

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 19875 OF 2017

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

General Manager,
Mahanadi Coalfields Limited,
Jagannath Are, Talcher, Angul Petitioner

-Versus-

Collector, Angul and Anr. Opp. Parties

For Petitioner : M/s B.N. Mohanty,
S.N. Sharma, A. Mohanty and
S.J. Biswal, Advocates

For Opp. Parties : Mr. P.K. Muduli,
Addl. Govt. Advocate
[O.P. No.1]

M/s B.C. Panda.
S. Mishra, J.N. Panda,
L. Das and B.N. Panda, Advocates.
[O.P. No.2]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE B.P. SATAPATHY**

Date of hearing and judgment :: 22.12.2022

DR. B.R. SARANGI, J. The General Manager, Mahanadi Coalfields Limited, Jagannath Area, Talcher, Angul, has filed this writ petition seeking to quash the order dated 30.11.2016 passed in Misc Case Nos.1 to 43 of 2015 under Annexure-5, by which the Collector, Angul has directed the petitioner to disburse the unpaid compensation amount to the left out awardees and to extend the employment benefit to one member of the awardee's family under the Land Acquisition Act, 1894.

2. The factual matrix of the case, in a nutshell, is that the Special Land Acquisition Officer, MCL, Angul instituted Land Acquisition Case No. 26 of 1985 for acquisition of raiyati land to the extent of Ac. 99.82 in village Badajorada for execution of magazine, approach road, power lines and conveyor alignment for Bharatpur Open Cast Project, as per requisition of Under Secretary to Govt. of India, Ministry of Energy Deptt. of Coal, vide letter no.43019/79/84 CA dated 31.12.1984. Accordingly, notification no.59543 dated 07.10.1987 was issued under Section 4(1) of the Land Acquisition Act, 1984 for

acquisition of Ac. 122.48 of land for Bharatpur Open Cast Project. Proposal was also submitted to the Government, vide District Office, Dhenkanal letter no.616 dated 16.12.1988 for declaration under Section 6(1) of the Land Acquisition Act, 1984 for an area of Ac.93.57 for construction of Bharatpur Open Cast Project (Colony). Consequentially, an area of Ac. 93.57 was notified on 02.01.1989 for Bharatpur Coal Mines of South Eastern Coal Ltd. During such acquisition of agricultural land in village Badajorada, as many as 74 families were identified as the land losers and 94 nominees were selected for rehabilitation under MCL apart from the award in terms of money. For the purpose of rehabilitation of family members of displaced families of village Badajorada, one uniform guideline was prepared on 02.06.1988. Accordingly, a category-wise list of 94 nominees of the village Badajorada was prepared and sponsored for employment.

2.1 The Special Land Acquisition Officer, on 31.05.1991, asked the General Manager of Jagannath

Area, the present petitioner, to give employment to 94 affected persons and also requested the petitioner to ask the land losers to furnish affidavit in support of their nominee/relation at the time of interview, and that after getting such intimation compensation amount will be disbursed. After receipt of the letter dated 31.05.1991, the Addl. Chief Personal Manager, Jagannath Area, MCL, on 22.08.1991, issued letter to Pabitra Pradhan, father of opposite party no.2 for interview to be held on 05.09.1991. After interview, the father of opposite party no.2 was asked to appear before the Medical Officer, Regional Hospital, MCL for medical check up. Accordingly, he appeared before the Medical Officer, on 05.01.1993, and his medical test was conducted on the same day. But the present petitioner did not take any step to give appointment to land oustee Pabitra Pradhan, father of opposite party no.2 along with other similarly situated persons. At the time of survey, father of opposite party no.2 was 18 years old and due to delay in the matter by the petitioner, he could not get appointment and, as such,

he crossed his age limit. Thereafter, father of opposite party no.2 made application before the Special Land Acquisition Officer, MCL to change the nominee. But the petitioner neglected to give appointment to the father of opposite party no.2 along with other land oustees, as a result of which, they started agitation.

2.2 As a consequence thereof, Special Land Acquisition Officer, MCL, on 07.04.2005, 12.05.2005, 26.11.2005, 27.01.2006, 04.06.2010 and 17.05.2011 invited the President and Secretary of the land oustees' association of Badajorada to have discussion and settlement. The President and Secretary of the land oustees' association of Badajorada attended the said meetings which were held from time to time under the Chairmanship of the Collector and in presence of other authorities and in the said meetings the authorities expressed their anguish that there was already delay in giving appointment and it was decided to take immediate steps for giving appointment to the land oustees.

2.3 The Special Land Acquisition Officer (MCL), Dhenkanal, vide his letter no.414 dated 31.05.1991, prepared a list of category of persons/families entitled to get the benefit, which are extracted hereunder:-

Sl. No.	Misc case No.	Name of the petitioner	Name of the awardee	Relation with awardee	Category of land oustee	Name sponsored for employment in respect of awardee / date of interview	Status of compensation
1	2	3	4	5	6	7	8
1	01/2015	Amulya Behera S/o- Darada Behera	Daraba Behera S/o- Kunja Behera	Son	D	Sara Behera W/o- Daraba Behera 04.09.1991	Paid
2	02/2015	Pinku Naik S/o- Khirod Naik	Abhi Naik S/o- Basu Naik	Grand son	B	Khirod Naik S/o- Abhi Naik 03.09.1991	Deposited in civil court
3	03/2015	Krushna Chandra Sahoo S/o- Krutartha Sahoo	Krutartha Sahoo S/o- Madan Sahoo	Son	B	Krutartha Sahoo S/o- Madan Sahoo 04.09.1991	Paid
4	04/2015	Dusmanta Pradhan S/o- Dukhaband hu Pradhan	Dukhaband hu Pradhan S/o- Baji Pradhan	Son	D	Dukhaband hu Pradhan S/o- Baji Pradhan 05.09.1991	Paid
5	05/2015	Pradeep Pradhan S/o- Bitu Pradhan	Bitu Pradhan S/o- Madhu Pradhan	Son	D	Bitu Pradhan S/o- Madhu Pradhan 04.09.1991	Paid
6	06/2015	Sasmita Pradhan W/o- Pradeep Pradhan	Iswar Pradhan S/o- Gopi Pradhan	D.I.L.	D	Pradeep Kumar Pradhan S/o- Iswar Pradhan 05.09.1991	Paid
7	07/2015	Pradeep Naik S/o- Krupasindh u Naik	Krupa Naik S/o- Sahadev Naik	Son	D	Pradeep Naik S/o- Krupasindh u Naik 03.09.1991	Unpaid

8	08/2015	Murali Pradhan S/o- Late Baji Pradhan	Murali Pradhan S/o- Late Baji Pradhan	Self	D	Murali Pradhan S/o- Late Baji Pradhan 05.09.1991	Paid
9	09/2015	Narayan Bhoi S/o- Tirthabasi Bhoi	Nakaphodi Bhoi S/o- Chandrama ni Bhoi	G. son	D	Tirthabasi Bhoi Adopt S/o- Nakaphodi Bhoi	Paid
10	10/2015	Tilottama Pradhan W/o- Srikanta Pradhan	Srikanta Bhoi S/o- Iswar Pradhan	wife	D	Srikanta Pradhan S/o- Iswar Pradhan 05.09.1991	Paid
11	11/2015	Jitendra Pradhan S/o- Uchhaba Sahoo	Hatia Pradhan S/o Kashi Pradhan	G.Son	D	Trinath Pradhan s/o- Hatia Pradhan 04.09.1991	partly paid
12	12/2015	Tikan Kumar Sahoo S/o- Uchhaba Sahoo	Uchhab Sahoo s/o Nilamani Sahoo	Son	D	Tikan Kumar Sahoo s/o- Uchhaba Sahoo 05.09.1991	unpaid
13	13/2015	Suman Behrea S/o- Nitya behera	Nirya Behera s/o- Kaira Behera	Son	D	Suman Behera s/o- Nitya Behera 03.09.1991	Paid
14	14/2015	Anjali Bhoi W/o- Paduka Bhoi	Paduka Bhoi s/o- Chandrama ni Bhoi	Wife	D	Paduka Bhoi s/o- Chandrama ni Bhoi 03.09.1991	Paid
15	15/2015	Ananta Naik S/o- Santha Naik	Kuhan Naik s/o- Damodar Naik	G.Son	D	Santha Naik s/o- Kuhan Naik 03.09.1991	Paid
16	16/2015	Babita Sahoo W/o- Bipin Bihari Sahoo	Joginath Sahoo s/o- Nilamani Sahoo	D.I.L.	D	Bipin Bihari Sahoo s/o- Joginath Sahoo 04.09.1991	Unpaid
17	17/2015	Biswajit Pradhan S/o- Pabitra Pradhan	Pabitra Pradhan s/o- Ganeswar Pradhan	Son	B	Pabitra Pradhan s/o- Ganeswar Pradhan 05.09.1991	Paid
18	18/2015	Prasant Bhoi S/o- Bikram Bhoi	Bikrak Bhoi s/o- pathani Bhoi	Son	D	Bikram Bhoi s/o- Pathani Bhoi 03.09.1991	Unpaid

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19	19/2015	Haramohan Pradhan S/o- Haladhar Pradhan	Haladhar Pradhan s/o- Kirtan Pradhan	Son	D	Haladhar Pradhan s/o- Kirtan Pradhan 03.09.1991	Paid
20	20/2015	Agasti Pradhan S/o- Late Madan Pradhan	Madan Pradhan s/o- Ganeswar Pradhan	Son	D	Agasti Pradhan s/o- Madan Pradhan 05.09.1991	Paid
21	21/2015	Saroj Pradhan S/o- Dhanu Pradhan	Dhanu Pradhan s/o- Gadadhar Pradhan	Son	D	Dhanu Pradhan s/o- Gadadhar Pradhan 04.09.1991	Paid
22	22/2015	Bijay Pradhan S/o Sanu Pradhan	Panu Pradhan s/o- Kashi Pradhan	G.Son	D	Sanu Pradhan s/o- Panu Pradhan 05.09.1991	unpaid
23	23/2015	Sagar Behea s/o- Mahadev Behera	Chandini Sahoo M/o- Arakhita Sahoo	G.Son	D	Mahadev Behera husband of Chandini Sahoo 05.09.1991	Paid
24	24/2015	Muna Pradhan s/o- Late Kabi Pradhan	Panu Pradhan s/o- Kashi Pradhan	G.Son	D	Kabi Pradhan s/o- Panu Pradhan 05.09.1991	unpaid
25	25/2015	Sanjib Pradhan s/o- Bhimasen Pradhan and Sumati Pradhan	Sumati Pradhan w/o- Bhimasena Pradhan	Son	D	Sumati Pradhan w/o- Bhimsena Pradhan 04.09.1991	unpaid
26	26/2015	Dillip Pradhan s/o- Pabitra Pradhan	Pabitra Pradhan s/o- Kalandi Pradhan	Son	D	Dillip Pradhan s/o- Pabitra Pradhan 05.09.1991	Paid
27	27/2015	Subrat Pradhan s/o- Bairagi Pradhan and Ahalya Pradhan	Bairagi Pradhan s/o- Jo Pradhan	Son	D	Ahalya Pradhan w/o- Bairagi Pradhan 04.09.1991	Paid
28	28/2015	Santosh Pradhan s/o- Sahadev Pradhan	Sahadev Pradhan s/o- Gadadhar Pradhan	Son	D	Sahadev Pradhan s/o- Gadadhar Pradhan 04.09.1991	Paid

29	29/2015	Pramod Pradhan s/o- Late Mania Pradhan	Pramod Pradhan s/o- Late Mania Pradhan	Self	B	Pramod Pradhan s/o- Mania Pradhan 05.09.1991	Paid
30	30/2015	Priyabrata Pradhan s/o- Muralidhar Pradhan	Muralidhar Pradhan s/o- Kulamani Pradhan	Son	D	Nenkuri Pradhan s/o- Muralidhar Pradhan	Paid
31	31/2015	Suryakanta Pradhan s/o- Sadhu Charan Pradhan	Panu Pradhan s/o- Kashi Pradhan	G. Son	D	Sadhu Charan Pradhan s/o panu Pradhan 05.09.1991	Unpaid
32	32/2015	Harmohan Pradhan s/o- Baishnab Pradhan	Baishnab Pradhan s/o- Kulamani Pradhan	Son	D	Harmohan Pradhan s/o- Baishnab Pradhan 05.09.1991	Paid
33	33/2015	Silu Sahoo s/o- Late Niranjana Sahoo	Ganda Sahoo s/o- Makunda Sahoo	G. Son	D	Niranjana Sahoo s/o- Ganda Sahoo 03.09.1991	Paid
34	34/2015	Anirudha Pradhan s/o- Gunanidhi Pradhan	Gunanidhi Pradhan s/o- Gddadhar Pradhan	Son	D	Gunanidhi Pradhan s/o- Gadadhar Pradhan 04.09.1991	Paid
35	35/2015	Rakesh Pradhan s/o- Nalini Pradhan	Janaka Pradhan s/o- Bainshidhar Pradhan	G. Son	B	Nalini Pradhan d/o- Janaka Pradhan 05.09.1991	Paid
36	36/2015	Bijan Sahoo s/o- Joginath Sahoo	Joginath Sahoo s/o- Nilamani Sahoo	Son	D	Bijan Sahoo s/o- Joginath Sahoo 04.09.1991	Unpaid
37	37/2015	Sandip Swami Pradhan s/o- Kishore Pradhan	Sunia Pradhan s/o- Madhu Pradhan	G.Son	D	Kishore Pradhan s/o- Sunia Pradhan 04.09.1991	Paid
38	38/2015	Chaturbhuja Pradhan s/o- Nakula Pradhan	Nakula Pradhan s/o- Gadadhar Pradhan	Son	D	Upama Pradhan d/o- Nakula Pradhan 04.09.1991	Paid
39	39/2015	Bauribandhu Naik s/o- Kartika Naik	Kartika Naik s/o- Abhi Naik	Son	B	Kartika Naik s/o- Abhi Naik 03.09.1991	Paid

40	40/2015	Sanjaya Pradhan s/o- Girish Chandra Pradhan	Girish Chandra Pradhan s/o- Chatura Pradhan	Son	D	Girish Chandra Pradhan s/o- Chatura Pradhan 05.09.1991	Unpaid
41	41/2015	Basudev Behera s/o- Balia Behera	Balla Behera s/o- Kirtan Behera	Son	C	Balla Behera s/o- Kirtan Behera	Paid
42	42/2015	Madhab Naik s/o- Late Dholeswar Naik	Dholeswar Naik, s/o- Kartika Naik	Son	B	Sudam Naik s/o- Abhi Naik 03.09.1991	Paid
43	43/2015	Chakradhar Pradhan s/o- Rajib Pradhan	Kuntala Pradhan w/o- Rajib Pradhan	Son	D	Kuntala Pradhan w/o- Rajib Pradhan 04.09.1991	Paid

2.4 Though the aforesaid list was submitted, but no action has been taken, so far as employment is concerned, in favour of the land oustees. As far as payment of compensation is concerned, the Special Land Acquisition Officer, Dhenkanal has passed award on 15.01.1991 for payment of compensation of Rs.40,27,252/- to 194 awardees in respect of area of Ac.92.97. Out of the total compensation, an amount of Rs.25,35,580/- has been paid to 101 awardees, i.e., 62.96% . Due to non-payment of compensation of more than 80%, the possession of notified area could not be handed over to MCL, as per the instructions of the

Government of Orissa in Revenue and Disaster Management Department Letter No. LA(C) 31/2002 (Misc) 63728/R, Bhubaneswar dated 21.12.2002.

2.5 So far as the benefit admissible to the land outsee-opposite party no.2 and similarly situated persons of Badajorada village is concerned, the same was discussed in 1st RPDAC meeting of MCL held on 07.11.2006 and it was decided that all the sponsored cases during 1991, i.e., 94 and 44 cases and all the left out cases be identified on verification by the joint committee thoroughly. All 'A' and 'B' category cases be processed for job rehabilitation. In case of 'C' category, the matter will be considered as per the decision of other cases as per para 1.11. Job rehabilitation will be provided to 'D' category land oustees. Further, jobs will be provided to 'C' category land oustees, then thereafter job rehabilitation will be provided to 'D' category land oustees.

2.6 In the 7th RPDAC meeting of MCL held on 09.11.2012, it was decided that the MCL would submit a detail history/observation and earlier decisions on the

rehabilitation issues of village Badajorada within one month to be placed before the sub-committee meeting of MCL for taking necessary decision. In the sub-committee meeting held on 27.07.2013, after a threadbare discussion, it was decided that MCL shall examine whether the land, which has already been acquired in village Badajorada, is required for MCL or not and MCL shall submit a report in writing to the District Administration in this regard. At this point of time, opposite party no.2 filed W.P.(C) No. 25429 of 2013, seeking direction to the opposite parties to give him appointment under the Rehabilitation and Resettlement Scheme prepared by the State Authorities against the displaced persons for acquisition of land for Mahanadi Coalfield. This Court, while disposing of the said writ petition on 11.12.2014, passed order to the following effect:-

“Heard Mr. B.C. Panda, learned counsel for the petitioner, Mr. J.P. Patra, learned counsel for opposite parties Nos.3 & 5 and Mr. A.K. Mishra, learned additional Government Advocate.

The petitioner has filed this application seeking for a direction to the opposite parties to

give him appointment under the Rehabilitation and Resettlement Scheme prepared by the State authorities against the displaced persons for acquisition of land for Mahanadi Coal Field.

Mr. Panda, learned counsel for the petitioner submits that the petitioner is a land oustee and he has not been extended the benefit of compensation as well as any employment under Mahanadi coal Field for his sustenance under the Rehabilitation and Resettlement Scheme prepared by the State authorities. He further submits that in some cases though the compensation amount has been paid but no appointment has given to one of the family members of the displaced families for acquisition of their land.

Mr. J.P. Patra, learned counsel for opposite party nos.3 & 5 submits that the land acquisition having been done by the State authorities any benefit admissible to the beneficiaries has to be considered in the light of Rehabilitation and Resettlement Scheme. Therefore, the Mahanadi Coal field authorities are in no way connected with this, but to implement the recommendation made by the competent authority for extension of benefit to the land oustees. In the present case, no such recommendation has been received from the competent authority, therefore, the petitioner has not been provided with compassionate appointment and other benefits admissible to him as claimed.

Mr. A.K. Mishra, learned Additional Government Advocate submits that the land acquisition has been made in the year 1985. In the meantime more than 29 years have been elapsed and after elapse of so many years it is difficult to extend the benefit to the land oustees without following due procedure of law. Therefore, the claim made by the petitioner being a belated one, the writ petition should be dismissed.

Considering the contentions raised by the learned counsel for the parties, this Court is of the considered view that admittedly the petitioner is a land oustee and for the public purpose the land having been acquired by the State for Mahanadi coal Field, the benefit should be extended to the petitioner by way of paying compensation and giving employment to one of the members of the displaced families as per Rehabilitation and Resettlement Scheme of the Government. In some cases the financial benefits have been extended but no employment has given to one of the members of the displaced families.

In that view of matter, let opposite party no.2-Collector, Angul cause an enquiry and in any case the benefits under the Rehabilitation and Resettlement Scheme have not been extended to the displaced families then he will pass appropriate order in accordance with law by affording opportunity of hearing to all the parties, namely, the petitioner, opposite parties-MCL and State authorities within four months from the date of communication of this order. The petitioner is directed to produce the certified copy of this order enclosing a copy of the writ petition along with all the Annexures before opposite party no.2, who shall act upon the same.

With the above observation and direction, the writ petition is disposed of.

Urgent certified copy of this order be granted on proper application."

2.7 When the aforesaid order dated 11.12.2014 was communicated, the General Manager, Hingula Area reported, vide his letter no.134 dated 15.03.2014, that the land of village Badajorada is not required for use by MCL

under Hingula Area as the said patch of land is not coming under CBA and more over most of the land oustees are coming under 'D' category and demanding employment, which is not viable in the present scenario. The R&R issues of village Badajorada was discussed in the sub-committee meeting held on 17.06.2015 where on deliberation it was found that the old case should be considered by providing employment to 94 identified land oustees irrespective of their category, as per precedence and close the issues once for all.

2.8 In the order dated 11.12.2014 passed by this Court in W.P.(C) No. 25429 of 2013, direction was given to the Collector, Angul to cause an enquiry and in case the benefits under the Rehabilitation and Resettlement Scheme have not been extended to the displaced families then he will pass appropriate order in accordance with law by affording opportunity of hearing to all the parties, namely, opposite party no.2, MCL and State authorities within a period of four months. In compliance of the said

order, the Collector caused an enquiry and passed order on 30.11.2016 to the following effect:-

“From the above findings, in my studied opinion, it is a fact that an area of Ac. 92.97 tenancy land has been acquired under Land Acquisition Act 1894 or Bharatpur Open Cast Project and no proposal has been submitted yet by MCL for de-notification of the said acquired land under the provisions U/s 48 of the Land Acquisition Act 1894. None of the present petitioners or any of their family members have been provided with employment for such acquisition. The stand taken by MCL for non providing employment either to the above petitioners or to one of their family members has no leg standing. Hence the objection of MCL authorities for non requirement of land at this belated stage i.e. after lapse of 28 years is not accepted. In view of the facts / circumstances discussed in the foregoing paras, is ordered to disburse the unpaid compensation amount to the left out awardees or his / her their legal heirs in the case of death and MCL authorities to extend employment benefit to one member of the awardee / petitioner's family. With the above observations Misc. No. 01/2015 to Misc. Case 43 of 2015 are disposed off accordingly.”

Aggrieved by the aforesaid order dated 30.11.2016 passed by the Collector, Angul communicated on 06.12.2016 in Annexure-5, this writ petition has been filed.

3. Mr. B.N. Mohanty, learned counsel appearing for the petitioner vehemently contended that the

petitioner does not require the lands, which have been acquired and, as such, whatever compensation has been paid, it does not want to take return of the same. Thereby, it seeks to quash the common order dated 30.11.2016 passed by opposite party no.1-Collector, Angul in Misc. Case Nos.1 of 2015 to 43 of 2015 directing the petitioner to disburse the unpaid compensation amount to the left out awardees or his/her/their legal heirs in the case of death, and further to extend employment benefit to one of the members of the awardee's family and to declare the acquisition proceedings as lapsed in accordance with Section-24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is further contended that since the petitioner does not require the lands, now it is open to the State authorities to take back the same and close the chapter for all times to come.

4. Mr. P.K. Muduli, learned Additional Government Advocate appearing for opposite party no.1

vehemently contended that for the purpose of the petitioner, the process of land acquisition was taken place in 1985 and from time to time the petitioner has committed to comply with the requirement of law by paying compensation or by giving employment to the land oustees. It is contended that this process was continued till filing of W.P.(C) No.25429 of 2013 before this Court by opposite party no.2, from which the order impugned dated 30.11.2016 emanates. At such a belated stage, the petitioner should not have contended that the lands, which were acquired in 1985, are not required by the petitioner, when in the meantime 36 years have already passed from 1985 to 2021. Today, when the matter is taken up in 2022, it is too late to make a submission that the petitioner does not require the lands, which had been acquired by the State on its requisition by ousting the land owners, viz., opposite party no.2 and other similarly situated persons. As such, being an welfare State, opposite party no.1 never choose depriving the benefit admissible to the land outstees, who have by now already

suffered for more than 37 years. It is further contended that at no point of time earlier to the order dated 11.12.2014 passed by this Court in W.P.(C) No.25429 of 2013, the petitioner had raised such contention, rather in the order dated 11.12.2014 passed in the said writ petition, it was the solemn statement made by learned counsel for the petitioner that the land acquisition having been done by the State authorities any benefit admissible to the beneficiaries has to be considered in the light of Rehabilitation and Resettlement Scheme and also contended that the Mahanadi Coalfield authorities are in no way connected with the same, but to implement the recommendation made by the competent authority for extension of benefit to the land oustees. Therefore, the contention raised that the lands are not required for the purpose they had been acquired and the stand taken for lapsing of the lands under Section 24(2) cannot be sustained and it is too late to make such a submission, which has no leg to stand.

4.1 It is further contended that as per clause-4(d) of the Uniform Guidelines for rehabilitation of the displaced persons due to S.E.C.L. Projection at Sambalpur and Dhenkanal districts, the MCL authorities are to provide employment according to their requirement to one of the members of the displaced families according to the eligibility. As specifically provided under clause-4(d), one member of each displaced family shall be provided employment, which is mandatory requirement, as has been held by this Court in **Bimal Chandra Pradhan v. Mahanadi Coal Fields Ltd**, 2015(II) OLR 854. The contention raised that the lands are no more required, for that also the procedure envisaged under Section-48 of the Land Acquisition Act, 1894 has to be followed, but the same having not been adhered to, the petitioner is precluded from raising such contention. In support of this contention, Mr. Muduli has placed reliance on the judgment of the apex Court in **Rameswar and others v. State of Haryana**, (2018) 6 SCC 2015. Therefore, it is contended that the action of the petitioner

is nothing but an “unjust enrichment” and intended to harass the land oustees. Therefore, seeks for dismissal of the writ petition. Reliance has also been placed on the Constitutional Bench judgment of the apex Court in ***Indore Development Authority v. Manoharlal and Others Etc.***, AIR 2020 SC 1496.

5. Mr. B.C. Panda, learned counsel appearing for opposite party no.2 vehemently contended that after the lands are acquired by issuing notice under Sections-4(1) & 6(1) of the Land Acquisition Act, 1894, the affected persons were enlisted and they were called upon for medical test for giving employment. At a belated stage, the contentions raised that the lands are not required cannot be sustained in the eye of law. In the meantime, 37 years have passed and, as such, opposite party no.2 and similarly situated land oustees have faced a lot of difficulties due to apathetic attitude of the petitioner and it is difficult for them to earn their livelihood and live with dignity. Thereby, Article 21 of the Constitution of India has been violated. It is further contended that there is no

dispute with regard to acquisition of the lands in 1985 and all the 74 persons lost their lands, which includes homestead as well as agriculture. On the basis of discussion arrived at between the parties, the Special Land Acquisition Officer prepared a list of 94 nominees of the land oustees and they were called upon to appear before the medical board for test and even though they appeared but not extended with the benefit. As a consequence thereof, 43 persons approached this Court by filing individual writ petitions, which were disposed of on 11.12.2014 and on receipt of the order of this Court, opposite party no.1-Collector, Angul made an enquiry and passed the order impugned dated 30.11.2016. Thereby, no illegality or irregularity has been committed by opposite party no.1 so as to cause interference of this Court at this stage.

5.1 The further contention raised by learned counsel appearing for the petitioner that the petitioner does not require the lands for the purpose for which they were acquired, for that also procedure envisaged under

Section 48 of the Land Acquisition Act has to be followed and, as such, till date no request has been made by the petitioner for de-notification under Section 48 of the Land Acquisition Act, 1894. In absence of the same, it cannot be said that the lands are not required for the purpose of the petitioner and such stand taken after lapse of 37 years to deprive the legitimate claim of opposite party no.2 is not permissible, rather it can be construed that such a stand has been taken for causing harassment and, therefore, in addition to the compensation payable to opposite party no.2 for acquisition of his land, the petitioner has to pay compensation for mental agony and the sufferings faced for such a long period. Therefore, the order dated 30.11.2016 passed by opposite party no.1-Collector, Angul in extending the benefit admissible to opposite party no.2, is well justified. The further contentions raised by learned counsel appearing for the petitioner that since the land so acquired is not required any more, in view of provisions contained in Section 24(2) of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013, the same has already lapsed, cannot be sustained in the eye of law. Thereby, he seeks for dismissal of the writ petition.

6. This Court heard Mr. B.N. Mohanty, learned counsel appearing for the petitioner; Mr. P.K. Muduli, learned Additional Government Advocate appearing for opposite party no.1 and Mr. B.C. Panda, learned counsel appearing for opposite party no.2 in hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. On the factual matrix of the case, as discussed above, two issues emerge for consideration:-

(1) Whether for petitioner's non-requirement of the lands, which were acquired for the petitioner in the year 1985, the land oustees can be deprived of getting their legitimate benefit?

(2) Whether under the present scenario the land acquisition proceeding lapses under

Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013?

8. **ISSUE NO.1**

On careful scrutiny of the facts, as mentioned above, there is no dispute before this court that the lands were acquired for the petitioner under the Land Acquisition Act, 1894 and by issuing notification under Sections-4(1) and 6(1) of the Act, the amount of compensation was determined. As per the guidelines issued on 02.06.1988, opposite party no.2 and similarly situated persons are to be provided employment as per clause-4(d), being the members of the displaced families according to their eligibility. This fact was examined by causing an inquiry by the authority and a list of 94 persons was prepared to the effect that they are entitled to get compensation for the acquisition of their lands and also get employment as per the guidelines issued on 02.06.1988. So far as payment of compensation is concerned, the admitted fact is that 62.96% of the

compensation amount has already been paid and the balance amount has not been paid and, admittedly, out of final determination amount of Rs.40,27,252/-, Rs.25,35,580/- have been disbursed. Therefore, the balance amount has not been paid as compensation. It clearly indicates even though the lands have been acquired by the petitioner, the compensation amount, as determined, has not been paid to the land oustees and, more so, no employment has been provided to the land oustees as per guidelines dated 02.06.1988 in Annexure-A/2. When opposite party no.2 approached this Court by filing W.P.(C) No.25429 of 2013, this Court directed opposite party no.1-Collector, Angul to cause an enquiry and pass an order extending the benefit, pursuant to which the impugned order dated 30.11.2016 has been passed. Challenging the said order, a new stand has been taken by the petitioner that it does not require the land in question, and such stand is not permissible at this belated stage after 37 years and in the meantime,

opposite party no.2 has suffered a lot being deprived of not only his agricultural land but also homestead land.

8.1 In ***Olga Tellis & Ors v. Bombay Municipal Corporation & Ors***, AIR 1986 SC180 : (1985) 3 SCC 545, the apex Court, while considering the question whether right to life includes the right to livelihood, held that the right to life which is guaranteed by Art. 21 includes the right to livelihood, and since the land oustees would be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction tantamounts to deprivation of their life and is hence unconstitutional. For the purposes of argument, the apex Court assumed the factual correctness on the premise that if the land oustees are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the apex Court considered the question as to whether the right to life includes the right to livelihood and saw only one answer to that question, namely, that it does. The sweep of the right to live conferred by Art.21 is wide and far-reaching. It does not mean merely that life cannot be

extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and he should have deprived him of his life.

8.2. By acquisition of the land and building, opposite party no.2 has been deprived of his property.

In ***Devender Singh and others v. State of Punjab and others***, 2008 SC 2675 : (2008) 4 SCC 649, the apex Court opined that the right to property is enhanced after it is deleted from fundamental rights and incorporated in Article 300A and held that right to property is no longer a fundamental right but it still is Constitutional right. The procedure laid down for deprivation thereof must be scrupulously complied with.

8.3 In ***Narendra Kumar v State of Haryana***, (1994) 4 SCC 460: AIR 1995 SC 519, the apex Court held that right to livelihood is an integral facet of the right to life.

8.4 In ***Francis Carlie Mullian v. Administrator, Union Territory of Delhi***, AIR 1981 SC 746 : (1981) 1 SCC 608, the apex Court held that every citizen has a right to live with human dignity.

8.5. In ***Menaka Gandhi v. Union of India***, (1978) 1 SCC 248 : AIR 1978 SC 597, the apex Court held that Article 21, if read literally, is a colourless article and would be satisfied, the moment it is established by the State that there is a law which provides a procedure which has been followed by the impugned action. But the expression 'procedure established by law' in Article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just.

8.6 The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. In ***Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni***, (1983) 1 SCC 124: AIR 1983 SC 109, the apex Court held that life means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

8.7. In ***Chameli Singh v. State of Uttar Pradesh***, (1996) 2 SCC 549 : AIR 1996 SC 1051, the apex Court held that right to life means to live like a human being

and it is not ensured by meeting only the animal needs of man. It includes right to live in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. It is further held that right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As it enjoined in the directive principles, the State should be deemed to be under an obligation to secure it for its citizens.

8.8 In ***P.G. Gupta v. State of Gujarat***, 1995 Supp (2) SCC 182, the right to shelter has also been defined by the apex Court.

8.9 Therefore, the factual matrix of the case, which has been taken note of, if applied to the present context, from 1985 to till 2015 on different situations sequence wise indicates that the petitioner is willing to take over the land from time to time and also it has participated in the discussion and agreed to the conditions, and on that basis steps have been taken and when 94 persons have been considered as land oustees, a list was also prepared

with the consent of the petitioner. Subsequently, it cannot turn around and say that the lands are not required for the petitioner.

8.10 In this context, the Uniform Guidelines for Rehabilitation of the Displaced Persons due to S.E.C.L. Projection at Sambalpur and Dhenkanal districts dated 02.06.1988 under Annexure-A/2 are to be referred to. Clause-4 thereof, being relevant for the purpose of the case, is extracted hereunder:-

“4. Employment:

- (a) *One member from the family sustaining loss of dwelling houses, homestead land and agricultural lands not less than 1/3rd of the total holding shall be provided with employment on a priority basis*
- (b) *One member of each family having sustained loss of 3 acres of non-irrigated land or 2 acres of irrigated land shall be provided with employment on second priority.*
- (c) *In case of families having lost only homestead land or the total agricultural holding, one member from each family shall be provided with employment according to availability.*
- (d) *In case of families who have lost 1/3rd of the total agricultural holding, one member from each family shall be provided with employment according to availability.*
- (e) *Rehabilitation of other displaced families shall be made through self employment schemes”.*

In view of such position, this Court is of the considered view that the petitioner is liable to provide employment as well as compensation, as due and admissible, and cannot deprive opposite party no.2 to get the legitimate claim, otherwise it would be violative of Article 21 of the Constitution of India.

8.11 In view of the eligibility criteria for employment classified under clause-4, as mentioned above, since opposite party no.2 has lost his agricultural holding, one member of his family has to be provided with employment according to availability as per sub-clause-(d) of clause-4 of the guidelines. Therefore, there is no dispute with regard to the eligibility of opposite party no.2 to get employment as per the scheme evolved by the State Government, which was agreed to by the parties. As such, there is also no dispute that opposite party no.2 has been placed under category 'D' and as per the scheme he is entitled to get an employment, which was also recommended by the Special Land Acquisition Officer to

the Collector, Angul for providing employment in consonance with the guidelines.

8.12. The factum of recommendation has also been admitted before the Collector in due process of adjudication. As such, there is no denial to that in the present writ petition. But, while challenging the order dated 30.11.2016 passed by the Collector, Angul, a novel stand has been taken before this Court that the petitioner does not want to take the land, which is not permissible. Therefore, in **Bimala Chandra Pradhan** (supra), this Court directed the opposite parties in the said writ petition to provide employment forthwith. Applying the same to the present context, the petitioner is directed to give employment to opposite party no.2, as the plea taken by the petitioner at this moment, that it does not want to take the land, is not at all tenable in the eye of law.

8.13 May it be noted that if the petitioner does not require the land on the ground that the same is no more necessary for any purpose, therefore, steps should have been taken under Section 48 of the Land Acquisition Act,

1894. But nothing has been placed on record to indicate that any such steps have been taken by the petitioner to relinquish the claim for acquisition of land. Had such view been expressed before the authority, then procedure envisaged under Section 48 of the Act for de-notification, would have been taken. But there is nothing on record to indicate that the same has been de-notified. In absence of the same, the stand taken by the petitioner, that it does not require the land, cannot have any justification and, as such, the same cannot be sustained in the eye of law. Accordingly, the issue no.1 is answered against the petitioner and in favour of opposite party no.2.

9. **Issue No.2**

After lapse of 37 years of acquisition process, a novel stand has been taken by the petitioner before this Court at this point of time that the proceeding under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has lapsed. This question remains no more *res integra*, in view of the Constitution Bench

judgment in **Indore Development Authority** (supra), wherein the Constitution Bench of the apex Court, after hearing learned counsel appearing for the respective parties, made the following references:-

“1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section 31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non- deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

2. Whether the word 'or' should be read as conjunctive or disjunctive in Section 24 (2) of the Act of 2013?

3. What is the true effect of the proviso, does it form part of sub- Section (2) or main Section 24 of the Act of 2013?

4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?

5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?

6. *Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into.”*

Question nos.1 to 3 are interconnected and concern the correct interpretation of Section 24(2) of the Act of 2013. Following questions are required to be gone into to interpret the provisions of Section 24(2) of the Act of 2013:

(i) Whether the word “or” in Section 24(2) of the Act of 2013 used in between possession has not been taken or compensation has not been paid to be read as “and”?

(ii) Whether proviso to Section 24(2) of the Act of 2013 has to be construed as part thereof or proviso to Section 24(1)(b)?

(iii) What meaning is to be given to the word “paid” used in Section 24(2) and “deposited” used in the proviso to Section 24(2)?

(iv) What are the consequences of payment not made?

(v) What are the consequences of the amount not deposited?

(vi) What is the effect of a person refusing to accept the compensation?”

9.1 In answering to the reference, whether Section 24 revives a stale and barred claim or not, it would be just and proper to see that the apex Court held as follows:-

“Before proceeding further, in our opinion, Section 24 contemplates pending proceedings

and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the Act of 1894.

9.2. So far as applicability of Section 24 (2) of the Act, 2013 is concerned, the apex Court held as under:-

“3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression ‘paid’ in the main part of Section 24(2) of the Act of 2013 does not

include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no

divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

9.3. In view of the law already decided by the apex Court in the Constitution Bench and applying the same to the present context, since the land has been acquired and compensation has been paid, in every eventuality the provisions under Section 24(2) have no application to the present case. More so, Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013,

i.e., 01.01.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition. Thereby, this Court is of the considered view that the stand taken by the petitioner that the proceedings have lapsed under Section 24(2) of the Act, 2013 cannot sustain in the eye of law, in view of the law laid down by the Constitution Bench of the apex Court in the case of **Indore Development Authority** (supra). Thus, issue no.2 is also answered against the petitioner.

10. In view of the factual and legal aspects, as discussed above, this Court is of the considered opinion that on both counts, the writ petition cannot be sustained and, as such, this Court is not inclined to interfere with the order dated 30.11.2016 passed by the Collector, Angul under Annexure-5. Accordingly, this Court directs the petitioner-MCL to comply with the direction given by the

Collector, Angul, vide order dated 30.11.2016 passed in Misc. Case Nos.1 to 43 of 2015 as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of the judgment.

11. In the result, the writ petition merits no consideration and the same is hereby dismissed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

B.P. SATAPATHY, J. I agree.

.....
B.P. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 22nd December, 2022, Arun/Alok/Ashok/GDS