**12.05.2023**
serial no. **21**
kaushik

**CPAN 431 of 2023**
**in**
**WPA 22028 of 2013**
**(CAN 5 of 2023)**

**Sri Manik Chandra Maji & Ors.**
**Vs.**
**Sri Ambika Prasad Panda & Ors.**

Mr. Sharanya Chatterjee,
Mr. Nepesh Maji, Advocates
… … for the Petitioners

Mr. Shiv Shankar Banerjee
Ms. Anupa Banerjee
Ms. Sanchita Barman Roy, Advocate
… … for the alleged contemnors

Affidavit filed by the alleged contemnors be taken on record.

Petitioner complains of violation of the order dated July 26, 2018 passed in the writ petition being W.P. 22028(W) of 2013.

Learned advocate appearing for the petitioner submits that, such order was assailed in appeal, which was disposed of on December 5, 2022. The appeal Court affirmed the order of the Single Bench. The petitioners as land losers are entitled to employment in terms of the prevalent Scheme of Eastern Coalfields Limited (ECL). The authorities acted in violation of the order dated July 26, 2018 as affirmed on December 5, 2022. He refers to the order dated January 31, 2023 passed by the authorities. He submits that, the same issues which were raised in the appeal and before the Writ Court were dealt with by the authorities, in favour of the authorities, purporting to sit in appeal over the Division Bench order. He submits that, by such action, the authorities acted in deliberate and contemptuous violation of the order dated July 26, 2018 as affirmed on December 5, 2022.

Learned advocate for the alleged contemnors submits that, the contemnors did not violate any order of the High Court either willfully or deliberately. He refers to the order dated July 26, 2018 as affirmed by the Division Bench on December 5, 2022. He submits that, the order dated July 26, 2018 required the authorities to consider the petitioners as land losers and to give benefit to them as such. The appeal Court specified that, the petitioner would be entitled to the benefits under the Scheme of 2001.

Learned advocate for the alleged contemnors refers to the Scheme of 2001 dated August 16, 2011. He contends that, the scheme caters to land losers who lost land in excess of two acres. However, such scheme contemplates that persons losing less than two acres of land individually can enter into a package deal and enjoy the benefits of land losers under such scheme. He contends in the facts of the present case the area of land owned by the individual petitioners are less than two acres. The land owned by the petitioners stood affected by the authorities prior to the sale deed being executed by the petitioners. Sale deeds were executed individually. The mineral rights with regard to the land in question belong to the Government of India. The authorities affected subsoil rights in respect of land in question and at least ten years prior to the execution of the sale deeds in question. He submits that, the petitioners did not enter into any package deal with each other and the authorities at the time of execution of the conveyance. The conveyances were executed individually. Each of the conveyances were in respect of less than two acres. Subsequent to the execution of the conveyance, the petitioners cannot claim benefit of the package deal as contemplated by the scheme dated August 26, 2001. He submits that, such claim was made after the registration of the conveyance.

The three petitioners before us were owners of immovable properties which ultimately, ECL purchased from them individually. From time to time, ECL floated schemes dealing with land losers. August 26, 2001 is a scheme of ECL which lays down the policy with regard to the dealing of the case of providing job opportunity to the land losers.

Factual matrix as emanating from the materials made available on record demonstrate that, land belonging to the petitioners were affected by the open cast mine of ECL much prior to the execution of the sale deed of the petitioners in favour of ECL. Petitioners executed conveyance in favour of ECL in respect of such land affected by the open cast mine of ECL. The deeds of conveyance demonstrate that the quantum of land and the name of the vendors as follows:

| Deed No & Date | Quantum of land sold by petitioners (in acre) | Ref RoR and name of the Record holder | Name of the transferee To the ECL | Relationship with the record holder of the transferees | Name of the petitioner | Share of the petitioner (in acre) |
|---|---|---|---|---|---|---|
| 5130/19 | 1.65 | RS KH No. 167 Surya Narayan Maji S/Lt. Bonod | Sri Ranjit Maji, Sri Giyrabga Maji & Sri Kapil Chandra Maji | Son of Surya Naraya Maji (then deceased) | Sri Ranjit Maji | 1.0333 (subject to submission of link regd. Gift deeds and authentic Genealog Ical Tree Chart) |
| 5132/19 11 1997 | 3.30 | RS KH No. 168 Gopal Ch. Chel & Purna Ch. Chel, both | Sri Anath Chel Ri Mantu Chel Sri Jhantu Chel | Son of Gopal Ch. Chel & Nephew of Purna Ch. | Sri Mantu Chel | 1.10 (subject to submission of |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | S/o Lt. Kalipada | | Chel (Then deceased) | | authentic documents of relationship certificate and family structures |
| 5143/20.11.1997 | 1.65 9 | RS KH NO. 167 Gorachand Maji, S/Lt. Girish | Sri Satish Ch Maji, Sri Jitendra Nath Maji And Sri Manik Chandra Maji | Son of Gorachand Maji (Then Deceased) | Sri Manik Ch Maji | 0.55 (subject to submission of authentic genealogical tree chart |

The petitioners before us are governed by the Scheme of 2001 as held by the Division Bench. Relevant provisions of the Scheme of 2001 are as follows:

> *"In exceptional circumstances where small area of land are required for vital works, in such cases the coal companies could, where the importance of land to be required so justifies come to mutually acceptable arrangements for speeding up requisition of such vital lands, including providing for employment as part of normal recruitment. This should, however, not be confused with the discarded scheme for employment to land loser. Such employment opportunity will only be provided against the actual vacancy becoming in the company or in either subsidiary companies.*
>
> *The ECL Board in its 164$^{th}$ meeting held on 10$^{th}$ July, 2001 at Sanctoria has directed the following which will be serving as a strict guideline of compliance while handling the cases of land losers.*

*The Project scheme which are of self-financing nature i.e. without creating any extra burden on the existing cash-flow of the company and keeping the recruitment to the barest minimum the company may go ahead towards recruitment of land loser by accepting the following guidelines :-*

*1. One employment against 2 acres of land taken from the landowner. The ownership should be absolute free from any encumbrance or litigation.*

*2. Land should be taken in possession of the company belong to the time of offering employment.*

*3. A maximum of two employment against land under one ownership would be admissible where land holding exceeds four acres.*

*4. In Package Deal, landowners having less than two acres of land may be permitted to tag his land with other land owners to make it 2 acres for claiming one employment in such cases all the land loser/owners will have to forego the right of monetary compensation.*

*5. Tagging will only be permissible if the landowner holds land within the same package covering the same area. All such landowners will nominate only one person for offer of employment opportunities.*

*6. No tagging of land will be allowed for land which has already been acquired and belongs to the company.*

*7. Age will be below 35 years on the date of offering employment opportunity.*

*8. such opportunity should be provided to the land owners himself or his son or his grandson. In case the landowner has no son, and only daughter, employment will be provided to the son in law if the daughter authorizes her husband for such employment.*

*9. Employment should be confined to the males only in view of the limited employment opportunities in mining.*

*10.The offer of employment opportunity will be regulated strictly in accordance with the provisions regarding training and regularization etc. contained in R & R Policy.*

*Where the above guidelines and directive of the Board is not fitting, as such specific cases may be sent for seeking specific approval from the Board. All attempts must be made to ensure that such cases should be treated as stray cases.*

*Even the old cases where the land has been damaged due to mining operation, the above policy guidelines will be holding good. Any negotiation, therefore, must be limited within the prescribed guidelines and as per the directive of the Board.*

*It is needless to emphasize that as per R & R Policy and directives issues by Govt. of India, the Land Losers or Project Affected People (PAPs) may be persuaded to accept the monetary compensation as laid down in the R & R Police framed by Coal Indian and approved by Govt. of India and circulated on August, 2000."*

The Scheme of 2001 contemplates at least two situations. Land losers selling land in excess of two acres will be entitled to certain benefits. Land losers selling less than two acres land need to enter into a package deal in which, the aggregate of the land sold to the authorities would be two acres.

There are three petitioners before me.

Petitioner no 3 sold an immovable property, which is in excess of two acres of ECL. Petitioner no. 3 was joined by two other persons in selling such immovable property to ECL. Such persons claimed themselves as land losers.

Out of the three owners, in respect of 3.30 acres of land of which petitioner no. 3 is a co-owner, wrote to ECL not to consider them (two owners) and petitioner no. 3 as land loser under the Scheme of 2001.

ECL cannot abrogate to itself any jurisdiction to decide any civil disputes amongst co-sharers. The other two co-owners can speak for themselves and are entitled to give up their rights under the Scheme of 2001. However, they cannot give up the rights accrued to the other co-owners, the petitioner no. 3, under the Scheme of 2001. ECL cannot rely upon the unilateral acts of the co-owners to claim that such acts affected the rights of the petitioner no. 3. That would tantamount to vesting jurisdiction on ECL which law does not permit.

Petitioner no. 3 is claiming as a land loser in respect of land in excess of two acres. Therefore, individually petitioner no. 3 on the strength of the Scheme of 2001 is entitled to be treated as a land loser.

The other two petitioners sold properties less than two acres to ECL. The issue is whether those two persons can enter into a package deal contemplated under the Scheme of 2001 to claim benefits thereof or not.

ECL authorities contended that a package deal cannot be entered into subsequent to a conveyance being executed. The facts of the present case demonstrate that petitioner nos. 1 and 2 did not enter into a package deal prior to the execution of the conveyance of ECL.

The Scheme of 2001 is set out hereinabove. It is an open ended scheme. There is no time limit for the purpose of entering into a package deal at all. It is a policy decision which seeks to regulate the affairs of an Article 12 Authority with persons whose land such Article 12 Authority utilised and then purchased. As an Article 12 Authority, ECL is required to interpret and apply the scheme benevolently and in favour of land losers so far as the land losers are concerned. Moreso, as ECL promulgamated the Scheme of 2001. As ECL is the author of the Scheme of 2001, the view favouring the other party is required to be applied.

Apart from petitioner no. 3 standing on the strength of quantum of land sold to ECL, he also entered into a package deal on the strength of interpretation of the Scheme of 2001.

It is sought to be contended that the two other co-sharers of the immovable property of petitioner no. 3 objected to the petitioner no. 3 entering into a package deal.

There may or may not be inter se disputes between co-sharers of the immovable properties. As on date, there is no order from any competent Court of Law preventing ECL from considering any of the petitioners selling their land as a land loser. In absence of a competent Court of Law preventing ECL from treating the petitioners as land losers it is incumbent on ECL to apply the parameters of the 2001 policy and take a decision thereon treating the petitioners as land losers. Moreso, when the High Court directed ECL to do so.

On the anvil of the reasoning noted above, the impugned decision of ECL dated January 31, 2023 cannot stand. It cannot stand on various other reasons also. One of them is the decision of the Adjudicating Authority that, the sale deeds in question were inappropriately executed by ECL official. Such a stand is no longer available to ECL subsequent to the order of the High Court. Such stand is downright dishonest and smacks of malafides. There is nothing on record to suggest, let alone establish that, ECL took any measure against any of its employees for entering into the so called inappropriate sale deeds. ECL stood benefited out of such sale deeds. It cannot be allowed to shirk its responsibilities on the ostensible ground of sale deeds being inappropriately executed.

I, therefore, direct the authorities to treat each of the petitioners as land losers as they qualified under the Scheme of 2001 and to take appropriate steps thereunder within seven days from date.

List the application on June 23, 2023 when the alleged contemnors will appear personally with the report of compliance.

**(Debangsu Basak, J.)**