they have applied for the issue of appropriate writ to direct the State Authorities to complete the construction of the Right Bank Canal at least upto the villages of Bhade and Andori, so that some modicum of irrigation facility is made available to the lands allotted to them at **Shedgewadi** and for some compensation.

5] Mr. Gaurav Potnis, learned counsel for the petitioners, after taking us through the pleadings and the affidavits-in-reply filed by the State Authorities, submits that the State Authorities, by their callous inaction and apathy have violated not only provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (said Act), but also, the fundamental rights of the petitioners as guaranteed by Article 21 of the Constitution of India. Mr. Potnis submits that the lands and houses of the petitioners now acquired, were located in the affected zone of the Nira Deoghar Irrigation Project. The petitioners, in the year 1996 itself have already deposited 65% of the compensation amount towards acquisition of their lands and houses with the rehabilitation authorities. However, the lands allotted to the petitioners

at Shedgwadi are totally barren, being bereft of water supply or irrigation facility. Mr. Potnis submits that the obligation in terms of section 10 of the said Act is to rehabilitate the petitioners in areas receiving the benefit of irrigation from the project, for which, their lands and houses came to be acquired. The allotment of the lands, which have neither any water supply nor irrigation facility, does not amount to rehabilitation in areas receiving the benefit of irrigation from the irrigation project. Accordingly, Mr. Potnis submits that this is a case of breach of the provisions of section 10 of the said Act.

6] Mr. Potnis further submits that after the acquisition of the petitioners' lands and houses in the affected zone, the petitioners were completely uprooted from the areas held by them and before them, their ancestors for generations together. Mr. Potnis submits that the petitioners were carrying on agriculture in the affected zone and the acquisition of their lands and houses, has resulted not merely in the acquisition of their property, but also, such acquisition has resulted in virtually taking away their right to livelihood. Mr. Potnis submits that from the year 2001 onwards, the respondents have been assuring the petitioners that the construction of the Right Bank Canal, which is to irrigate the lands allotted to the petitioners would be completed. However, on account of lack of executive will, combined with inaction and apathy, such construction is not being completed, as a result of which, the petitioners have been deprived their right and livelihood as guaranteed by Article 21 of the Constitution of India. Mr. Potnis, finally submits that this is a fit case where the order dated 8 December 2015 made by this Court awarding compensation of Rs.15,000/- per month for each of the petitioners is made absolute and further, time bound directions are issued to the State Authorities, to complete the construction of the Right Bank Canal and provide water and irrigation

facilities to the lands allotted to the petitioners. Mr. Potnis has relied upon the decisions in ***Olga Tellis and ors. Vs. Bombay Municipal Corporation and ors***¹, ***Bhusawal Municipal Council Vs. Nivrutti R. Phalak and ors***², ***Rudul Sah Vs. State of Bihar***³, ***Challa Ramkonda Reddy and ors. Vs. State of Andhra Pradesh by Dist. Collector, Kurnool***⁴ and ***Devki Nandan Prasad Vs. State of Bihar***⁵.

7] Mr. Nitin Deshpande, learned Additional Government Pleader (AGP) with admirable restraint submitted that there is no obligation under the said Act to allot any land to project affected persons like the petitioners, since section 10 of the said Act makes it very clear that the lands can be allotted subject to availability and not otherwise. He submitted that despite such position, the State Authorities did allot lands to the petitioners at **Shedgewadi** and has made all efforts to provide irrigation facility to such lands, even though, there is no statutory or constitutional obligation in this regard. He submitted that there may be some delay but there is no negligence on the part of the State Authorities, since, the delay is entirely for reasons beyond the control and contemplation of the State Authorities. He submits that the delay was mainly for the following three reasons:

- i] Litigations by various land owners from the benefited zone resisting acquisition of their lands for the construction of the Right Bank Canal;
 - ii] Delay in obtaining clearances from the Ministry of Environment and Forest (MOEF) in respect of part of the construction of the Right Bank Canal affected by forest lands ;
- and

1 1985 (3) SCC 545

2 2015 (14) SCC 327

3 (1983) 4 SCC 141

4 AIR 1989 AP 235

5 1983(4) SCC 20

iii] Paucity of funds.

8] Mr. Deshpande also submitted that the State Authorities, in the matter of construction of dams or irrigation project exercise sovereign functions and therefore, are entitled to sovereign immunity, assuming without accepting that there has been some negligence on the part of the officers, in the matter of providing water and irrigation facilities to the petitioners' lands. He submits that, in such circumstances, the State Authorities cannot be saddled with any liability for payment of compensation. In support of such proposition, Mr. Deshpande relied upon the judgment of the Income Tax Appellate Tribunal in ***Vidarbha Irrigation Development Corporation Vs. Joint Commissioner of Income Tax*** decided on 22 July 2015, which according to him has held that the State Authorities discharge sovereign function when comes to construction of dams and irrigation projects. As regards sovereign immunity, Mr. Deshpande relies upon the decisions in cases of ***Peninsular and Oriental Steam Navigation Company Vs. The Secretary of State for India***⁶, ***State of Rajasthan Vs. Mst. Vidhyawati & anr.***⁷, ***M/s. Kasturilal Ralia Ram Jain Vs. State of U.P.***⁸ and ***N. Nagendra Rao & Co. Vs. State of A.P.***⁹, ***Shantiprasad Gupta Vs. State of U.P.***¹⁰, ***State of Assam and ors Vs. Md. Nizamuddin Ahmed***¹¹, ***State of Himachal Pradesh and anr. Vs. Umed Ram Sharma and ors.***¹², ***Executive Engineer (State of Karnataka) Vs. K. Somasetty & ors.***¹³, ***Province of Madras represented by the Collector of Madurai Vs. Jaithoon Bibi & Ors***¹⁴,

6 (5) Bom.HCR. OC.1 (Supreme Court of Calcutta)

7 AIR 1962 SC 933

8 AIR 1965 SC 1039

9 (1994) 6 SCC 205

10 AIR 1973 All 28

11 AIR 1999 Guwahati 62

12 (1986) 2 SCC 68

13 (1997) 5 SCC 434

14 (1988) 1 MLJ 180

SPS Rathore Vs. The State of Haryana & ors.¹⁵, Rabindra Nath Ghosal Vs. University of Calcutta and ors¹⁶, Tamilnadu Electricity Board Vs. Sumathi & ors.¹⁷, State of U.P. & anr. Vs. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsha Samiti & ors.¹⁸, Pani Haq Samiti Vs. Brihanmumbai Municipal Corporation¹⁹, Sunda Thevar & ors. Vs. The Collector of Madurai & anr.²⁰ and Narmada Bachav Aandolan Vs. Union of India²¹.

9] Finally and in the alternate, Mr. Deshpande, submitted that proceedings under Article 226 of the Constitution are inappropriate and the petitioners ought to be relegated to the ordinary remedy by way of civil suit, particularly since the issue of payment of compensation would involve adjudication into several disputed questions of fact. Mr.Deshpande submitted that the State Authorities in their returns have pointed out the petitioners could have sourced water by sinking wells or bore-wells in order to undertake agricultural operations. He submitted that some of the petitioners, have in fact, undertaken agricultural operations by sourcing water in this manner. He submitted that nothing prevented the petitioners from applying to the State Authorities for water by means of lift irrigation facilities through some other irrigation project proximate to **Shedgewadi**. All these according to Mr. Deshpande are matters which involve adjudication into disputed questions of fact, which exercise may not be undertaken by this Court in the exercise of its extraordinary jurisdiction.

15 (2005) 10 SCC 1

16 (2002) 7 SCC 478

17 (2000) 4 SCC 543

18 (2008) 12 SCC 675

19 PIL No.10 of 2012 decided on 15/12/2014 (OOCJ Bombay)

20 (1984) 2 MLJ 451

21 AIR 2000 SC 3751

10] For all the aforesaid reasons, Mr. Deshpande submitted that the petitions may be dismissed and even the order dated 8 December 2015, by which this Court directed payment of compensation to the petitioners be recalled or varied. Mr. Deshpande by reference to certain documents submitted that at least three or four petitioners have sold the lands allotted to them at **Shedgewadi**, presumably for some profit and at least such petitioners are not entitled to any reliefs whatsoever in these petitions.

11] The rival contentions now fall for our determination.

12] There is no serious dispute with regard to the basic facts. The Nira Deoghar Irrigation Project was conceived some time in the year 1984 to comprise *inter alia* Nira Deoghar Dam, Left Bank Canal (length 21 kms) and the Right Bank Canal (length 208 kms.). The construction of the actual dam and presumably even the Left Bank Canal was completed by the year 2000. However, the construction of the Right Bank Canal commenced only in the year 2001 and up to the year 2008, hardly length of 19 km was covered. Between 2008 and 2014, there was no construction. The construction resumed only a good two years after institution of these petitions. Except for vaguely urging that the petitioners could have sunk wells or bore-wells or applied for irrigation facility from some other project, there is no denial that irrigation facility is till date not made available to the lands allotted to the petitioners at **Shedgewadi**, by way of supposed rehabilitation.

13] From the year 1984 till date, the issue of rehabilitation of project affected persons is governed principally by the following legislations:

- i] Maharashtra Resettlement of Project Displaced Persons Act, 1976;

- ii] Maharashtra Project Affected Persons Rehabilitation Act, 1986; and
- iii] Maharashtra Project Affected Persons Act, 1999 (said Act)

14] Besides, the issue is also governed by some Government Resolutions (GRs), which supplement or assist in the implementation of the aforesaid legislations. The policies with regard to rehabilitation are to some extent reflected in the "*Punarvasan Arakada*" (Rehabilitation Plan) and the "*Water Policy*" formulated by the State Government. The Government of India has also formulated the National Rehabilitation and Settlement Policy 2007. In the preamble to this policy, there is acknowledgement that acquisition of private property by the State leads to involuntary displacement of people, depriving them of their land, livelihood and shelter; restricting their access to traditional resource base, and uprooting them from their socio cultural environment. These have traumatic, psychological and socio cultural consequences on the affected population which call for protecting their rights. There is imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of the affected persons, rather than as externally imposed requirements. The displacement process often poses problem that make it difficult for the affected persons to continue their earlier livelihood activities after resettlement. This requires careful assessment of the economic disadvantage and the social impact of displacement. There must be a holistic effort aimed at improving the all-round living standards of the affected people. Chapter VII of the policy specifically recommends allotment of land in command area of project, to the extent possible, to families affected by irrigation or hydel projects. In case a family cannot be given land in command area of project or the family opts not to take

lands, such a family may be given monetary compensation on replacement costs basis for their lands lost, for purchase of suitable lands elsewhere. In case of irrigation or hydel projects, the State Governments may formulate suitable schemes for providing land to the affected families in the command area of the project by way of pooling of the lands that may be available or, otherwise, would be made available in command areas of such project. In addition to this, the National Policy recommends several other benefits to persons affected by irrigation projects.

15] This means that, at least on paper, there is robust mechanism in place to address and redress the issues of rehabilitation of project affected persons. The enactment of legislations and the formulation of policies is one thing, however, implementation of the same, is quite another. The facts and circumstances in these batch of petitions, is a clear instance where the authorities enjoined to implement the rehabilitation schemes display scant and insensitive regard, when it comes to actual implementation.

16] The State Authorities, consistent with the provisions of the aforesaid legislations, issued necessary notifications declaring the “*affected zone*” and “*benefited zone*” in respect of the Nira Deoghar Irrigation Project. The affected zone, *inter alia*, included the areas actually required and acquired for the purposes of construction of Nira Deoghar Dam, as also areas which were expected to be submerged by the dam waters. The benefited zone, included areas which were to receive the benefit of irrigation facilities from out of Nira Deoghar Irrigation Project. The petitioners held lands and houses in the village of Dapkeghar, Tal. Khandala, Dist. Pune. Since, such lands and houses were to be submerged in the Nira Deoghar Dam waters, they

were included in the affected zone.

17] The State Authorities, by invoking the doctrine of *eminent domain*, vide award dated 25 March 1996 made under the Land Acquisition Act, 1894, acquired the petitioners' lands and houses at Dapkeghar in the affected zone. In all, about 91 hectares land was acquired, for which, compensation, including solatium and interest was determined at Rs.57.25 lakhs, corresponding to Rs.63000/- per hectare. Such acquisition, in reality involved, not just the acquisition of petitioners' ancestral lands and houses, but also, the petitioners only source of livelihood, i.e., agriculture, for which, no separate compensation was ever determined, possibly because there is no such requirement in the Land Acquisition Act, 1894. Out of the compensation so determined, the petitioners were required to deposit with the Collector 65% of the amount of compensation by way of compliance with the provisions of section 16(2) (b) of the said Act, to which detailed reference shall be made in the course of this judgment.

18] The construction of Nira Deoghar Dam was substantially completed by the year 2000-2001. Since, submergence of lands in the affected zone was quite imminent, the petitioners were forced to relocate at **Shedgewadi**, where they were allotted lands in supposed compliance of obligations in terms of sections 10 and 16 of the said Act. In fact, since the lands allotted to the petitioners at **Shedgewadi** were bereft of adequate water supply or irrigation facility, such allotment can hardly be styled as compliance with the statutory obligations prescribed in section 10 (1) of the said Act, which, no doubt subject to availability of sufficient land for the purpose, contemplates the rehabilitation of affected persons from the affected zone under an irrigation project, ***“on land in the villages or areas receiving the***

benefit of irrigation from such project”.

19] Section 10 of the said Act which is concerned with the rehabilitation of the affected persons, reads thus:

“10. Rehabilitation of affected persons.— (1) The State Government shall in accordance with the provisions made by or under this Act and subject to the availability of sufficient land for the purpose, rehabilitate affected persons from the affected zone under an irrigation project, on land in the villages or areas receiving benefit of irrigation from such project.”

(2) Nothing in section 14 or any other provisions of this Act or any other law for the time being in force shall prevent the State Government from rehabilitating, in accordance with the other provisions made by or under this Act, as many persons as possible from the affected zone under any other project to which the provisions of this Act apply or not, including those under any irrigation project who have remained to be rehabilitated,—

(a) on land in benefited zone of any irrigation project or, as the case may be, in other villages or areas, acquired for the purpose under the provisions of section 14 ; or

(b) on any land from the land pool.

(3) The State Government shall provide civic amenities in the prescribed scale and manner in the new gaothan or in the extended part of any existing gaothan established for the purpose of rehabilitation of affected persons and such amenities shall include the following, namely :—

(a) permanent provision for drinking water, in proportion to the population, by open well, bore well, tube well, piped water supply scheme or by any other mode ;

(b) school with playground of appropriate level as prescribed by the Education Department of the State Government with toilet facilities ;

(c) construction of Village Panchayat Office and Chavdi or Samaj Mandir ;

(d) internal metal roads and asphalted approach road of appropriate standard ;

(e) an access to the farm lands of the affected persons, if required ;

(f) electric supply along with street lights, and three

phase connections, wherever required ;

(g) cremation ground with a shed, platform, electric supply, water supply and burial ground, as may be required with an approach road ;

(h) open built-up gutters ;

(i) financial assistance for individual latrines and public latrines, whenever necessary ;

(j) land for cattle stand with a water cistern ;

(k) land with pick up shed for Maharashtra State Road Transport Corporation bus services ;

(l) land for threshing floor, that is to say, khalwadi ;

(m) pasture land (if Government land is available) ;

(n) developed land for market ;

(o) land for future expansion of gaathan ;

(p) land for a secondary school and a dispensary or primary health centre, bank, post-office, garden for children, etc., depending on the population of the new gaathan ;

(q) land for registered bodies for public purposes in the old gaathan ;

(r) land for play ground.

(4) In addition to the amenities listed above, the State Government shall also provide, to an appropriate standard, in the new gaathan having majority of the affected persons, all such other amenities which existed in the old gaathan :

Provided that, the places of public worship shall not be constructed by the Government, however, the compensation for the places of public worship in the old gaathan shall be awarded to the concerned Public Trust and if the places of public worship do not belong to any public trust, such places of public worship shall be constructed as provided in the Maharashtra Religious Endowments (Reconstruction on Resettlement Sites) Act, 1970.

(5) The expenditure on all such amenities in sub-sections (3) and (4) above shall be part of the cost of the project.

(6) (a) *In all Class III and Class IV category of services under the establishment of the State Government Departments, public sector undertakings, local self government, government-aided institutions and co-operative societies specified under section 73A of the Maharashtra Co-operative Societies Act, 1960 there shall be not less than five per cent. priority quota for the employment of nominees of the affected persons.*

(b) The beneficiary persons, societies, companies, factories, sugar-factories, spinning-mills assisted by the State Government in the form of matching share contribution etc., shall provide employment to not less than five per cent. of the cadre strength of Class III and Class IV or equivalent of non-technical employees to the nominees of the affected persons :

Provided that, the above priority shall be treated as preference among the open and different reservation categories in pro-rata manner.

(c) The Collector shall maintain a register showing the recruitment position in the District and ensure removal of the backlog in recruitment of the nominees of the affected persons. However, at any recruitment, the percentage of the persons so recruited from amongst the nominees shall not exceed fifty."

(emphasis supplied)

20] There is really no material on record to indicate that the State Authorities have provided to the petitioners the civic amenities as listed in sub-section (3) of section 10 of the said Act or for that matter any amenities which existed in the old gaathan, from where the petitioners uprooted on account of the Nira Deoghar Irrigation Project. However, in this case, since we are mainly concerned with the denial or in any case the unreasonable delay on the part of the State Authorities in providing the benefit of irrigation to the lands allotted to the petitioners at **Shedgewadi**, we will make particular reference to the phraseology employed by the legislature in section 10 (1) of the said Act. As noted earlier, what this section contemplates is the rehabilitation of the affected persons from the affected zone under an irrigation project, **"on land in the villages or areas receiving the benefit of irrigation from such project"**.

21] Section 16 of the said Act, which deals with the grant and assignment of land to project affected persons, reads thus:

16. (1) An eligible affected person who is desirous of getting land or plot or both in the area shown for the purpose in

the scheme published under section 15 may make an application to the Collector in the prescribed form for grant of land or plot, and subject to such rules as may be prescribed, it shall be lawful for the Collector—

(a) to grant land acquired under section 14 to such affected person with the occupancy status on the land held by him earlier ;

(b) to grant a plot of land to such affected person in a new gaothan or extended part of the existing gaothan with the occupancy status on the land held by him earlier and rupees ten thousand as a special grant for construction of house on such plot,

in such manner, as far as possible, according to the provisions of parts III and IV of the Schedule and on such terms and conditions as may be prescribed :

Provided that—

(i) if the allottee of the land under sub-clauses (a) and (b) of sub-section (1) is an occupant Class II, he shall be entitled to conversion of the land to occupant Class I after a period of ten years on payment of premium as may be prescribed ;

(ii) the affected person referred to in sub-section (d) of clause (2) of section 2 shall be eligible to a constructed house on the basis of the Indira Awas Scheme of the State Government ;

(iii) the affected person referred to in sub-clause (e) of clause (2) of section 2 shall be eligible only for grant of a plot under clause (b) ;

(iv) subject to the provisions of sub-sections (2) and (3), the occupancy price of the land or plot, as the case may be, granted under clause (a) or (b), except under sub-clause (ii) above, shall be determined and paid in the manner as may be prescribed.

(2) An affected person eligible for the grant of land or plot under sub-section (1) shall forfeit his right to get the same if—

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of forty-five days from the date of receipt by him of a notice in that behalf from the Collector ; or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent. of the amount of compensation which he has received for his

land which is acquired from him in the affected zone or of the likely cost of the land to be granted to him under sub-section (1), whichever is less, at the time of payment of such compensation to such affected person.

(3) After payment of the amount under clause (b) of sub-section (2), the remaining amount towards the occupancy price payable by the affected person for the land allotted to him shall be recovered from him free of interest in such manner and installments as may be prescribed :

Provided that, the first instalment of such recovery shall commence one year after the irrigation facility is made available to him.

(4) The State Government shall pay a special grant to all such affected persons who have deposited an amount as per clause (b) of sub-section (2) of this section but have not been allotted land in the benefited zone and the rate of the special grant shall be rupees four hundred per mensem for the period from the date of actual displacement of the person from the land to the date of allotment of land in the benefited zone.

(5) Nothing in this Act shall prevent the project authority to lease out to the affected person the land acquired from him till the gorge filling of an irrigation project is taken up and not used for quarrying dam seat, etc.

(6) Nothing in this Act shall prevent the Collector to lease out to the affected person the land acquired from him in the benefited zone, which is still in his possession, for whatever reason, till the possession of such land is granted to any eligible affected person and such land shall be given only on lease.

(emphasis supplied)

22] Section 10 of the said Act, as noted earlier, no doubt subject to the availability of sufficient land for the purpose contemplates rehabilitation of affected persons from the affected zone under an irrigation project, on land in villages or areas receiving the benefit from such project. In the context of the provisions of section 10 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976, the Full Bench of this Court in **Ganpat Pawar Vs. Special Land Acquisition Officer**²², after quoting the provision, has held as follows:

“9. The provisions of Chapter III are important and must be noticed in some details. Section 10, the first section in Chapter

22 AIR 1984 Bom 382

III, states as follows:

“The State Government shall resettle as many displaced persons as possible on land in the benefited zone or in other villages or areas (being villages and areas specified by the State Government by an order in writing for that purpose) in accordance with the provisions of this Act and the rules made thereunder”.

*This section stipulates, in our opinion, that when the question of resettlement of displaced persons is to be tackled, it is to be so done in accordance with the provisions of the Act and the rules made thereunder. It may also be noted that the section mentions that the State Government shall resettle “as many displaced persons as possible”. In other words, there is no obligation on the State Government, under this section at any rate, to resettle all the persons who have been displaced as a result of any project undertaken by the Government. **The resettlement itself, when undertaken, has to be done in accordance with the provisions of the Act. The obligatory nature of the duty cast under Section 10 is relating to the duty which is to be performed in accordance with the provisions of this Act and not the duty in relation to the settlement of the persons displaced as a result of any project.**”*

(emphasis supplied)

23] Although, the provisions of section 10(1) of the said Act with which we are directly concerned are more emphatic on the issue of rehabilitation, applying the dictum of the Full Bench in *Ganpat Pawar (supra)*, it is quite clear that the resettlement itself, when undertaken, has to be done in accordance with the provisions of the act. The obligatory nature of the duty cast, clearly relates to the duty which is to be performed in accordance with the provisions of the act. When considered from such perspective, we find that the State Authorities, in the present case, were obliged to rehabilitate the petitioners, who are admittedly project affected persons, **“on land in villages or areas receiving benefit of irrigation from such project”**. The contention that there was no obligation to provide rehabilitation upon lands receiving the benefit of irrigation, is therefore, unacceptable. The

provisions of section 16(3) , including in particular the proviso thereto, makes this position quite clear. This proviso states that the first installment of the remaining amount towards occupancy price shall be recovered “***one year after the irrigation facility is made available to him***”. This provision also contemplates the making available of irrigation facility to the lands allotted to the project affected persons as and by way of rehabilitation. The State Authorities, have not seriously disputed this position any time in the past. The contentions belatedly raised, are only for the purpose of avoiding payment of any compensation for the unreasonable delay in completing the works on the Right Bank Canal at least up to the villages of Bhade and Andori, so that facility of irrigation is available to the lands allotted to the petitioners at **Shedgewadi**.

24] The petitioners have graphically described the trauma they underwent on account of their uprootment from the affected zone . The petitioners have stated that there were hardly any amenities provided by the State Authorities at **Shedgewadi**, notwithstanding the beneficent and generous provisions set out in section 10 or section 16 of the said Act. They have graphically described the manner in which they, alongwith their family members and cattle were virtually herded from the affected zone to the so called benefited zone at **Shedgewadi** and there condemned to begin life anew, without any serious financial or social support from the mighty State. The petitioners make reference to the *Punarvasan Arakada* (Rehabilitation Plan) and the Water Policy formulated by the State Government. These policies speak of “*rehabilitation first, development later*”. This means the policy of pre-rehabilitation. It is high time that the State Authorities consider with utmost seriousness and sensitivity, the actual implementation of their own policies, rather than permit the same to degenerate into

mere paper policies or populist slogans.

25] The position that the lands allotted to the petitioners at **Shedgewadi** had no benefit of irrigation facilities is virtually conceded by the respondents. Even otherwise, there is overwhelming material on record, which establishes this position. At a belated stage, however, the State Authorities have attempted to raise some dispute by contending that it was always open to the petitioners to sink wells, bore-wells, with the help of which they could have used the lands allotted to them for purposes of agriculture. There is also a faint plea that the petitioners could have applied for water supply from some other irrigation project and had the petitioners made such application, the State Authorities would have considered the same. Such unsubstantiated pleas hardly inspire any confidence and are not borne from the material on record. If indeed, it was possible for the State Authorities to provide the benefit of irrigation to the lands allotted to the petitioners at **Shedgewadi**, from out of other irrigation projects in the locality, then, it was the duty of the State Authorities to do so, rather than fault the petitioners for having failed to seek such benefit from the State Authorities. Again, to say that the petitioners could have very well sunk wells or bore-wells at or near the allotted lands, in order to avail the benefit of water supply, is hardly a plea expected from the State Authorities, if the promise of social and economic justice enshrined in the preamble to our Constitution is to have some meaning. It is also pertinent to note that such pleas were mainly taken by the State Authorities in their affidavits dated 11 July 2016 and 28 July 2016 filed after this Court, by order dated 8 December 2015 directed payment of compensation to the petitioners and the Hon'ble Supreme Court, by its order dated 12 February 2016 declined to stay the direction for payment of compensation. It is quite apparent that all such vague and

unsubstantiated pleas, unsupported by the material on record are only for the purposes of avoiding the payment of compensation to the petitioners.

26] Although, the State Authorities were required to rehabilitate the petitioners *inter alia*, by way of allotment of land in villages or areas receiving the benefit of irrigation from the Nira Deoghar Project, this was not achieved, because the State Authorities commenced the construction of the Right Bank Canal only in the year 2001, which was incidentally the year in which the petitioners were uprooted from the affected zone and relocated at **Shedgewadi**. From the year 2001-2008, the State Authorities could manage to complete construction only upto the length of km 01 to km 19 (19 kms.) , when in fact, the total length of the Right Bank Canal was proposed as 208 kms. Even **Shedgewadi**, where the petitioners have been allotted lands is at a distance of about 5 kms from the villages of Bhade and Andori, through which the Right Bank Canal is to pass at kms 48 and 49 from the starting point. From the year 2008 to 2014, there was virtually no progress whatsoever upon the construction of the Right Bank Canal.

27] The petitioners addressed several representations to the State Authorities pointing out their plight, on account of lack of water supply and irrigation facilities at **Shedgewadi**. The petitioners were assured that the construction upon the Right Bank Canal would recommence. However, such assurances were only on paper and at the site, there was really no progress on the construction of the Right Bank Canal. Left with no alternative, the petitioners instituted these petitions in the year 2012 seeking appropriate writ for completion of the construction and provision of water supply and irrigation facility as well as compensation.

28] Initially, since this court was keen upon ensuring that the State Authorities take some serious and emergent steps to recommence the construction upon the Right Bank Canal so that there is some lasting benefit to the petitioners, the petitioners were prevailed upon to delete the prayers seeking compensation, which, the petitioners, in the same spirit, complied with. This is reflected in the order dated 19 October 2012 made in these petitions. From time to time, the State Authorities were directed to file affidavits indicating the progress, if any, in the matter of recommencement of construction upon the Right Bank Canal, so that the petitioners could have the benefit of irrigation facilities. Despite availing several opportunities and several indulgences, the State Authorities did not even bother to file any counter affidavit until 18 February 2013, a good seven months since the date of the institution of the petitions.

29] Finally, on 18 February 2013, Shri. Shivaji Rajale, Executive Engineer, Nira Deoghar Project filed a counter affidavit vaguely and evasively denying the averments in the petitions. He has stated that the construction of the Right Bank Canal could not be completed on account of litigation by land owners in the benefited zone, delay in obtaining the approval from MOEF and paucity of funds. He has also made certain vague statements that it was possible for the petitioners to sink wells and bore-wells and thereafter undertake agricultural operations. In the affidavit, however, Mr. Rajale, after acknowledging the entitlement of the petitioners in terms of the said Act, has only repeated some vague assurances regards completion of the construction of Right Bank Canal. Certain relevant extracts from the affidavit dated 18 February 2013 read thus:

"7.I state that thus as per the provisions of the Rehabilitation Act, the project affected person/s is entitled to

receive the benefits under the Rehabilitation Act if he deposit occupancy price of the land i.e. sixty five percent of the amount of compensation and the remaining amount of the occupancy price as determined by the Collector. **I further state that the proviso of Sub-clause 3 is more important to the effect that the first installment of such recovery shall commence one year after the irrigation facility is made available to him.** I state that in the present case, as the occupancy price of the land/s i.e. 65% of the amount of compensation was deposited, the Petitioner/s accordingly allotted the land/s from the benefited zone as project affected persons and therefore complied the requirements of the Rehabilitation Act irrespective of the facts of claiming the remaining amount of the occupancy price. **I further state that the remaining amount of the occupancy price is not recovered by the concerned authority because of the irrigation facility is not made available to him.** I state that the relief by way of monetary compensation, if granted and/or allowed, then in that case, it would be a case of project affected person getting both i.e. the land/s under the provisions of Rehabilitation Act and the relief of monetary compensation."

8. I state that, the construction of dam of Nira Deoghar Project commenced in the year 1993-94 i.e. before the formation of MKVDC and the water storage of the said project is completed in two stages i.e. firstly in the year 2000 and secondly in the year 2008. I, therefore, state that the water storage of the said Nira Deoghar Project is completed by all means in the year 2008. I state that, as per the project report of Nira Deoghar Project, the dam is having two canal systems namely Left Bank Canal & Right Bank Canal. The length of Left Bank Canal is 22 K.M. whereas the length of Right Bank Canal is 208 K.M. which starts from village Salav of Bhore Tehsil, Dist-Pune and ends at Mandki of Malshiras Tehsil, Dist. Solapur. I state that village Bhade and Andori comes within the jurisdiction of Tehsil Khandala, District Satara and those villages are situated in the command of Right Bank Canal. I state that, the actual work of canal is started in the year 2000-01. **I state that though the actual work of canal is started in the year 2000-2001 till today, the work from K.M. No. 1 to 19 is completed by the end of June 2008.** I further state that even though the land acquisition process was completed by the Land Acquisition Officer still some of the land owner/s had filed civil suits before the Civil Court at Pune so also before this Hon'ble Court and challenged the entire acquisition procedure. I further state that because of the said litigation, the

work of canal was held up for considerable period. I further state that unfortunately the sufficient funds were also not available for the completion of the entire canal.

9. *I state that the Right Bank canal crosses through N.H. No. 4 from the area of village Shirval. Some of the land/s which are situated by both the sides of N.H. No. 4 possessed non agricultural activities and therefore the process of acquisition was held up because of various reasons came across to the Land Acquisition Officer. I further state that the part of K.M. No. 48 and 49 of Right Bank Canal also crosses the land owned by the forest department. I have therefore no alternate but to forward a proposal to the Ministry of Environment and Forest Department, New Delhi for the permission to excavate the Right Bank canal from K.M. No. 48 and 49. I state that the initial proposal is forwarded in the year 2006 and formal approval is received from the Ministry of Environment and Forest Department, New Delhi in the month of September, 2008. I further state that I made the compliance of the conditions putforth by the Ministry of Environment and Forest Department, New Delhi and accordingly the proposal for the final approval is submitted in the month of January, 2011 to the Ministry of Environment and Forest Department, New Delhi. I further state that till today I did not get the final approval and/or permission from the Ministry of Environment and Forest Department, New Delhi in order to excavate the work of canal from the area referred hereinabove. **I state that village Bhade and Andori are situated within the distance of 5 kilometer approximately from K.M. No. 48 and 49 of the said Right Bank Canal and therefore I state that unless and until the work from K.M. No. 48 and 49 of the said Right Bank Canal is completed, it would not be possible to complete the canal work of village Bhade and Andori.***

10. *I state that in view of the reasons referred hereinabove it was practically not possible to keep the continuity in order to complete the entire work of Right Bank canal till today. I state that if the issue of acquisition of N.H. No. 4 is resolved so also if the final approval is received from Ministry of Environment and Forest Department, New Delhi so also if there is no issue of paucity of funds, then in that case, it would be possible to complete the entire work of Right Bank canal within appropriate period.*

(emphasis supplied)

30] Relying upon the vague assurances in the aforesaid counter affidavit and in the fond hope that the State Authorities will take steps to recommence and complete the construction of the Right Bank Canal at least up to the village of Bhade and Andori, these petitions were adjourned from time to time. By November 2015, however, it was noticed that the State Authorities displayed no seriousness whatsoever in the matter. Therefore, on 18 November 2015, this court made the following order

"1. Heard the learned counsel for the Petitioners, the learned counsel appearing for Respondent No. 5 and the learned AGP appearing for the State. We have perused the order dated 19th October 2012 passed by the Division Bench of this Court. The Petitioners are Project Affected Persons whose lands have been acquired for public purposes of submergence of Neera Deoghar Irrigation Project. After payment of necessary occupancy price, the Petitioners have been allotted lands by way of rehabilitation. What is pointed out is that there is absolutely no water supply available to the lands allotted to the Petitioners and, therefore, it is impossible for the Petitioners to cultivate the said lands. From the Reply filed by the Respondent No. 5, it appears to us that it is an admitted position that for various reasons, the lands allotted to the Petitioners are not irrigated lands. Thus, it appears to us that the Petitioners who are agriculturists lost their agricultural lands by way of compulsory acquisition and though the lands were allotted by way of rehabilitation in the year 2002 or thereafter, the Petitioners are unable to cultivate the same on account of failure of the State to supply water.

2. As noted earlier, from the Affidavit of Respondent No. 5, prima facie it becomes an admitted position that there is no water supply to the lands allotted to the Petitioners. Hence, we direct that these Petitions shall be listed for final hearing on 30th November 2015 high upon board.

3. We direct the Principal Secretary of the Revenue Department as well as the Principal Secretary of Irrigation Department to look into the issues raised by the Petitioners.

4. We make it clear that if we find that the State does

not come forward with a concrete solution by the next date, the Court will consider the question of passing an interim order directing payment of reasonable compensation to the Petitioners till the date on which the water supply is made available to the Petitioners. We also make it clear that a case for grant of compensation at the minimum rate of Rs. 15,000/- per month to each Petitioner will have to be considered.

5. Needless to state that the responsible Officers of the concerned Ministry shall be personally present in the Court on the next date."

31] When the matter was called out on 30 November 2015, learned Addl. Government Pleader (AGP) appearing for the State Authorities applied for adjournment stating that he has received no instructions in the matter. Accordingly, quite reluctantly, the matter was adjourned to 8 December 2015, since it was assured that the instructions would be available by the said date.

32] On 8 December 2015, once again, no affidavit was filed on behalf of the State Authorities. However, learned AGP placed on record a letter dated 8 December 2015 addressed to him by the Deputy Secretary to the Government in the Water Resource Department. The letter states that on 18 September 2015, in principle approval has been issued by the MOEF for construction works in forest area and out of 11 conditions imposed therein, 10 conditions have been complied and by letter dated 30 August 2015 the State Authorities have requested the MOEF to dispense with the compliance of the remaining condition. The letter states that the decision of MOEF is expected by March 2016. The letter proceeds to state that all possible endeavour shall be made to complete the work at the earliest 'subject to availability of funds'. The letter also states that if the petitioners apply for lift irrigation from Veer Dam and its canal, the

applications will be considered in terms of the Government policy laid down in Government Resolution dated 21 November 2002.

33] This court, dissatisfied with the vague assurances in form of letter dated 8 December 2015, made a detailed order dated 8 December 2015, recording that the State Authorities, by their inaction and lethargy have infringed the petitioners' right guaranteed by Article 21 of the Constitution and directed the State Authorities to pay to each of the petitioners compensation at the rate of Rs.15000/- per month effective from 1 December 2012. The State Authorities were directed to clear the arrears by end of February 2016 and to continue to pay compensation on or before the 10th day of each calendar month, until, water supply and irrigation facility is made available to the lands allotted to the petitioners at **Shedgewadi**. The State Authorities were also directed to place on record the steps taken by them to provide water supply to the lands allotted to the petitioners at **Shedgewadi** in form of an affidavit on or before 22 February 2016. In paragraphs 5 to 16 of the order dated 8 December 2015, this court has observed as follows:

"5. We have perused the provisions of the said Act of 1999. Sub-section (1) of Section 10 of the said Act is relevant for our consideration, which reads thus:

"10. Rehabilitation of affected persons.— (1) The State Government shall in accordance with the provisions made by or under this Act and subject to the availability of sufficient land for the purpose, rehabilitate affected persons from the affected zone under an irrigation project, on land in the villages or areas receiving benefit of irrigation from such project."

6. Thus, it is an obligation of the State Government to rehabilitate the project affected persons from the affected zone under an irrigation project, on lands in the villages or areas receiving benefit of irrigation from such project. Thus, the obligation of the State is to allot such lands by way of

rehabilitation to the Project Affected Persons which are receiving benefit of irrigation from such Project. In the present case, the acquired lands of the Petitioners were situated in the affected zone of Neera Deoghar Project. Therefore, the obligation of the State Government was to allot lands in villages or areas receiving the benefit of irrigation from the said Project. Hence, the Petitioners were entitled to the allotment of irrigated lands by way of rehabilitation. Going by the Affidavit on record and what is stated in the letter dated 8th December 2015 which is taken on record and marked "A1" for identification, the admitted position is that the Petitioners have been allotted lands by way of rehabilitation which are not receiving benefit of irrigation from the said Project. In the Affidavit on record and even in the letter dated 8th December 2015, the fact that as of today facility of irrigation is not available to the allotted lands is accepted. Though assurances have been given, even the outer limit within which the water supply will be made available to the allotted lands has not been set out. By amending the Petition, a prayer was made and prayer clause (IV) has been added seeking a relief of payment of Rs. 600/- per month in terms of Government Resolution dated 10th February 2000. The substantive prayer in the Petition is to direct the Respondents to provide water to the lands allotted to the Petitioners' within six months. The Petition is filed in July 2012.

7. Taking the statements in letter dated 8th December 2015 as correct, there is no possibility of water supply being made available to the lands allotted to the Petitioners in near future. The decision of the Ministry of Environmental & Forest (MOEF) of the Government of India is likely to be received by March 2016. Therefore, the construction work of the canal will commence thereafter that also subject to availability of funds.

8. Considering the admitted position that the State Government has failed to comply with its legal obligation under sub-section (1) of Section 10 of the said Act of 1999, we expected the State Government to come out with a Scheme for allotting alternate lands to the Petitioners. In fact, the Petitioners would have been justified in making a prayer in the Petitions for allotment of alternate lands. In response to the prayer in the in the Petitions for release of water within six months, the stand taken by the State Government in the letter dated 8th December 2015, to say the least, is very shocking. It it contended that the Petitioners will be entitled to the special grant of Rs. 400/- per

month from the date of their actual displacement from the lands till the date of allotment of lands in the benefited zone. Therefore, even according to the Policy of the Government, no amount is payable to the Petitioners after the date of actual allotment though the lands allotted to the Petitioners are in true sense not in benefited zone. A stand is taken that the entire occupancy price is not payable by the Petitioners and the balance price will be payable by the Petitioners only after irrigation facility is made available to the Petitioners.

9. In paragraph 5 of the said letter dated 8th December 2015, it is suggested that the Petitioners can seek lift irrigation from Veer dam and its canals. However, there is no concrete assurance that water supply will be made available to them through the said scheme.

10. The obligation of the State Government is to allot lands receiving benefit of irrigation from the project for which the Petitioners' lands were acquired. The object of the said Act of 1999 is to rehabilitate the Project Affected Persons. Admittedly, the agricultural lands held by the Petitioners which were their source of livelihood were taken away by way of compulsory acquisition.

11. After considering the entire scheme of the Act, it is apparent that the obligation of the State Government is to provide lands in villages or areas actually receiving benefits of irrigation. The Petitioners have been allotted lands in a zone which is described only on a paper as benefited zone of the project. From the chart tendered across the bar it is clear that the lands were allotted to the Petitioners from 2000 onwards on different dates. Admittedly, the Petitioners are not in position to cultivate the allotted lands for all these years due to the failure of the State to supply water.

12. Thus, the Petitioners have been deprived of their livelihood for considerably long time. The acquisition was completed in the year 1996. We are of the view that this is nothing short of violation of fundamental rights guaranteed to the Petitioners under Article 21 of the Constitution of India.

13. As far as the Government Resolution which is relied upon in paragraph 4 of the letter dated 8th December 2015 is concerned, the learned counsel for the Petitioners has tendered

across the bar further Government Resolution dated 21st January 2003 which shows that the Government Resolution dated 21st November 2002 has been withdrawn.

14. Considering the fact that the State Government has not only violated legal rights of the Petitioners under the said Act of 1999 but also violated fundamental rights of the Petitioners, this is a fit case where till the disposal of the Petition, the State government should be directed to pay compensation to the Petitioners as the Petitioners are not in position to cultivate the lands allotted to them by way of rehabilitation due to default by the State. In view of the stand taken by the State, irrigation facility can be made available only after the canal is constructed which may take years.

15. We are conscious of the fact that there is no prayer made specifically made for the grant of compensation during the pendency of the Petition. We are also conscious of the fact that under the order passed by this Court on 19th October 2012, the Petitioners were directed to delete prayer clauses (iv) and (v). Notwithstanding the deletion of these prayers, substantive prayer directing the Respondents to provide water supply to the land allotted to the Petitioners within six months remains. The stand taken in the Reply filed by Mr. Shivaji Dadasaheb Rajale and the stand taken in the letter dated 8th December 2015, marked "A1" for identification, show that there is absolutely no possibility of the Petitioners getting water supply to their allotted lands in near future though they are admittedly entitled to the same. Going by the admitted position, if not from the date of respective allotments, but at least from the date of filing of the Petitions, the Petitioners were entitled to the water supply.

16. Notice for final disposal has already been issued in these Petitions. Therefore, today we would have been justified in passing an order directing the Respondents to provide water supply to the Petitioners within a reasonable time. However, we find that even if such direction is issued, it is impossible for the State Government to comply with the said direction. The State Government want Petitioners to apply for water supply through lift irrigation scheme of some other project. If the State was sensitive, it would have made the supply available through any other scheme on its own. Therefore, considering the admitted entitlement of the Petitioners and considering the admitted default and the violation of legal and fundamental rights of the Petitioners

by the State Government, instead of issuing a direction to provide water supply, for the time being, we propose to direct the State Government to pay compensation to the Petitioners in each Petition at the rate of Rs.15,000/- per month from 1st December 2012 till the date water supply is made available to their allotted lands. Even taking into consideration the provisions of the Minimum Wages Act, a sum of Rs. 15,000/- per month to the Petitioners in each Petition will be very reasonable. It is not possible to accept the Government's submission that even though no water is being provided, the Petitioners are not entitled to any compensation. This order shall continue to operate till actual water supply is made available to the lands allotted to the Petitioners. The livelihood of the Petitioners depends on water supply. So long as water supply is not made available, the State must make sure that the Petitioners survive."

34] The State Authorities did not file any affidavit on or before 22 February 2016 in spite of directions in the aforesaid order dated 8 December 2015. The State Authorities, however, instituted petitions for special leave to appeal (c) nos. 3403-3438 of 2016 before the Hon'ble Supreme Court in order to question the aforesaid interim order dated 8 February 2015. On 12 February 2016, the Hon'ble Supreme Court has made the following order :

*"Upon hearing the counsel the Court made the following
ORDER*

Applications for exemption from filing certified copy of the impugned judgment are allowed.

Ministry of Environment and Forests represented by the Secretary is added as party at the request of the learned senior counsel appearing for the petitioner. Cause title be amended accordingly.

Issue notice.

There will be no stay of the current compensation at the rate awarded by the High Court."

35] Despite the Hon'ble Supreme Court declining stay upon the award of compensation, the State Authorities failed and neglected to pay compensation to the petitioners. The petitioners were therefore,

constrained to institute contempt petitions, which are pending consideration. The record indicates that some arrears have been deposited in this court but there is no clarity as to whether compensation as directed, has in fact been paid to the petitioners or not.

36] On 11 July 2016, Bapusaheb R. Pawar, Executive Engineer, Nira Deoghar Project, has filed an affidavit. On 28 July, 2016, Ravindra E. Upasani, Superintending Engineer and Deputy Secretary to Government of Maharashtra, Water Resources Department, has filed an affidavit. There is no appreciable difference in the contents of the two affidavits. The entire thrust of these affidavits is to resist the payment of compensation to the petitioners. In these affidavits, whilst not disputing the indisputable delay in providing water and irrigation facilities to the lands allotted to the petitioners, the deponents have referred to several reasons, or rather, excuses in order to justify such culpable delay. These affidavits also state that some of the petitioners have sold the lands allotted to them at **Shedgewadi** between the years 2013 and 2015 and at least such petitioners should be denied compensation or any other relief.

37] One of the peculiar features of these two affidavits is the invocation of several "*doctrines*" by the State Authorities for several purposes. They invoke the *doctrine of eminent domain* when it comes to acquisition of petitioners property from the affected zone. They invoke the *doctrine of sovereign immunity* when it comes to payment of compensation to the petitioners. They invoke the *doctrine of faith and duty to take care* when it comes to explaining the delay for non completion of the works upon the Right Bank Canal, in the context of acquisition of lands in the benefited zone or undertaking construction

activities in forest areas without permission from the MOEF. They invoke the *doctrine of larger public good* to contend that the petitioners, as private citizens, must not complain about acquisition of their property or delay in making available water and irrigation facilities to the land allotted to them, since, making such facility available to them is not a priority, taking into consideration the paucity of finances with the State Authorities. As if all this was not enough, the State Authorities, in these affidavits also invoke the *doctrine of public trust* to state that such doctrine is not “*necessarily confined to natural resources only*” but has a “*broad application and it applies with equal force to the finances of the State*”. These affidavits also invoke “*precautionary and public interest principle*” stating that the State Authorities are duty bound to spend amounts “*purely in public interest and by exercising due care and caution*”. Finally, these affidavits state that the State Authorities , in construction of dam and canal discharge “*non profit making welfare function of the State Government, which is sovereign in nature*”.

38] The affidavits also state that the award of compensation would involve adjudication into disputed questions of fact and therefore, the petitioners must be relegated to the ordinary remedies of instituting civil suits, if they so desire. The affidavits also state that some of the petitioners have sold the allotted lands to third parties and are therefore, not entitled to any reliefs in the petitions instituted by them. The affidavits set out that the Nira Deoghar Project, when conceived in 1984 had a budget sanction of 61.47 crores, but by the year 2002, the budget was revised to 910.90 crores, suggesting that it may not be possible to expend further amounts upon the project. The affidavits also state that compensation can be awarded under Article 226 of the Constitution only where “*facts were gross and almost undisputed*”, as if

to suggest that unreasonable delay of over 16 years in the present case is not gross and was in any manner, disputed. It is necessary to note that in the initial affidavit, no such pleas were taken or in any case seriously taken. It is only after this court directed the payment of compensation and such direction was not stayed by the Hon'ble Supreme Court, these affidavits have been filed. We are sorry to note that the tenor and the contents of such affidavits betray the sense of responsibility and sensitivity towards the plight of the project affected persons like the petitioners who have been deprived their right to livelihood at least since the year 2001.

39] The only redeeming feature of the aforesaid affidavits is that they state that the construction of the Nira Deoghar Right Bank Canal is now completed up to kms 39 in all respects and water facility is made available to the land owners around the same. The affidavits also state that the works between kms 40 and 65 are also nearing completion barring some hurdles like construction of aqueduct in km no.40, high way crossing in km 43 and permission from MOEF for construction of canal having length of 300 meters (0.3 kms) through forest area in kms. 48 and 49. This indicates at least some progress, even though, the affidavits do not state even the approximate time within which the works will be completed and water supply and irrigation facility made available to the petitioners' lands at **Shedgewadi.**

40] The petitioners, in response to the aforesaid two affidavits, have filed detailed affidavits-in-rejoinder. Therein, the petitioners have dealt with the vague allegations in the affidavits filed by the State Authorities that the lands allotted to the petitioners have some modicum of water

supply or in any case, the lands are capable of being irrigated with the help of water from some other projects which are in fact, not even in the vicinity. They have pointed out that few wells or bore wells have been sunk by some original land owners from **Shedgewadi** and not persons like petitioners relocated there. They have pointed out that other irrigation projects are at quite some distance away and even the State Authorities are aware that such projects can offer no succor to the petitioners or the lands allotted to the petitioners. They have pointed out the particulars of their family members and the serious livelihood issues which they face on account of the inaction of the State in providing them effective rehabilitation since 2001.

41] On the aspect of sale of allotted lands by some of the petitioners, they have offered the following explanation:

- (i) The petitioner in Writ Petition No. 7975 of 2012, one Maruti Balu Pawagi was suffering from cancer and has sold the allotted land of **Shedgewadi**, after obtaining necessary permission from the authorities, in order to pay for his medical expenses, such sale was effected after the institution of the petition in the year 2012, vide Deed dated 13 February 2013;
- (ii) The petitioner in Writ Petition No. 11731 of 2012 was 80 year of age and was required to maintain his son, who is physically challenged, therefore, on 9 July 2015, he had no option than to sell his land. This petitioner has already withdrawn the writ petition instituted by him after tendering such explanation vide Civil Application No. 1497 of 2016; and
- (iii) The petitioners in Writ Petition Nos. 9092, 8870 and 7829 of 2012 have sold only a portion of barren land allotted to them to the adjoining land owners, who had some measure of water supply. These petitions have stated that the balance portion of

the allotted land is still owned and possessed by them. Again, such sales were effected in the year 2014 and 2015, much after institution of the present petitions.

42] In the affidavit-in-rejoinder, the petitioners have once again reiterated that the lands allotted to them are barren and the aforesaid sales in a few instances, were out of desperation, since the lands are barren and incapable of being used for agriculture without water or irrigation facilities. The affidavit states that normally no farmer will sell his irrigated lands as it is only source of his livelihood. In any case, the petitioners state that the isolated instance referred to earlier in fact fortify the petitioners' case that the State Authorities have virtually deprived the petitioners of their livelihood and thereby infringed Article 21 of the Constitution of India.

43] After the affidavits-in-rejoinder were filed by the petitioners, Mr. S.N. Bolbhat, Executive Engineer, Nira Deoghar Project has filed affidavit dated 20 September 2016. In this affidavit, fortunately, the averments in the affidavit-in-rejoinder set out quite candidly and plainly by the petitioners have not been contested. Taking into consideration the documents produced by the petitioners alongwith their petitions as also alongwith affidavit-in-rejoinder, it is apparent that there was nothing really left for the State Authorities to dispute.

44] The explanation offered by the petitioners in the matter of sale of allotted lands or portions of allotted lands with the permission from the authorities suggest that such sales have taken place in not more than five instances between the years 2013 and 2015. Out of these, the petitioner in Writ Petition No. 11731 of 2012 was 80 years old and had the responsibility to maintain his physically challenged son. The sale of

the allotted land with the permission of the authorities, in such circumstances, is hardly reason enough to deny such petitioner compensation from 1 December 2012 and the date of withdrawal of his writ petition, i.e., on 22 June 2016. The petitioner in Writ Petition No. 7975 of 2012 was suffering from cancer and has sold the allotted land with the permission of the authorities in order to pay for his medical expenses. The petitioners in Writ Petition Nos. 9092, 8870 and 7829 of 2012 have sold only portion of the allotted lands to the adjoining land owners, who had the benefit of some water supply through the wells sunk by them upon their property. These are presumably the original land owners at **Shedgewadi**. The objection based upon sale of the allotted lands, applies only to the petitioners in these five petitions. In fact, the explanation offered, which has not been disputed, suggests that such petitioners have sold the allotted lands or portions thereof with permission from the authorities out of sheer desperation and for the purposes of mere existence and survival. The State Authorities have virtually pushed these petitioners to such a point and therefore, it hardly behoves the State Authorities to raise objections of the nature as found in the affidavits dated 11 July and 28 July 2016.

45] We must note however, that the affidavit dated 20 September 2016 filed by Mr. S.N. Bolbhat, Executive Engineer, Nira Deoghar Project, is to some extent encouraging. In paragraphs 3, 4 and 5 of this affidavit, the Executive Engineer has stated thus:

“3. I say that the work of Right Bank Canal of Nira Deoghar Project has been completed upto Km 40. As regards the remaining portion of Km 41 to Km 65 are complete save and except the bottleneck portion. The said remaining work will be completed as early as possible and preferably not later than 31.3.2017. Care would be taken to see that this work is complete before this date.

4. *I say that that leaves the work of distribution system so as to take the water upto the fields of the petitioner. For this purpose earlier on it was proposed that required portion of land would be acquired. Now, the State Government has taken a policy decision to dig pipeline 1 meter below the ground level so that the farmers would not loose their lands and the government need not pay monetary compensation because of the ownership of the land at such a depth vests in the State Government. This would enable the authorities to complete the distribution system much quicker than the other mode. The State Government has issued a resolution to that effect. The same is annexed to this affidavit and is marked as "**Exhibit-1**".*

5] *I say that if the land owners concerned fully cooperate then it is not difficult to complete the distribution system on or before 31st October 2017."*

46] The State Authorities in the present case have not only acted in breach of their statutory obligations under the said Act but further, they have infringed the petitioners human rights as well as right to livelihood, which is an essential concomitant to the right to life and personal liberty as guaranteed by Article 21 of the Constitution. The petitioners were uprooted from the affected zone in the year 2001. The State Authorities have retained 65% of the otherwise meagre compensation awarded to them for the acquisition of their ancestral lands and houses in the affected zone, which have since submerged under the Nira Deoghar Dam Waters. Such retention of compensation was because the State Authorities, consistent with their statutory obligations under the said Act, had agreed to allot the petitioners alternate lands in villages and areas having the benefit of irrigation project. In reality however, the lands allotted to the petitioners at **Shedgewadi** are found to be barren for want of adequate water supply and irrigation facility. The material on record establishes that from the year 2001, the petitioners have been clamoring for water supply and irrigation facility , which, the State Authorities were obliged to provide,

not just in terms of the said Act, but also, as a measure of their constitutional obligation. The State Authorities, whilst not seriously denying this position, have, for reasons which are far from convincing delayed completion of the construction of Right Bank Canal up to the villages of Bhade and Andori, thereby, depriving the petitioners water supply and irrigation facility for the last decade and a half. Such deprivation for such length of time constitutes deprivation of right to livelihood otherwise than by the procedure prescribed by law. The record, including the desperate sales by some of the petitioners, indicate that the State Authorities, by their inaction and apathy, denied the petitioners their very right to livelihood as guaranteed by Article 21 of the Constitution.

47] In ***Sahyadri Punarvasan Gaothan Vikas Sanstha vs. Pandharpur Municipal Council***²³, Division Bench of this Court was concerned with the grievances of persons displaced by the Kanhar Dam in Satara District in the matter of proper implementation of the resettlement programme. This court observed that it was unfortunate that whenever irrigation projects are undertaken in the name of larger public good, people residing in remote villages are displaced. Not only they get thrown out from the areas where they are residing for decades together, but upon shifting, minimum and basic amenities are also not guaranteed to them. It is a common grievance of the people that while residing decades together, with State assistance and most of the time on their own, they establish schools, play grounds, cremation grounds etc.. However, everything is gone the moment the villages are submerged. Such people are then shifted at far off places. In the name of resettlement and rehabilitation, virtually nothing is provided. This is the grievance on most occasions. People get thrown

²³ 2005(3) Bom.C.R. 210

out and displaced physically, mentally and socially. Communities which are residing together for decades are forced to adjust with totally different living conditions. This has a deleterious effect upon all sections and stratas of society, but more particularly upon women and children. The Division Bench, after reference to the decision of the Hon'ble Supreme Court in ***Samata Vs. State of A.P.***²⁴, has held that right to reputation, right to privacy, right to equal opportunities of personal, social, community growth and development are facets of the right to life and liberty guaranteed by Article 21 of the Constitution. The mandate is clear. Right to live has to be made meaningful, purposeful and relevant. It is not as if only the urban population is entitled to the benefit of basic amenities. It is a misnomer and the misconception when we proceed on the basis that the people living in the villages do not require toilets, open spaces, markets, burial grounds, roads, electricity and water supply. Even after 57 years of independence, we are unable to provide these basic amenities. The response of State is not at all encouraging. It is unfortunate that absolutely no attention is paid to these aspects when implementing and undertaking public project. The courts including the Hon'ble Supreme Court has highlighted the matter of total rehabilitation. In fact, the need of hour is to first habitate and then commence the work. However, neither this nor rehabilitation has been done sincerely and honestly. Funds are allocated but rarely disbursed. If disbursed, there is no account of actual expenditure. Although expended on paper, at site, nothing is visible. It is time that rehabilitation is done sincerely, honestly and diligently.

48] In ***Rashtriya Chemicals and Fertilizers Ltde. & anr. V. State of Maharashtra and ors.***²⁵, another Division Bench of this Court , in

24 AIR 1997 SC 3297

25 2007 (5) Mh.L.J. 39

the context of issues relating to rehabilitation of project affected persons, by reference to the directive principles of the State Policy and the fundamental rights, has held that the State, within the means of its economic capacity is duty bound to provide adequate means of livelihood and living wages, specially when families are displaced on account of land acquisition, snatching away many a times their only source of livelihood. The State, instead of providing with adequate means of livelihood, deprives them only source of livelihood. No doubt, the State pays compensation towards the acquisition of land. The reality however, is that such compensation on account of the erosion in the value of the rupee, increased cost of living, even if the entire capital is saved, is not sufficient. The land which has been acquired, most of the times, has sustained these families for generations. This should be an eye opener to the State, policy maker and decision maker, that any policy which results in the family being displaced from the lands for industrial projects or other projects, the State must fine tune the rehabilitation package, which apart from being paying compensation for the lands acquired, will also as far as possible provide to such displaced families including agricultural laborers, preference for jobs in the industry that will come up. Such an exercise is perhaps required to make the concept of life, guaranteed under Article 21 more meaningful. The State is bound to act in accordance with the preambular concepts of the constitution. An enlightened State, committed to economic and social justice must articulate these preambular concepts. A practical approach is required in the context of problems faced by displaced persons.

49] In ***N.D Jayal Vs. Union of India***²⁶, the Hon'ble Supreme Court has held that rehabilitation of the oustees is a logical corollary of Article

²⁶ 2004 (9) SCC 362

21 of the Constitution. At paragraph 60, the Supreme Court has observed thus:

60. *Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations. Thus observed this Court in Narmada Bachao Andolan case. **The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence.** Such a time-limit was fixed by this Court in B.D. Sharma V. Union of India – 1992 Supp (3) SCC 93 and this was reiterated in Narmada. This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.*

(emphasis supplied)

50] In **State of M.P. Vs. Narmada Bachao Andolan**²⁷, the Hon'ble Supreme Court has held that in certain cases the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of 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. For people whose lives and livelihood are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. The fundamental right of a 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 predominantly agricultural society, there is a strong linkage between the land and the person's

²⁷ 2011 (7) SCC 639

status in the social system. 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 interest of the weaker segments of the society, in particular, the Scheduled Castes and Scheduled Tribes. Every human being as a right to improve his standard of living. Ensuring people are better off is the principle of socio economic justice which every State is under an obligation to fulfil, in view of the provisions contained in Articles 37, 38, 39(a),(b)(e), 41,43,46 and 47 of the Constitution. (Vide ***Muralidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde- 1995 Supplement (2) SCC 549*** and ***N.D. Jayal Vs. Union of India (supra)***)

51] In ***Tukaram Kana Joshi vs. Maharashtra Industrial Development Corporation***²⁸, the Hon'ble Supreme Court has held that right to property is not only constitutional or a statutory right but also a human right and human rights are considered to be in the realm of individual rights which are gaining an even greater multifaceted dimension and , therefore, in case the person aggrieved is deprived of land without making payment of compensation as determined by the Collector/Court, it would tantamount to forcing the said uprooted person to become vagabond or to indulge in anti-social activities as such sentiments would borne in them on account of such ill-treatment. Therefore, it is not permissible for any State / Authority to uproot a person and deprive him of his human rights, without ensuring compliance with the statutory requirement under the garb of development (see paragraph 9). In paragraphs 17 and 18, the Hon'ble Supreme Court has observed thus:

“17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay

28 (2013) 1 SCC 353

adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental / constitutional / human rights, under the garb of industrial development.

18. The appellants have been deprived of their legitimate dues for about half a century. In such a fact situation, we fail to understand for which class of citizens the Constitution provides guarantees and rights in this regard and what is the exact percentage of the citizens of this country, to whom constitutional/statutory benefits are accorded, in accordance with the law.”

(emphasis supplied)

52] In *Bhusawal Municipal Council (supra)*, the Hon'ble Supreme Court, in the context of court, acquisition of lands by the State and the consequent delay in payment of compensation has held that the judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of the justice . The State /authority often drags “*poor uprooted claimants*” even for payment of a paltry amount up to the Hon'ble Supreme Court, wasting the public money in such luxury litigation without realising that the poor people cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct. The Hon'ble Supreme Court, at paragraphs 17 to 21 has observed thus:

“17. The fundamental right of a farmer to cultivate his land 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 predominantly an agricultural society, there is a “strong linkage between the land and the person’s status in the social system”.

“10. ... 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.

11. ... 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 Mahanadi Coalfields Ltd. v. Mathias Oram, SCC p. 273, paras 10 & 11 and State of M.P. v. Narmada Bachao Andolan.)

18. A farmer’s life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache, he will never know how it feels. The risks faced by the farming community are many: they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer’s hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. **Of late, there have been many cases of desperate farmers ending their lives in different parts of the country.** The principles of economics provide for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them.

19. Economic growth through the 1990s had made India a more market-oriented economy, but had failed to benefit all Indians equally. The problems that plagued the farmers several decades ago are still glaringly present today; there is little credit available. What is available is very expensive. There is no advice on best practice in conducting agriculture operations. Income through farming is not enough to meet even the minimum needs of a farming family. Support systems like free health facilities from the Government are virtually non-existent. The drama of millions leaving their homes in search of jobs which are non-existent, of

villages swiftly losing able-bodied adults, leaving behind the old, hungry and vulnerable. Families break up as their members head in diverse directions.

20. *We do not see any justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. **Such attitude not only amounts to high-handedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant Council has paucity of fund cannot be accepted as a justified cause to entertain the petition.** If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 of the 1894 Act, cannot be sufficient security to serve the interest of the person interested pending adjudication of appeal against the Reference Court's award.*

21. *In view of above, the appeals are devoid of any merit. **In such a fact situation, the Court cannot sit limply and allow the defaulter to go scot-free and force the person seeking protection to lose hope. The Court cannot adopt an indifferent and passive attitude in such circumstances.** The appellant is directed to make the payment of the enhanced amount of compensation within a period of ten weeks from today, failing which it must restore the possession of the suit land to the persons aggrieved who in turn would refund the entire amount received as compensation. With these observations, the appeals are dismissed".*

(emphasis supplied)

53] In **Bondu Ramaswamy and ors. Vs. Bangalore Development Authority and ors.**²⁹, the Hon'ble Supreme Court has referred to the frequent complaints and grievances in regard to five areas, with reference to the prevailing system of acquisition governed by the Land Acquisition Act, 1894 and stated that such areas require the urgent attention of the State Government and the Development Authorities.

²⁹ (2010) 7 SCC 129

One of the areas mentioned is the absence of *rehabilitatory measures*. The Hon'ble Supreme Court has observed that while the plight of project oustees and land losers affected by acquisition for industries has been frequently highlighted in the media, there has been very little effort to draw attention to the *plight of the farmers affected by frequent acquisition for urban development*. The Hon'ble Supreme Court has suggested that one of the solutions is to make the land losers also the beneficiaries of the acquisition, so that they do not feel alienated but welcome the acquisition. The Hon'ble Supreme Court has referred to its earlier view in ***Land Acquisition Officer Vs. Mahaboob***³⁰, to describe the plight of a land loser, particularly when the State delays payment of compensation :

“As the landowner does not get the full compensation in one lump sum, he is not in a position to purchase an alternative land. When the land is acquired, he loses his means of livelihood, as he knows no other type of work. The result is, he is forced to spend the compensation received in piecemeal, on sustenance of his family when he fights the legal battles for increasing the compensation and for recovering the increases granted, by levying execution. The result is that whatever compensation is received piecemeal, gets spent for the sustenance of the family, and litigation cost during the course of prolonged litigation. At the end of the legal battle, he is hardly left with any money to purchase alternative land and by then the prices of land would have also increased manifold, making it impossible to purchase even a fraction of the land which he originally possessed. Illiteracy, ignorance, and lack of counselling add to his woes and the piecemeal compensation is dissipated leaving him with neither land, nor money to buy alternative land, nor any means of livelihood. In short, he is stripped of his land and livelihood.”

54] From the analysis of the provisions of the said Act as also the law laid down on the subject by this Court and the Hon'ble Supreme Court, we are of the opinion that the State Authorities were both,

30 (2009) 14 SCC 54

statutorily as well as constitutionally obliged to provide to the petitioners land receiving the benefit of irrigation from the Nira Deoghar Project or at least, to make available to the lands allotted to the petitioners some reasonable amount of water supply and irrigation facility, so as to render such lands fit for agriculture. Such obligation can be culled out not merely from the provisions of section 10 of the said Act, but also, the provisions of the Constitution of India, including but not restricted to Article 21 thereof. In the facts of the present case, the need to comply with such obligation was even greater since, the petitioners, on account of the acquisition of their ancestral lands and houses from the affected zone had been virtually rendered destitute. This was not a case of simple acquisition of land and houses but rather, this was a case of acquisition of the very livelihood of the petitioners. From 1996 onwards, the State Authorities have retained with themselves 65 % of the otherwise meagre compensation awarded to the petitioners for the acquisition of their lands and houses in the affected zone. The ancestral lands and houses of the petitioners were submerged under the Nira Deoghar Dam Waters by the year 2000. The petitioners were uprooted from their environs and relocated at Shedgewadi, without any measures of rehabilitation worth the name being provided for them. In particular, the lands allotted to the petitioners remain barren for want of water supply and irrigation facility. The State Authorities have breached their own policies of rehabilitation first and development later. The State Authorities have acted in breach of the law declared by the Hon'ble Supreme Court in cases of *N.D. Jayal (supra)* and *Narmada Bachao Andolan (supra)* that rehabilitation should take place before six months of submergence and such prior rehabilitation will create a sense of confidence amongst the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment. The absence of any pre-

rehabilitation is one thing. In the present case, almost sixteen years have elapsed since the petitioners were ousted from their lands and houses which were submerged and even till date, the State Authorities have failed and neglected to provide them with reasonable amount of water supply and irrigation facilities. In such circumstances, the material on record overwhelmingly establishes the infringement of the petitioners fundamental right guaranteed by Article 21 of the Constitution.

55] By way of redressal therefore, the State Authorities are obliged to take necessary steps to provide reasonable water supply and irrigation facility to the lands allotted to the petitioners at **Shedgewadi**. Though after unreasonable delay, the State Authorities have now undertaken to do so by 31 October 2017 as indicated in the affidavit dated 20 September 2016 filed by Mr. S.N. Bolbhat, Executive Engineer of the Nira Deoghar Project. In any case, we direct the State Authorities to complete the distribution system on or before 31 October 2017, which is the date stated in the said affidavit and to further ensure that reasonable water supply and irrigation facility is made available to the petitioners the lands allotted at **Shedgewadi** by the said date. Such a direction is imperative from the constitutional court , as otherwise, the petitioners right to livelihood as guaranteed by Article 21 of the Constitution will continue to be a casualty on account of executive inaction, which we find to be quite gross and insensitive in the facts of the present case.

56] In **State of H.P. v. Umed Ram Sharma**³¹, the Hon'ble Supreme Court took resort to Article 21 of the Constitution of India and observed that for residents of hilly areas, access to roads is access to life itself.

31 (1986) 2 SCC 68

The Supreme Court, at paragraph 11 has observed thus:

*“11. ... The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. **Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself.** These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.”*
(emphasis supplied)

57] The aforesaid decision was quoted with approval by the Hon'ble Supreme Court itself in ***Swaraj Abhiyan Vs. Union of India and ors***³². In this case, the Hon'ble Supreme Court was concerned with a situation of drought which has affected almost 1/3rd population of the country. In a detailed judgment, considering various legislations and constitutional provisions the Supreme Court after quoting Lokmanya Tilak “***the problem is not lack of resources or capability, but the lack of will***”, has ruled that it is the duty of the State to create circumstances so as to enable drought affected persons to live a life of dignity as guaranteed by Article 21 of the Constitution of India. The Supreme Court has decried the attitude of the State Authorities in even acknowledging the existence of the problem. The Supreme Court has observed that sometimes, the cause of the problem is bureaucratic inactivity and apathy; sometimes executive excesses that cause the problem and sometimes the problem is caused by the ostrich-like

32 (2016) 7 SCC 498

reaction of the executive. In such a situation, it is the duty of the court to intervene, even though, such intervention are often pejoratively and unfortunately described as judicial activism. The Supreme Court has quoted with approval Justice Michael Kirby, a former Judge of the High Court of Australia who says in his Hamlyn Lecture *“Judicial Activism — Authority, Principle and Policy in the Judicial Method”* with reference to our country as follows:

“The acute needs of the developing countries of the Commonwealth have sometimes produced an approach to constitutional interpretation that is unashamedly described as “activist”, including by Judges themselves. Thus, in India, at least in most legal circles, the phrase “judicial activism” is not viewed as one of condemnation. So urgent and numerous are the needs of that society that anything else would be regarded by many—including many Judges and lawyers—as an abdication of the final court’s essential constitutional role.

One instance may be cited from Indian experience: the expansion of the traditional notion of standing to sue in public interest litigation. The Indian Supreme Court has upheld the right of prisoners, the poor and other vulnerable groups to enlist its constitutional jurisdiction by simply sending a letter to the Court. This might not seem appropriate in a developed country. Yet it appears perfectly adapted to the nation to which the Indian Constitution speaks. Lord Chief Justice Woolf recently confessed to having been astounded at first by the proactive approach of the Indian Supreme Court in this and other respects. However, he went on:

‘... I soon realised that if that Court was to perform its essential role in Indian society, it had no option but to adopt the course it did and I congratulate it for the courage it has shown.’”

Much later, Justice Kirby goes on to say:

“It is beyond contest that some of the accretions of power to the judiciary over the last century have come about as a result of failures and inadequacies in law-making by the other branches and departments of the Government. Constitutional power hates a vacuum. Where it exists, in the form of silence, confusion or uncertainty about the law, it is natural that those affected, despairing of solutions from the other law-making organs of the Government, will sometimes approach the

judicial branch for what is in effect a new rule. They will seek a new law that responds quickly to their particular problem. When this happens, Judges, if they have jurisdiction in the case, are not normally at liberty to just send the parties away. How do they decide whether the fulfilment of their judicial role permits, or requires, the giving of an answer or obliges them to decline and force the parties to return to the politicians or bureaucrats? To what extent must Judges defer to Parliament, when they know full well, from many like cases, that nothing will be done because the problem is too particular, divisive, technical or boring to merit political attention and parliamentary time? What, in other words, is the judicial role in the particular case?"

To be sure, judicial activism is not an uncomplimentary or uncharitable epithet to describe the end result of public interest litigation. Those who benefit from judicial activism shower praise and those who are at the receiving end criticise it. C'est la vie!"

58] Taking into consideration the established violation by the State Authorities of the petitioners fundamental rights guaranteed by Article 21 of the Constitution, not to mention the gross dereliction on the part of the State Authorities in complying with their statutory and constitutional obligations to the petitioners, we are of the opinion that this is a fit case to award to the petitioners compensation. The basic facts in the present case, are really not in dispute. Some minor and inconsequential disputes attempted to be created by the State Authorities quite belatedly (i.e. after this court vide order dated 8 December 2015 directed payment of compensation and such direction was not stayed by the Hon'ble Supreme Court in its order dated 12 February 2016) cannot deflect the jurisdiction of this court to award compensation to the petitioners as a public law remedy, now that the infringement of the fundamental rights of the petitioners is established. There is really no merit in the contention of the State Authorities that the unreasonable delay in providing water supply and irrigation facility to the lands allotted to the petitioners after they were ousted from the

affected zone on account of submergence of their lands and houses, was for any genuine causes , beyond the control or contemplation of the State Authorities.

59] The first reason stated for such unreasonable delay is the institution of the litigations by various land owners from the benefited zone resisting acquisition of their lands for the construction of Right Bank Canal. In the affidavits, the State Authorities except for raising such a plea have not bothered to substantiate the same even broadly. There are no particulars whatsoever of the litigations, if any, instituted by the lands owners in the benefited zone , on account of which the construction of the Right Bank Canal was thwarted. The State Authorities, who have , in their affidavits dated 11 July 2016 and 28 July 2016 relied quite heavily upon the *doctrine of eminent domain* and who are armed with powers as well as wherewithal for compulsory acquisition, can hardly raise such defences with any degree of seriousness.

60] The second reason stated is the delay in obtaining clearances from MOEF in respect of part of the construction of the Right Bank Canal through designated forest areas. Again, we are satisfied that this is only a bogey raised by the State Authorities. The total length of the Right Bank Canal is meant to be 208 kms. In order to provide irrigation facility to the lands allotted to the petitioners at **Shedgewadi** , the Canal has to be completed up to the villages of Bhade and Andori at kms. 48-49. Out of this, Canal up to the length of 300 meters,i.e., 0.3 kms. is to pass through designated forest areas. This position was known to the State Authorities in the year 2001 itself. The clearance from MOEF was however, applied for only in the year 2006 and the State Authorities took almost five years to comply with the conditions

set out in the provisional approval. This is nothing but lethargy. No sooner this court, by its order dated 8 December 2015 awarded compensation to the petitioners, and such award was not stayed by the Hon'ble Supreme Court on 12 February 2016, the State Authorities pursued the matters with the MOEF with utmost zest. Accordingly, this reason cited, is by no means sufficient to resist the payment of compensation to the petitioners.

61] The third reason stated is “*paucity of funds*”. In the facts and circumstances of the present case, we are unable to accept such reason or such defence. The State Authorities have spent of crores of rupees on the Nira Deoghar Project. The State Authorities have retained 65% of the compensation otherwise payable to the petitioners for the acquisition of their ancestral lands and houses in the affected zone since 1996 on the solemn promise that the petitioners would be allotted lands in the benefited zones having the benefit of irrigation. The State Authorities have however, reneged upon such solemn promise, the provisions of the said Act or the constitutional obligations notwithstanding. In such circumstances, as observed earlier, there is statutory as well as constitutional obligation upon the State Authorities to provide for reasonable water supply and irrigation facilities to the lands allotted to the petitioners. The failure on the part of the State Authorities to do so, therefore, constitutes breach of statutory as well as constitutional obligations. Such constitutional obligations at least, cannot be avoided easily by vaguely raising the plea of “*paucity of funds*”.

62] In ***Municipal Council, Ratlam vs. Shri. Vardichan and ors.***³³, the Hon'ble Supreme Court, turned down such a plea on behalf of the

33 (1980) 4 SCC 162

Municipal Council resisting the discharge of its statutory duties by styling such a plea as an “*alibi*”. The Supreme Court observed that the plea of municipality that notwithstanding the public nuisance financial inability validly exonerates it from statutory liability has no juridical basis. The criminal procedure code operates against statutory rights under Part III of the Constitution have to be respected by the State regardless of budgetary provision. Otherwise, a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget. That cannot be. Finally, the Supreme Court has held that law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice.

63] In ***State of Maharashtra vs. Manubhai P. Vashi and ors.***³⁴, the Supreme Court, relying upon *Ratlam (supra)* has held that paucity of funds can be no reason for discrimination by the State or an excuse to violate Article 21 of the Constitution of India. These observations were made when the State of Maharashtra refused to extent grant any aid to law colleges discriminating them from the streams of Arts, Science, Commerce, Engineering etc. and a plea of “*paucity of funds*” was raised. The Supreme Court held that Article 21 read with Article 39A of the Constitution mandates or casts a duty upon the State to afford grant-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise.

64] In ***Khatri (2) vs. State of Bihar***³⁵, the Supreme Court referred to the constitutional obligation (as against a statutory obligation) of

34 AIR 1996 SC 1

35 (1981) 1 SCC 627

providing free legal services to an indigent person and rejected the plea based upon paucity of funds by observing thus:

“5. ... Mr K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the Court in Rhem v. Malcolm

‘the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty’

and to quote the words of Blackmun, J. in Jackson v. Bishop

‘humane considerations and constitutional requirements are not in this day to be measured by dollar considerations’.”

65] In ***Paschim Banga Khet Mazdoor Samity vs. State of W.B.***³⁶, the Supreme Court, in the context of the another constitutional obligation of providing adequate medical services to the people at para 16 had observed thus:

“16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. [See Khatri (2) v. State of Bihar, SCC at p. 631.] The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view.”

36 (1996) 4 SCC 37

66] In ***P.Ramchandra Rao vs. State of Karnataka***³⁷, the Constitution Bench of the Supreme Court has held that the State cannot be permitted to deny the constitutional right of speedy trial of the accused on the grounds that the State has no adequate financial resources to incur expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, *'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or 'administrative inability'*. Further, the Hon'ble Supreme Court has held that *the Court should not disown its own jurisdiction on any area or in respect of any matter over any one authority or person, when the constitution is found to be at stake and the fundamental rights of citizens/persons are under fire, to restore them to their position and uphold the Constitution and the rule of law — for which this Court has been established and constituted with due primacy and necessary powers, authority and jurisdiction, both express and implied.*

67] Finally, we turn to Mr. Deshpande's contention that the State Authorities cannot be made to pay any compensation in a matter of this nature because the State Authorities, in undertaking construction of dams and irrigation projects exercise sovereign functions and are therefore, entitled to *sovereign immunity*. As noted earlier, he relied upon the judgment of Income Tax Appellate Tribunal (ITAT) which has granted exemption to the Vidharbha Irrigation Development Corporation from payment of certain taxes on the ground that the said Corporation discharges sovereign functions. Mr. Deshpande also placed reliance upon the several decisions of the Hon'ble Supreme

37 (2002) 4 SCC 578

Court in support of the plea that the State Authorities enjoy an absolute immunity in the matter of discharge of sovereign functions and therefore, no claim for compensation is maintainable.

68] In this case, even if we were to proceed on the basis that the State Authorities discharge sovereign functions when it comes to construction of dams and irrigation projects, we must note that the facts and circumstances as emerge from the record clearly establish that there is dereliction of duty on the part of the State Authorities not merely in the matter of compliance with the provisions of the statute, but also, in the matter of compliance with constitutional obligations. The material on record, clearly establishes that the State Authorities, on account of apathy, lethargy and insensitivity have violated the petitioners' fundamental right guaranteed by Article 21 of the Constitution of India. In the situation of this nature, therefore, there is no question of upholding the State's plea of "*sovereign immunity*" based mainly upon the decision in *Kasturilal Ralia Ram Jain* (supra).

69] In ***Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and ors.***³⁸, the Supreme Court has distinguished its decision in *Kasturilal Ralia Ram Jain* (supra) upholding the State's plea of sovereign immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application. In the constitutional scheme, *sovereign immunity* is no defence to the constitutional remedies under Articles 32 and 226 which enables the award of compensation for contravention of fundamental rights.

38 (1993) 2 SCC 746

70] In ***State of A.P. Vs. Challa Ramkrishna Reddy and ors.***³⁹, the Hon'ble Supreme Court has considered in great details the legal validity of the defence of sovereign immunity where the State is alleged to have infringed fundamental right guaranteed by Article 21 of the Constitution and concluded in no uncertain terms that such a defence based upon *sovereign immunity* is wholly inapplicable. In fact, the Hon'ble Supreme Court has held that such a defence, based upon the old English Maxim that the King can do no wrong has undergone a change in England itself with the enactment of the Crown Proceedings Act, 1947. Even the Crown in England therefore, does not enjoy absolute immunity and may be held vicariously liable for the tortuous acts of its officers and servants. The maxim that King can do no wrong or that the Crown is not answerable in tort has no place in Indian jurisprudence where the power vests, not in the Crown, but in the people who elect their representatives to run the Government, which has to act in accordance with the provisions of the Constitution and would be answerable to the people for any violation thereof. The right to life is one of the basic human right. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. The fundamental rights, which also includes basic human rights continue to be available even to a prisoner and those rights cannot be defeated by the pleadings *the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by this Court*. Finally, by reference to its decision in ***Common Cause, A Registered Society Vs. Union of India***⁴⁰ – 1999 (6) SCC 667, in which the entire history in relation to the doctrine of sovereign immunity was considered beginning from the time of East India Company and up to the stage of the enactment of

39 (2000) 5 SCC 712

40 (1999) 6 SCC 667

Constitution of India, the Hon'ble Supreme Court has held that "*In this process of judicial advancement, Kasturi Lal's case has paled into insignificance and is no longer of any binding value*".

71] In ***N. Nagendra Rao Vs. State of A.P.***⁴¹, in the context of the doctrine of sovereign immunity, the Hon'ble Supreme Court has held that no civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with the structural change in the society. No legal or political system today can place the State above the law as it is unjust and unfair for a citizen to be deprived of its property illegally by negligent acts of the officers of the State without any remedy. From sincerity, efficiency and dignity of State as a juristic person, propounded in the 19th Century as a sound sociological basis for State immunity, the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive society and the judicial approach is to do away with the archaic State protection and place the State or the Government on par with any other juristic legal entity. The movement now is from "*State irresponsibility to state responsibility*."

72] As noted earlier, this is not a fit case to relegate the petitioners to the ordinary remedy of instituting suits against the State Authorities now that the infringement of their fundamental right guaranteed by Article 21 of the Constitution is established. It is even otherwise well settled that a constitutional court is vested with the jurisdiction to award compensation, particularly where such award is consequential upon the deprivation of fundamental right of the petitioners. In *Rudul Sah (supra)*, the petitioner upon establishing that his detention had

41 (1994) 6 SCC 205

violated his fundamental rights applied to the Hon'ble Supreme Court for compensation in the petition under Article 32 of the Constitution. In this context, the Hon'ble Supreme Court at paragraphs 10 and 12 observed thus:

*"10. We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour. **In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention.** One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. **Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield.** If civilisation is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.*

.....

....

12. This order will not preclude the petitioner from bringing a

suit to recover appropriate damages from the State and its erring officials. The order or compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Sahs in Bihar or elsewhere.”

(emphasis supplied)

73] In ***Nilabati Behera (supra)***, lest there remains any ambiguity upon the competence of a writ court to award compensation where infringement of fundamental right of the petitioners is established, the Hon'ble Supreme Court has made the following observations:

“12. It does appear from the above extract that even though it was held that compensation could be awarded under Article 32 for contravention of a fundamental right, yet it was also stated that “the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was actually controversial” and “Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes”. This observation may tend to raise a doubt that the remedy under Article 32 could be denied “if the claim to compensation was factually controversial” and, therefore, optional, not being a distinct remedy available to the petitioner in addition to the ordinary processes. The later decisions of this Court proceed on the assumption that monetary compensation can be awarded for violation of constitutional rights under Article 32 or Article 226 of the Constitution, but this aspect has not been adverted to. It is, therefore, necessary to clear this doubt and to indicate the precise nature of this remedy which is distinct and in addition to the available ordinary processes, in case of violation of the fundamental rights.

...

17. It follows that ‘a claim in public law for compensation’ for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting

to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. **The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy.** It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

....

19. This view finds support from the decisions of this Court in the Bhagalpur Blinding cases: *Khatri (II) v. State of Bihar* and *Khatri (IV) v. State of Bihar* wherein it was said that the court is not helpless to grant relief in a case of violation of the right to life and personal liberty, and it should be prepared "to forge new tools and devise new remedies" for the purpose of vindicating these precious fundamental rights. It was also indicated that the procedure suitable in the facts of the case must be adopted for conducting the inquiry, needed to ascertain the necessary facts, for granting the relief, as the available mode of redress, for enforcement of the guaranteed fundamental rights. More recently in *Union Carbide Corpn. v. Union of India*, Misra, C.J. stated that "we have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future ... there is no reason why we should hesitate to evolve such principle of liability ...". To the same effect are the observations of Venkatachaliah, J. (as he then was), who rendered the leading judgment in the Bhopal gas case with regard to the court's power to grant relief.

20. We respectfully concur with the view that the court is not helpless and the wide powers given to this Court by Article 32,

which itself is a fundamental right, imposes a constitutional obligation on this Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this Court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. ***If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.***

21. We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Article 9(5) reads as under:
“Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in *Rudul Sah* and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in *Rudul Sah* and others in that line have to be understood and *Kasturilal* distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such

proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

....

32. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. **The citizen complaining of the infringement of the inalienable right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the courts exercising writ jurisdiction.** The primary source of the public law proceedings stems from the prerogative writs and the courts have, therefore, to evolve 'new tools' to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. While concluding his first Hamlyn Lecture in 1949 under the title "Freedom under the Law" Lord Denning in his own style warned:

"No one can suppose that the executive will never be guilty of the sins that are common to all of us. You may be sure that they will sometimes do things which they ought not to do: and will not do things that they ought to do. But if and when wrongs are thereby suffered by any of us what is the remedy? Our procedure for securing our personal freedom is efficient, our procedure for preventing the abuse of power is not. Just as the pick and shovel is no longer suitable for the winning of coal, so also the procedure of mandamus, certiorari, and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to date machinery, by declarations, injunctions and actions for negligence.... This is not the task for Parliament ... the courts must do this. Of all the great tasks that lie ahead this is the greatest. Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to a totalitarian state. None such must ever be allowed in this country."

33. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too

much as protector and guarantor of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations.

34. *The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. **The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.”***

(emphasis supplied)

74] As regards the quantum of compensation, we endorse the reasoning in the order dated 8 December 2015, by which we had directed the State Authorities to pay Rs.15,000/- per month to each of the petitioners effective from 1 December 2012 until, the State

Authorities make available to the petitioners and the lands allotted to them some reasonable water supply and irrigation facility. The material on record has established that the petitioners have been deprived their right to livelihood from the year 2001 when they were ousted from their ancestral lands and houses in the affected zone and relocated at **Shedgewadi** without any significant rehabilitation measures and more particularly without benefit of reasonable water supply or irrigation facilities. Although, the petitioners seek compensation from the year 2001, we are not inclined to consider such relief since, petitions were instituted in the year 2012 and further the State Authorities have now undertaken to provide reasonable water supply and irrigation facilities to the lands allotted to the petitioners as expeditiously as possible and in any case by 31 October 2017. The undoubted trauma which the petitioners have faced for all these years, is however, factored to some extent in determining the quantum of compensation. The material on record indicates that the petitioners families comprise at least five to six members. All these are relevant considerations for determination of the quantum of compensation.

75] Further, we note the compensation awarded for acquisition of the petitioners' lands and houses in the affected zone in the year 1996 was quite meagre and out of the same, the State Authorities have retained 65% amount. In terms of Notification dated 20 October 2005 issued by Ministry of Labour and Employment under the provisions of the Minimum Wages Act, 1948, the minimum rate of wages per day per employee payable in employment in agriculture was in the range of Rs.102/- to Rs.153/-. In terms of Notification dated 1 September 2016, the Ministry of Labour and Employment has proposed revision of the rates of minimum wages payable to employees engaged in agriculture. This ranges between Rs.300/- to Rs.438/- per day per employee.

These are rates of wages payable to employees engaged in agriculture. The petitioners, are in the position of owners of the lands allotted to them. We also take into consideration the principles set out by the Hon'ble Supreme Court in *Nilabati Behera (supra)* in the matter of determination of compensation, where infringement of fundamental rights of the petitioners are established. In this case, the Hon'ble Supreme Court has held that payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law, but in the broader sense of providing relief by an order of making "*monetary amends*" under the public law for the wrong done due to breach of public duty, of not protecting the fundamental right of the citizen. Therefore, upon cumulative consideration of all such matters compensation at the rate awarded, would be fair and proper in the facts and circumstances of the present case.

76] For all the aforesaid reasons, we allow these writ petitions and direct the State Authorities to complete the construction of the Nira Deoghar Right Bank Canal at least up to the villages of Bhade and Andori at kms. 48-49 and to thereafter take necessary steps as proposed by them to make available to the lands allotted to the petitioners reasonable water supply and irrigation facility by 31 October 2017. This direction is based upon the statements made by the State Authorities in their affidavit dated 20 September 2016, which we accept as undertakings to this Court. Further, we make absolute the directions issued by us in our order dated 8 December 2015, in the matter of payment of compensation at the rate of Rs.15,000/- per month to each of the petitioners with effect from 1 December 2012 and to continue to make such payments until the direction for supply of reasonable water supply and irrigation facility to the lands allotted to

the petitioners at **Shedgewadi** is complied with. Rule is accordingly, made absolute in each of these petitions. There shall however, be no order as to costs.

77] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

(CHIEF JUSTICE)

78] Mr. Deshpande, the Additional Government Pleader, seeks a stay on the judgment and order. We have accepted the undertaking given on behalf of the State in its affidavit dated 20 September 2016 and further, made absolute, the directions issued by us in our order dated 8 December 2015. The Hon'ble Supreme Court, in its order dated 12 February 2016, had declined stay upon the implementation of directions in order dated 8 December 2015. For these reasons, we reject the application for stay of the judgment and order.

(M. S. SONAK, J.)

(CHIEF JUSTICE)

chandka