

Karjan Jalasay Yojana Assargrath Sahkar Ane Sangarsh Samiti

Vs

State of Gujarat and Others

Writ Petition (C) No. 7715 of 1985

(CJI P. N. Bhagwati, G. L. Oza JJ)

04.02.1986

ORDER

BHAGWATI, C. J. -

1. Mr M. N. Shroff, learned advocate appearing on behalf of the respondents has strongly pressed that the interim order of stay passed by us should be vacated since possession of land acquired by the State Government is required to be taken immediately as the area is going to be submerged by reason of the construction of a dam across river Karjan and unless possession of the land is taken it will not be possible for the State Government to proceed with the construction of the dam. We appreciate the anxiety of the State Government to take possession of the acquired land. We are also aware that the land has been acquired for an important public purpose. But at the same time we cannot overlook the human problem arising out of displacement of large number of tribals and other persons belonging to weaker section on account of acquisition of land. We are, therefore, of the view that the interim stay may be vacated but subject to the following conditions :

(1) If any person in possession of acquired land or any part thereof is to be dispossessed of the land in his or her occupation it shall be done only in the presence of a social activist nominated by Shri Hari Vallabh Parekh of Anand Niketan Ashram or the Judicial Magistrate of Rajpipla and such social activist or Judicial Magistrate will maintain a record of the names and addresses of the occupants of land who are thus dispossessed and will also enquire into and ascertain as to how long such persons have been in occupation of the land.

(2) The State Government or its officers who intend to take possession of any part of the acquired land will give at least seven days' notice to the social activist nominated by Shri Hari Vallabh Parekh and to the Judicial Magistrate, Rajpipla so that at least one of them can remain present at the time of taking possession and possession can be taken in his or her presence.

(3) The social activist or Judicial Magistrate in whose presence possession of any part of the acquired land is taken shall note down the nature and condition of the land before possession of it is taken.

(4) Simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal quality but not exceeding three acres in area and if that is not possible, then alternative employment where he would be assured a minimum wage. Such alternative

employment shall be provided to the head of the family whether such head be a man or a woman, the family to be taken into account being one consisting of parents and minor children. No possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of subsistence the only exception being where the person concerned has already got or acquired other land to cultivate in which case payment of compensation would be enough. If for any reason the State Government is not able to provide alternative land or arrange for alternative employment, the State Government will subject to the same exception, pay to the head of the family at the latter's place of residence compensation equivalent to minimum wage every fortnight during the period alternative land or employment is not provided.

(5) If any person who is dispossessed of any part of the acquired land in his occupation has his dwelling on such land and in consequence of taking possession he is deprived of such dwelling, the State Government will, simultaneously with taking possession of such land, provide alternative dwelling to the person who is dispossessed, so that the person dispossessed should not be without roof over his head even for a single day.

(6) The amount representing compensation in respect of the part of the acquired land of which possession is taken as aforesaid, shall be paid within 15 days to the person who was in occupation of such land and from whom possession was taken provided that according to the inquiry of the social activist or the Judicial Magistrate in whose presence possession was taken, such person has been in occupation of the land for a period of not less than two years. Such payment of compensation shall be without prejudice to the right of occupant to claim a higher amount by way of compensation.

2. The State Government will be entitled to take possession of the acquired land subject only to the aforesaid conditions. Shri Hari Vallabh Parekh will immediately proceed to nominate a social activist who shall carry out the assignment mentioned above. Whatever costs, charges and expenses are incurred by the social activist or Judicial Magistrate, shall be borne by the State Government and for this purpose the State Government will deposit a sum of Rs. 5000 in the Court of Judicial Magistrate, Rajpipla within one week from today. Shri Hari Vallabh Parekh will, as soon as he nominates a social activist communicate the name and address of such social activist to the Collector of Bharuch so that the Collector can give intimation to such social activist to remain present with the officers of State Government who will go for taking possession of any part of the acquired land.

3. The persons appointed by us will also find out whether compensation has been paid to the persons dispossessed and whether they have purchased alternative land out of the compensation and are cultivating such land.

4. The Judicial Magistrate will submit a report to the Court in regard to the implementation of this order on or before February 28, 1986. It will be open to Shri Hari Vallabh Parekh or to the Judicial Magistrate to seek any further directions from this Court, if he thinks it necessary to do so.

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