

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 1025 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2023

Saroj Bhattacharya & Ors.
-Versus-
M/s. Eastern Coalfields Ltd. & Ors.

For the Appellants : *Mr. Siddhartha Banerjee,*
Mr. Sharanya Chatterjee,
Mr. Soumajit Majumder,
Mr. Nepesh Majhi,
Mr. Ayaskanta Ghosh.

For the ECL/Respondent : *Mr. Shiv Sankar Banerjee.*
Nos. 1 to 5

Hearing is concluded on : *14th March, 2024*

Judgment On : **28th March, 2024**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging the order dated 9th June 2022 passed by the learned Single Judge in the writ petition being WPA 28330 of 2016.

2. Records would reveal that the appellants purchased 6.05 acres of land by deeds of sale dated 28th May, 2002 and 3rd July, 2002. On the said plots of land, mining activities were being carried out by Eastern Coalfields Limited (hereinafter referred to as ECL) since 1st April, 2001 by depillaring operations. Due to such mining activities, the surface land became unusable and in order to maintain production, ECL purchased the said plots of land from the appellants, by three registered deeds of sale executed on 31st March, 2004 following the prevalent resettlement and rehabilitation policy. In furtherance of the said policy, the respondent no.3 by a memo dated 28th July, 2005 forwarded a list relating to employment of 82 land losers having less than three years ownership to the Board for approval. Thereafter by a memo dated 5/9th July, 2013, the Area Land Cell comprising of the respondent no.4 and others forwarded a proposal for employment of the appellants and others in 2:1 ratio by amalgamating all packages but in vain. Aggrieved thereby, the appellants were constrained to prefer a writ petition being WP No. 15342 (W) of 2015. The Court by an order dated 22nd July, 2015 directed the respondent no. 4 to file a report in the form of an affidavit stating therein specifically '*as to when Eastern Coalfields Limited is likely to give effect to the contents of the note sheet dated 5th July/9th July, 2013*'. Pursuant thereto, a report in the form of an affidavit was filed on behalf ECL stating *inter alia* that in terms of the note sheet dated 5th/9th July, 2013, the matter has been put up before the headquarter and that recommendation was still awaited. Upon considering the said report, the writ petition was disposed of on 12th August, 2015 directing the concerned authority of ECL at

it's headquarter to take a decision. Pursuant to the said order, a decision was communicated *vide* memo dated 25th/30th September, 2015 rejecting the appellants claim observing *inter alia* that '*the essential criteria is that on the date of use of the land, the land losers must have at least five years ownership over the land*'. Challenging the said order and citing the instances of discrimination as practiced by the authorities, the appellants preferred a writ petition which was disposed of by the order impugned in the present appeal.

3. Mr. Siddhartha Banerjee, learned advocate appearing for the appellants submits that ECL provided employment to various land losers having the same and identical pre-employment features like that of the appellants regarding '*ownership less than 3 years*', as would be explicit from the memo dated 28th July, 2005. Considering the issue of discrimination, as urged, placing reliance upon a memo dated 28th July, 2005, the Court observed that '*it is not clear to the Court whether ultimately these candidates referred to in the memo dated 28th July, 2005 were offered employment or not*'. After arriving at such finding, the learned single Judge erred in law in reopening all issues and directing the respondent no.4 to '*revisit the issue afresh*'.

4. He argues that the appellants' claim had been kept pending since the year 2004. In the affidavit-in-opposition filed in connection with the writ petition it has been admitted by the authorities that the appellants sold the land in question to ECL in the year 2004. ECL purchased the land from the appellants at a meagre price with the assurance of providing employment. In

the case of one Banshi Dhibar, the authorities rejected the claim on the ground that his ownership was less than five years. The said order of rejection was set aside upon being challenged in a writ petition. In the appeal preferred by ECL against the said order, the Court observed that in the event ECL has granted employment to any person having less than five years of ownership, the same benefit should be extended to the appellant and for consideration of the said limited issue, the matter was relegated to the Chairman. Let the said order passed in FMA 2021 of 2014, as produced, be kept on record.

5. *Per contra* Mr. Shiv Sankar Banerjee, learned advocate appearing for the respondents submits that the land losers' scheme has been mis-utilized by some unscrupulous persons by speculative purchase of land from its owners and then immediate sale thereof to ECL. The appellants were not the owners of the concerned land at the time of initiation of the mining operation. They allegedly purchased the lands from the original owners on 28th May, 2002 and 3rd July, 2004 and in the sale deeds executed by the appellants there was no covenant whatsoever, regarding employment or loss of value and that as such they did not come within the purview of the scheme.

6. According to Mr. Banerjee, the fact as to whether the appellants are similarly situated with the persons named in the petition is a question of fact and the same can only be decided by the competent authority. In view thereof, the issue was rightly relegated to the authorities in consideration and there is no infirmity in such direction.

7. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

8. The report in the form of an affidavit filed on behalf of the ECL in the earlier writ petition reveals that the note sheet dated 5th/9th July, 2013 was forwarded to the headquarter *vide* memo dated 27th March, 2013 and it was categorically stated that *'the recommendation of the Head Quarter is still awaited'*. In the said note sheet it was also stated that *'no compensation has paid to any land owner'* and that *'3 Nos. employment proposals stating all details was forwarded to H. Q. against 10.29 Acres sanctioned land 3 Nos. employment proposals was also forwarded against 12.64 Acres of sanctioned land but till date no reply has yet been received from H. Q. through the factual position was enumerated in the pre-page of this note sheet. This amalgamation process earlier has also been made in this area in case of Chora OCP in order to establish a mutual trust for procuring land in future'*. In the said note sheet it was also stated that *'in the above circumstances the Area Land Cell committee decide to forward a proposal for a sanction of employment in 2:1 ratio by amalgamating in all package in one package considering that all the schedule land is under one mining lease and one colliery'*.

9. In the said conspectus and particularly considering the contents of the memo dated 28th July, 2005 it cannot be contended by the respondents that the appellants do not come under the purview of the scheme *'having less than 3 years ownership'* prior to purchase of the same by ECL. It is the

specific case of the appellants that person having less than three years ownership, as referred to in the memo dated 28th July, 2005 have already been granted employment.

10. The factual issue which thus emerges for consideration is as to whether persons having less than three years ownership as referred to in the memo dated 28th July, 2005 had been granted employment by ECL. In the event such employment had been granted, the appellants cannot be discriminated and the respondents are bound to extend similar benefits to the appellants. This question of fact has to be decided.

11. On behalf of the respondents an application being CAN 2 of 2023 has been filed annexing copy of an order dated 6th December, 2022 passed by the respondent no.4 observing *inter alia* that one Ramkishore Goenka and one Parameshwarlal Goenka were the actual land owners of plot nos. 243 and 250, having total area of 3.29 Acres and 13.32 acres in Mouza Parasea, P.S. – Andal, district of Burdwan and that the appellants purchased 6.05 acres of land *vide* deeds dated 28th May, 2002 and 3rd July, 2002. By the said order the appellants' claim has been rejected observing *inter alia* that the appellants '*did not come with a clean hand and claim for employment is illegal as the ownership of the petitioner over the claim land is in "lis pendens" at Hon'ble High Court at Calcutta*'. Such purported findings were arrived at placing reliance upon an affidavit dated 13th December, 2000 affirmed by one Usha Devi Goenka stating that on or about 1970, Mr. Parameshwarlal Goenka was missing and that such information was published in different newspapers. There is nothing in the impugned order to show that the

appellants' claim had been rejected for not having ownership over the land in question for five years or three years after the same was utilized in mining operation by ECL. It appears that the appellants' claim had been rejected doubting the validity of the deeds by which the appellants purchased the concerned land in the year 2002. This fact was never agitated in the earlier writ petition being WP No. 15342 (W) of 2015 and no such stand was taken in the report filed in the form of affidavit on behalf of the respondents in the said writ petition. Such issue was also not agitated at the time of disposal of the subsequent writ petition being WPA 28330 of 2016. The impugned decision appears to have been adopted on 6th December, 2022 but the same was never communicated to the appellants. Mere passing of an order of refusal would not be effective unless it is communicated to the persons concerned [see the judgment delivered in the case of *State of Punjab versus Amar Singh Harika* reported in *AIR 1966 SC 1313*]. While passing the said order, the respondent no.4 has also not taken into consideration the memo dated 28th July, 2005, as referred to in the order passed by the Court on 9th June, 2022. The order dated 6th of December, 2022 has been passed going beyond the tether of consideration set by the Court. In view thereof, the order dated 6th December, 2022 passed by the respondent no. 4 is not sustainable in law and is, accordingly, set aside.

12. For the reasons discussed above, the respondent no. 2 is directed to determine as to whether any person under clause B of the memo dated 28th July, 2005, having less than three years ownership, had been granted employment, upon calling for all relevant records from the respondent nos. 3

to 5 and upon granting an opportunity of hearing to the appellants. If the answer is in the affirmative, the said respondent no.2 shall pass the consequential order for employment and communicate the decision to the appellants.

13. The above exercise shall be completed by the respondent no. 2 within a period of 8 weeks from date of communication of this order.

14. The order impugned in the present appeal is, accordingly, modified and the appeal together with the connected applications, are disposed of.

15. There shall be however no order as to costs.

16. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)