(2016) 07 SHI CK 0077

High Court of Himachal Pradesh

Case No: CWP No. 662 of 2014

Sant Ram	APPELLANT
Vs	
State of H.P.	RESPONDENT

Date of Decision: July 13, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - Section 24

Citation: (2016) 4 HimLR 2178

Hon'ble Judges: Mr. Mansoor Ahmad Mir, CJ. and Mr. Sandeep Sharma, J.

Bench: Division Bench

Advocate: Mr. Abhilasha Kaundal, Advocate, for the Respondent No. 5; Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate, for the Respondent No. 4; Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan, Additional Advocate General and Mr. Kush Sharma,

Final Decision: Disposed Off

Judgement

Sandeep Sharma, J. - By way of present petition the petitioners have prayed for the following reliefs:-

"(i) That the respondents may very kindly be directed to implement the scheme of Rehabilitation and Resettlement of the Oustees of the JAYPEE Himachal Cement Project (Annexure P-1) in favour of the petitioners immediately.

(ii) That the respondents may very kindly be directed not to force the petitioners to vacate their houses till the implementation of the Scheme

(iii) That the respondents may further be directed not to use any undue or unlawful force against the petitioners for vacating their houses till the implementation of the Scheme (Annexure P-1).

(iv) That the respondents may kindly be burdened with costs.

(v) That the entire record of the case may kindly be summoned. Or

Such other orders which this Hon''ble Court deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner and against the respondents."

2. Briefly stated facts as emerged from the record are that respondent No.4, Jaypee Himachal Cement Project(for short ''JHCP'') solely with a view to establish its cement plant at village Baga, Tehsil Arki, District Solan, Himachal Pradesh, acquired huge chunk of land belonging to private land owners as well as the Government in the year, 2005. The land acquisition proceedings were started in the year, 2005 and thereafter Land Acquisition Collector, Arki passed award with respect to acquired land on 10.1.2008 vide Award No.1/2008 and in compliance thereof, amount of compensation was deposited by the aforesaid ''JHCP'' with the Land Acquisition Collector, Arki for disbursement to the interest holders.

3. Record further reveals that apart from the other villages, land of three villages i.e Baga, Samtyari, and Sehnali were also acquired for the purpose of mining etc. by the aforesaid ''JHCP'' for the establishment/construction of cement plant. Petitioners in their petition have averred that since their considerable land and houses were acquired for the mining purposes by the aforesaid ''JHCP'' in village Samtyari, they were entitled to compensation as well as resettlement in terms of Scheme for the Rehabilitation and Resettlement of the Oustees (for short "Scheme") of the ''JHCP'', formulated by the Respondent-State at the time of acquisition of the land of the villagers. Petitioners further averred that despite there being elapse of more than seven years after the acquisition of land and establishment of cement plant, respondents have not granted any benefit to them in terms of the aforesaid Scheme. It is also averred that respondent-State had framed the aforesaid Scheme and as such, scheme being mandatory in nature was required to be given effect by the respondents but despite several requests, no steps whatsoever, have been taken by the respondents to re-settle and rehabilitate the oustees and aggrieved families, whose land and houses were acquired for the construction of the "JHCP". Petitioners have also placed on record the copy of scheme (Annexure P-1).

4. The petitioners in paragraph 5 of the petition have stated that under the scheme a grant of Rs. 11,00,000/- was to be granted to the oustees or to the aggrieved families but till date no amount, as referred above, has been granted to the petitioners despite several requests. It is also averred that they have been continuously visiting the office of respondents No.3 and 4 for the grant of benefit to them in terms of the Relief & Rehabilitation Policy but no action is being taken by them. Petitioners with a view to substantiate their claim that their houses and properties stand acquired by the respondents for the construction of "JHCP" have also placed on record copies of jamabandi (Annexure P-2), Pariwar Register

(Annexure P-3) and certificate issued by the Cooperative Society of village Kandhar (Annexure P-4). Petitioners have also stated in their petition that bare perusal of Annexures P-3 and P-4 demonstrate that families of the petitioners are living separately and they are entitled for rehabilitation grant under the scheme as framed by the State Government in its independent capacity. At this stage, it may be pointed out that both the petitioners are brothers and members of one family. Petitioners further stated that the scheme formulated by the respondents was to Rehabilitate and resettle the ousted people and affected families but respondents have miserably failed to discharge their lawful duties to implement this scheme, which is mandatory in nature.

5. Petitioners have also averred in the petition that they are also entitled to resettlement in terms of Act, namely, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. As per petitioners, it is/was mandatory upon the authorities to frame Rehabilitation Scheme for affected persons before acquisition of any land. The petitioners have set up case that since their land as well as houses have been acquired for the construction of "JHCP, they are entitled for resettlement in terms of the Policy. Petitioners also stated that they are living separately with their families and as such, respondents cannot adopt pick and choose method while granting rehabilitation grant under the Scheme. The Petitioners have also stated that since their houses along with land have been acquired by the ''JHCP for the purpose of construction, it is the duty of the State to provide houses to the affected families under the scheme. The petitioners have also submitted that since they are presently residing along with their families in the houses, respondents cannot throw them out of their houses until they are resettled in term of the scheme of Rehabilitation/policy framed at the time of acquisition.

6. Since the petitioners in the present case were apprehending the eviction orders from the respondents, they approached this Court by way of instant writ petition seeking relief as have been reproduced herein above. This Court vide order dated 31.1.2014, while issuing notices to the respondents, passed following order:-

"In the meanwhile, there shall be a direction to the respondents to issue a week''s prior notice to the petitioners, in the event of their eviction from the acquired property is required."

7. Respondents pursuant to notices issued by this Court, filed detailed reply to the averments contained in the writ petition. Respondents No. 1 to 4 have specifically taken objection of delay and latches. Respondents have stated that the land of the petitioners and their brother Sh. Babu Ram stands acquired, as per the provision prevalent at that time, and award thereof was passed on 10.1.2008 i.e. Annexure R-4/A, whereby land and houses of the petitioners stand acquired. As per respondents, since the houses and land of the petitioners and their brother Sh. Babu Ram were joint and moreover the acquired land was in joint khata of Sh. Dharam Pal, Sh. Sant Ram and their brother Sh.Babu Ram along with their mother

Smt. Premi Devi, Smt.Sevti Devi and Smt. Lachhmi both daughters of Sh. Gandhi and as such, there was no question, whatsoever, to grant separate compensation, if any, to each of the petitioners. Respondents with a view to substantiate their contention that the compensation stands paid to the petitioners according to their respective shares in terms of the award passed by Land Acquisition Collector Arki on 2.2.2008 have also placed on record, the copy of voucher, whereby amount of compensation was received by the petitioners i.e. Annexure R-4/3. It has been specifically stated by respondents No. 1 to 3 that family of the petitioners was under the headship of their brother Sh.Babu Ram and as such, benefit under the Scheme could only be given to the head of the family and as such, Sh. Babu Ram brother of the petitioners was paid an amount of Rs. 11,00,000/- as grant under the Scheme.

8. Respondents also stated in their reply that Scheme has been strictly enforced by them and due and admissible compensation as well as other relief, as envisaged under the Scheme, has been given to all the affected parties. As per respondents, the definition of family given under the Scheme includes brothers and sisters living jointly as per entries of Panchayat Pariwar Register as on the date of issuance of Notification issued under Section 4 of the Land Acquisition Act (for short "Act"). In the present case Notification under Section 4 of the Act was issued on 12.8.2015 i.e. Annexure-4/4, the copy of Pariwar Register of the family of the petitioners as it existed in the Pariwar Register of Gram Panchayat, Mangal on 16.5.2006 was taken into consideration while extending the benefit under the Scheme referred herein above.

9. It also emerge from the reply filed by the respondents that despite their being best efforts, land of the choice of the interest holders could not be given to the affected families and as such, it was decided that a sum of Rs. 11,00,000/- would be paid to the oustees as full and final settlement. Accordingly, in terms of conscious decision taken by the concerned authorities, and an amount of Rs. 7,72,000/-, out of Rs. 11,00,000/-, was forwarded to the Tehsildar, Arki, to disburse the same, as Rehabilitation and Resettlement grant to Sh. Babu Ram, the brother of the petitioners, a copy of receipt showing that the amount was received by Sh.Babu Ram has been made available on record as Annexure R-6. It also emerges from the record that the rest of the amount i.e. Rs. 3,28,000/-, under the Scheme, was paid in advance by respondent No.4 to Sh. Babu Ram, brother of the petitioners vide letter dated 3rd June, 2010 (Annexure R-7). Respondents with a view to refute the claim put forth by the petitioners (Annexure P-3) that he being a separate family is entitled for compensation in its individual capacity, have stated in their reply that at the time of issuance of Notification under Section 4 of the Act on 12.8.2005, the family of the petitioners was joint along with their elder brother Sh. Babu Ram and as such, they were rightly granted compensation to the tune of Rs. 11,00,000/- as one unit of the family. Respondents also refuted the contention of the petitioners with regard to existence of separate Ration card got prepared by them on the basis of the entries in the Panchayat Pariwar Register. Respondents reiterated that since notification

was issued on 12.8.2005 and compensation, in terms of the Scheme, was granted to the petitioners in term of that notification, no benefit, if any, could be granted to the petitioners on the strength of entries made in the Panchayat Pariwar Register as well as Ration card for the year, 2005-06. As per respondents, under the scheme, no authenticity is attached to the entries in the register of ration card or the records of the Co-operative Society, rather respondents have refuted the claim of the petitioners that they were falling under BPL Category, because as per own version of the petitioners, Dharam Pal received compensation of Rs. 10,00,000/-. Similarly, Sh. Sant Ram also received compensation more than Rs. 10,00,000/- on account of acquisition of their land.

10. Respondents in para-9 of their reply specifically stated that they had called a meeting to settle the dispute between respondent No.4 and the petitioners vide communication dated 27th December, 2013 and on spot possession of land of the petitioners as acquired under Award No. 1/2008, was handed over to "JHCP" on 4.4.2008. It also emerge from the reply filed by the respondents that the petitioners were paid compensation to the tune of Rs. 11,00,000/- on account of house benefits under the Scheme. Similarly respondent No.4 refuted the claim of the petitioners by stating that the land of the petitioners along with their brother Sh.Babu Ram was acquired on the basis of acquisition proceedings initiated on 12.8.2005 and on the basis of which award was made on 10.1.2008 by the Land Acquisition Collector and the amount of compensation was paid to them. Respondent No.4, solely with a view to substantiate their claim that along with the land of the petitioners their houses were also acquired, a copy of award Annexure R-4/1 placed on record, which suggests that houses of the petitioners and their brother Sh.Babu Ram were joint, whereas acquired land was in joint khata of Sh. Dharam Pal, Sant Ram and their brother Sh.Babu Ram along with their mother Smt. Premi Devi along with Smt. Sevti Devi, Lachhmi Devi daughter of Sh.Gandhi and the amount of compensation was paid to them according to their respective shares by the Land Acquisition Collector, Arki on 2.2.2008. It also emerges from the reply filed by respondent No.4 that the petitioners, apart from receiving a total sum of Rs. 11,00,000/- on account of benefit under the scheme, have also received an amount of Rs. 83,16,551/- on account of compensation in lieu of acquisition of their land.

11. Learned counsel representing the petitioners, vehemently argued that the respondent-State has miserably failed to give effect to the scheme and no steps, whatsoever, have been taken by the respondents to rehabilitate and resettle the oustees of ''JHCP'' even after seven years of the acquisition of the land. He forcibly contended that since land of the petitioners as well as houses were acquired by the respondents for construction of cement plant, the respondents were bound to provide alternate accommodation before getting them evicted from the houses acquired by the ''JHCP'' for the construction of cement plant. During arguments, he invited the attention of this Court to the scheme i.e Annexure P-1 to demonstrate that the petitioners, apart from compensation in lieu of acquisition of land, were

also entitled to alternative accommodation in lieu of the house acquired along with land. He also made this Court to travel through Annexures P-2 and P-3 to demonstrate that the petitioners were the owners in possession of the land acquired by respondent No. 4. It is contended that Annexure P-3 clearly suggests that petitioner, namely, Sant Ram lives separately from Sh. Babu Ram and as such, Sant Ram, in his independent capacity is/was entitled to the benefit, as envisaged under the scheme.

12. On the other hand, Shri Shrawan Dogra, learned Advocate General and learned Senior Advocates, representing the respondents, vehemently opposed the aforesaid submissions having been made on behalf of the petitioners and stated that due and admissible compensation, in terms of the scheme being relied upon by the petitioners, stands duly paid to the petitioners and as such, nothing more can be claimed by the petitioners. It is contended on behalf of the respondent-State that the Scheme for the oustees of the ''JHCP'' has been given full effect and in terms of the same, due and admissible benefit have been extended to each affected persons and as such, contention put forth by the petitioners that till date no steps, whatsoever, have been taken by the respondent to give effect to the scheme deserves outright rejection. Respondents, with a view to substantiate their statements, invited the attention of this Court to the reply filed by the respondents, duly supported with an affidavit and annexures, wherein it has been specifically mentioned that at the time of starting of acquisition proceedings and passing of award family of the petitioners was under the headship of their brother Sh. Babu Ram and as such, benefits under the scheme were given to the head of the family. Sh. Babu Ram brother of the petitioner being head of the family received total sum of Rs. 11,00,000/- under the rehabilitation scheme. Respondents also invited the attention of this Court to the award passed by the Land Acquisition Collector, whereby present petitioners along with other family members namely Sh. Sant Ram, Dharam Pal, Sh. Babu Ram and Smt. Premi Devi received an amount of Rs. 83,16,551/- as compensation in lieu of their land acquired for the purpose of construction of "JHCP". It is also contended on behalf of the respondents that no claim, if any, could be granted to the petitioners on the strength of Annexures P-3 and P-4 because as per Annexure P-3, petitioners are members of the family along with other family members namely Sh. Babu Ram, Dharam Pal, Sh. Sant Ram and Smt. Premi Devi. As far as Annexure P-3 is concerned, respondents submitted that entry in the Pariwar Register showing separation of the family has been made on 5.11.2006 and as such, no benefit, if any, can be granted in terms of rehabilitation policy, which was admittedly framed at the time of acquisition of land in the year, 2005. In the aforesaid background, respondents prayed for dismissal of the petition.

13. We have heard the learned counsel for the parties and have gone through the record of the case.

14. Careful perusal of the records made available to this Court as well as submissions having been made on behalf of the parties clearly suggests that by way of present petition, petitioners have made an attempt to demonstrate that they being an independent family on the strength of Annexure P-3 are/were entitled to compensation in terms of the scheme of the "JHCP". It also appears that apprehending eviction from the houses, which admittedly stand acquired along with the land, the petitioners approached this Court by way of writ petition, wherein prayer is made to implement the scheme of "JHCP. But this Court after perusing the pleadings available on record and hearing the submissions having been made on behalf of the respondents is unable to accept the contention put forth by the petitioners. The record or pleadings do disclose that the petitioners being part of the joint family headed by Sh.Babu Ram have already received an amount of Rs. 11,00,000/- under the scheme apart from an amount of Rs. 83,16,551/- received on account of compensation in lieu of the land acquired by the respondents for the purpose of construction of the "JHCP".

15. Perusal of Annexure P-1, scheme for the Rehabilitation and Resettlement of the oustees of the Jaypee Himachal Cement Project (A unit of Jai prakash Associated Limited) clearly provides the definition of family which is reproduced as under:-

" b. Family" means husband/wife, who is entered as owner/co-owner of land in the Revenue Record, their children including step or adopted children and includes his/her parents and those brothers and sisters who are living jointly with him/her as per entries of Panchayat Pariwar Register as on the date of Notification under Section 4 of the Land Acquisition Act, 1894."

16. Perusal of clause (b) of the scheme clearly suggests that family means husband/wife, who is entered as owner/co-owner of land in the Revenue Record, their children including step or adopted children and includes his/her parents and those brothers and sisters, who are living jointly with him as per entries of Panchayat Pariwar Register as on the date of issuance of Notification under Section 4 of Act, 1894. Aforesaid provision leaves no doubt in the mind of this Court that relevant date for determining the family for the grant of benefit under the Scheme for Rehabilitation and Resettlement of the Oustees is the date of notification issued under Section 4 of the Act.

17. Though, perusal of clause (b), wherein family has been defined suggest that members of the family, who have been entered separately as a different family in the Pariwar Register could be termed as a separate family but for grant of benefit under the above referred scheme, one need to establish that they were entered as a separate family in the Panchayat Pariwar Register on the date of notification issued under Section 4 of the Act, 1894.

18. In the present case, admittedly land was acquired in the year, 2005 and compensation as awarded by Land Acquisition Collector was paid to the affected

parties including the petitioners. Annexure P-3, which has been heavily relied upon by the petitioners clearly suggest that the family of the petitioners namely Sant Ram has been recorded separately in the Pariwar Register w.e.f. 5.11.2006, meaning thereby, at the time of issuance of notification under Section 4 of Act, family of the petitioner Sant Ram was not recorded as separate family in the Pariwar register as required under clause (b) of the scheme referred herein above.

19. Perusal of Annexure P-3 clearly suggests that till 5.11.2006, Sant Ram was residing along with other brother, namely, Sh. Babu Ram and as such, claim put forth by the petitioners that they being independent family are also entitled to the benefit under the scheme formulated for the benefit of Rehabilitation and Resettlement of the Oustees of the ''JHCP'' deserves to be rejected out rightly being baseless. Rather, perusal of Annexure P-2, jamabandi for the year, 2000-01 clearly suggests that petitioners Sant Ram and Dharam Pal have been recorded as joint owners with Sh. Babu Ram, who has admittedly being head of the family received an amount of Rs. 11,00,000/- under the Scheme apart from an amount of Rs. 83,61,551/- on account of compensation in lieu of the land acquired for the purpose of construction of "JHCP". Hence, in view of the above, this Court sees no force and merit in the contention of the petitioners that they being an independent family are entitled to the benefit of the scheme. Moreover, it clearly emerge from the reply filed by the respondents that an amount of Rs. 11,00,000/- was paid to the petitioners under the scheme in lieu of the houses acquired by the respondents for the construction of "JHCP". It has specifically come in the reply of respondent No.4 that since despite best efforts they were unable to provide suitable land to the petitioners as well as other similarly situate person, a conscious decision was taken to make onetime payment to the affected persons in lieu of their houses acquired along with the land, accordingly, an amount of Rs. 11,00,000/- was awarded and paid to the family of the petitioners as well as other similarly situate person.

20. Consequently, in view of above discussion, this Court sees no merit in the contentions put forth by the petitioners in their petition, rather after perusing the averments contained in the petition, this Court is constrained to observe that this is sheer abuses of process of the law where petitioners by filing instant petition have made an attempt to procure relief to which they were/are not entitled at all. The another contention put forth by the petitioners that no prior notice was issued to them by the respondents before getting them evicted from their houses cannot be considered at this stage by this Court after seeing the specific reply filed by the respondents, wherein it has been specifically mentioned that the possession of the land acquired stands delivered to the respondent company for the construction of cement plant.

21. Hence, this Court does not see any merit in the petition and the same is accordingly dismissed. Pending application(s), if any, shall also stands(s) disposed of.