SUPREME COURT OF INDIA

State of M.P.

Vs.

Bheru Singh

C.A.No.1211 of 2012

(Asok Kumar Ganguly and Gyan Sudha Misra JJ.)

01.02.2012

JUDGEMENT

GYAN SUDHA MISRA, J.

1. Leave granted.

2. These two appeals arise out of the judgement and order dated 11.08.2009 passed by the High Court of Madhya Pradesh, Bench at Indore in a public interest petition bearing Writ Petition No. 48 of 2004 against which the State of Madhya Pradesh as also the respondents Bheru Singh alongswith two others which include a social activist have filed separate Special Leave Petitions bearing Nos. 30685/2009 and 10163/2010 respectively giving rise to these two appeals which are confined to some of the directions only, that were issued by the High Court in its impugned judgement, to be stated hereinafter.

3. The material factual details of these two appeals have a prolonged history giving rise to a labyrinth of litigation which emerged as a consequence of displacement of large number of persons from a massive area of agricultural and homestead land which were in occupation of the oustees/displaced persons, due to land acquisition which was done for the purpose of construction of Man Dam on the tributary of Narmada River in the State of Madhya Pradesh. This had given rise to the filing of several other writ petitions in the High Court of Madhya Pradesh in the past which gave rise to the appeals reaching even upto this Court and are reported in (2000) 10 SCC 664, (2005) 4 SCC 32 and (2011) 7 SCC 639 which are commonly referred to as Narmada Bachao Ist judgment, Narmada Bachao IInd judgment and Narmada Bachao IIIrd judgement.

4. But before we discuss the relevance and implications of these judgements on the instant appeals, it would be relevant to relate the historical background of the matter giving rise to a spate of litigations in the High Court of Madhya Pradesh. In this context, it may be stated that a detailed Project Report (DPR) for the construction of `Man Dam' on the tributary of Narmada River at Village Jirabad, Tehsil Gandhwani, District Dhar, having a total submergence area of 1168.67 hectares in 17 villages of Tehsil Dhar and Gandhwani, District Dhar, M.P. was submitted in July, 1982. A Rehabilitation and Re-settlement (R R) was framed by the State of M.P. for the project affected families (PAF) and oustees of Narmada Project including `Man Dam'. This R R policy was later on amended several times in which the latest amendment was made in the year 2003. The Planning Commission of India accorded investment clearance for the `Man Project' out of total submergence area of 1168.67 hectares and 584.646 hectares of private land was acquired by invoking the provision of Land Acquisition, 1894. In the construction of the `Man Dam' which took place between the year 1991-1994, 1266 families were affected, out of which 448 families lost their land. Out of these 448 families, 62 families opted for land as per the policy and they were given land in the year 1994 itself. The remaining 386 families accepted full cash compensation in terms of Clause 5.1 of R R policy.

5. However, since the displaced persons were still dissatisfied, the Government of Madhya Pradesh as a welfare measure took a decision in 2002 to grant `Special Rehabilitation Grant' (SRG) to the families/oustees who had lost their land in submergence in the Narmada Project in order to enable them to purchase land of their own choice to the extent they lost in the submergence on condition that they will not claim any land from the Government. The benefit of SRG was also extended to the families/oustees who had lost their land in submergence in the `Man Project'. Out of the 386 families who had accepted full cash compensation in terms of Clause 5.1 of R R policy, 337 oustees/PAF came forward and accepted the SRG. The intention behind the approval of SRG was that every oustees' level of living should not be lower than what it was before displacement, even if they cannot be made better off. The oustees who had been provided land for land by the Government were not eligible for Special Rehabiliation Grant.

6. However, while implementing the R R Policy and distributing the SRG, disputes arose between the displaced persons and the executing authorities of the State of M.P. In order to resolve the same, the Government of Madhya Pradesh constituted a Committee known as Grievance Redressal Authority.

Subsequently, the Government of Madhya Pradesh issued a notification dated 11.06.2002 extending the jurisdiction of the Grievances Redressal Authority (GRA) to hear the grievances of the displaced families of the Man Dam Project who started hearing the grievances of the displaced families from July, 2002 with regard to their rehabilitation and resettlement and continued to pass orders on the grievances of the displaced families of Man Dam Project till 2003.

7. Aggrieved by some of the orders passed by the GRA as well as the inadequate measures adopted by the Government of Madhya Pradesh for rehabilitation and resettlement of displaced families of the `Man Dam Project', the respondents 1 and 2 who are tribals living in villages Khedi-Balwadi and Khanpura of District Dhar alongwith Respondent No. 3 who is stated to be a social activist working with the people of displaced families of Man Dam Project which have been submerged by the Man Dam Project, filed a writ petition in 2004 under Article 226 of the Constitution as a PIL claiming appropriate reliefs. Response of the State of Madhya Pradesh was duly filed on 21.6.2004 in the writ petition No. 48/2004 and in paragraph B it was specifically stated that 62 project affected families who demanded land for land has been given land and all the orders of GRA have been complied with and thus substantial compliance of R R Policy was also made. On 17.2.2005, the State of Madhya Pradesh filed further reply to the rejoinder of the petitioner - Bheru Singh in W.P.No.48/2004 and in paragraph B it was specifically stated that 62 project affected families who demanded land for land has been given land and with the help of SRG, the oustees have even purchased more land comparatively to the lost land in the submergence and have even saved the money.

8. Still further on 19.3.2009, the State of Madhya Pradesh filed its reply in the writ petition No.48/2004 submitting the status with regard to the rehabilitation of 448 families who had lost their land in submergence. In the affidavit, the State of Madhya Pradesh submitted that out of 448 families, 386 families accepted the full cash compensation as per R R Policy and remaining 62 who demanded land, have been allotted land in the year 1994 itself. Out of these 386 families, 337 families accepted SRG and out of remaining of 49 families 26 families approached GRA for allotment of land but their claim was rejected as they have already accepted full cash compensation. Thereafter, on 1.5.2009, the State of Madhya Pradesh filed further affidavit in the writ petition No. 48/2004 wherein it was clarified that the cash compensation was given to the land holders in 1995 with the direction to the bank to initially disburse only 50 per cent of the amount , with the balance 50 per cent being payable only after obtaining an order in that behalf from the concerned Land Acquisition Officer.

9. The Hon'ble High Court vide its impugned order dated 11.8.2009 passed in W.P.No.48/2004 was pleased to hold that there was substantial compliance of R R Policy but by relying on a previous judgment and order dated 21.2.2008 passed by the High Court of M.P. in W.P.No.4457/2007 (Narmada Bachao Andolan vs. State of Madhya Pradesh) directed the State to allot land to the adult son irrespective of the fact whether he had lost the land or not. It has been stated herein by the State of Madhya Pradesh that subsequently the three Judge Bench of the Supreme Court by its judgment and order dated 11.5.2011 passed in Civil Appeal No. 2082/2011 reported in (2011) 7 SCC 639 set aside the judgment and order dated 21.2.2008 passed in W.P.No.4457/2007 and held that the adult sons are not entitled for allotment of land as per the R R Policy. However, the High Court vide its impugned judgment had already disposed of the writ petition with the following directions:

> (i) We hold that there has been substantial compliance of paragraphs 3.2(a) and 3.2 (b) of the Rehabilitation Policy which provides for allotment of agricultural land, government or private, to the displaced families and there is no violation of fundamental right to livelihood guaranteed under Article 21 of the Constitution and, therefore, no direction need be given by this court in this regard;
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> (ii) We hold that SRG amount together with compensation paid to the displaced families computed on the basis of average sale price per acre prevalent in the year 1997-98 was sufficient to enable the displaced families to purchase as much land was acquired from them under the Land Acquisition Act, 1894 and no decision can be given by the Court to the Respondents/State to pay SRG amount on the basis of average sale price of the year 2001-02, this being a policy matter;
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> (iii) We direct that every son who had become a major on or before the date of notification under Section 4 of Land Acquisition Act, but who was part of larger family from whom land has been acquired will be treated as a separate displaced family and would be allotted agricultural land as per paragraphs 3 and 5 of the Rehabilitation Policy for the Man Project and in case he does not opt for land in accordance with paragraph 5 of Rehabilitation Policy, will be paid SRG in addition to compensation under Land Acquisition Act, in accordance with notification dated 7.3.2002 of Government of Madhya Pradesh, Narmada Valley Development Authority, by the Respondents within four months from today;

(iv) We hold that the definition of `displaced family' in paragraph 1(b) of the Rehabilitation Policy does not discriminate against women and is not violative of Articles 14 and 21 of the Constitution, but women who are included in the definition of displaced persons will be given those benefits under the Rehabilitation Policy by the Respondents which are to be given to displaced persons;

(v) We hold that respondents were not entitled to deduct the amount of compensation payable for trees and wells located on the land of oustees as determined under the award passed under the Land Acquisition Act, 1894 from the SRG amount paid to the oustees and we direct the respondents to refund such compensation amount to the oustees with interest @ 9 per cent per annum calculated from the date on which the amount was deducted till the date on which the amount was deducted till the date on which refund in made to them.

10. The State of Madhya Pradesh which was respondent in the writ petition before the High Court feeling aggrieved by the decision of the High Court have filed this appeal arising out of the SLP No. 30685/2009 under Article 136 of the Constitution challenging directions Nos. (iii) and (v) issued by the High Court.

11. The respondents/displaced persons on the other hand are also aggrieved of the directions of the High Court given out at para Nos. (ii) and (iv) and have therefore separately filed Special Leave Petition bearing SLP (C) No.10163/2010, wherein they have essentially challenged the directions of the High Court by which it has declined to grant the relief to the petitioners seeking a direction for each displaced family. But specifically, the directions of the High Court in paragraph No. 37 (i) (ii) and (iv) of the impugned order and also partially the portion of direction No. 37 (iii) which directs payment of SRG in lieu of land entitlements in paragraphs (iii) and (v) of R and R Policy to adult sons of cultivators as well as failure of the High Court to pass directions with regard to relief at clause 9 of the writ petition is under challenge at the instance of the petitioner Bheru Singh and others against the aforesaid directions.

12. The State of Madhya Pradesh in this appeal has primarily raised substantial questions of law as to whether the Hon'ble High Court has erred in law in holding that every son who had become major on or before the date of notification under Section 4 of the Land Acquisition Act is entitled for separate allotment of land in spite of the fact that the issue regarding the allotment of land to adult/major son was pending consideration before the Supreme Court wherein the Supreme Court

by its interim order directed that the applications pertaining to allotment of land to major son of oustees will not be disposed of or decided by GRA till issue is decided by the Hon'ble Supreme Court.

13. The question has further been raised as to whether the High Court has erred in holding whether the major son is a `displaced family' or a `displaced person' contrary to the R R Policy if he had not been cultivating land for at least one year before the date of publication of notification under Section 4 of the Land Acquisition Act specially if he had not been cultivating the land in the capacity of the land owner in absence of which he would merely be a labourer.

14. Further question which has been raised at the instance of State of Madhya Pradesh is whether the High Court has erred in directing the petitioner to refund compensation payable for trees and wells located on the land of the outstees with interest at the rate of 9 per cent without appreciating the basic genesis of the provisions of SRG. Still further, the question which has been raised by the State of Madhya Pradesh is whether the High Court has erred in directing the appellant State of Madhya Pradesh to allot separate land to the major sons of the oustees of the Man Dam in spite of the fact that the appellant-State has substantially complied with the provisions of the rehabilitation policy and there is no violation of right of livelihood under Article 21 of the Constitution of India and the objective of the Rehabilitation Policy has already been achieved.

15. Learned senior counsel Shri P.S. Patwalia, representing the State of Madhya Pradesh, while assailing the impugned directions of the High Court has first of all raised some preliminary issues. At the outset, it was stated that a three Judge Bench of this Court vide its judgment dated 11.5.2011 passed in Civil Appeal No.2082/2011 reported in (2011) 7 SCC 639 had set aside the judgment and order dated 21.2.2008 passed by the High Court of Madhya Pradesh in Writ Petition No.4457/2007 and it was pleased to hold that the adult sons are entitled for allotment of land as per the R R Policy.

16. As already stated earlier, the State of Madhya Pradesh had constituted a Grievance Redressal Authority (`GRA' for short) by order dated 11.6.2002 to hear the grievances of the oustees of Man Project also and in the year 2003-2004, the construction of the Man Dam was complete. Thereafter, 337 families out of 386 families had accepted SRG and out of the remaining 49 families, 26 families approached GRA for the allotment of land but their claim was rejected as they had already accepted the full cash compensation. This prompted the oustees in the year 2007 to file a writ petition bearing No.4457/2007 in the High Court of Madhya

Pradesh which gave rise to Civil Appeal No. 2082/2011 which was heard and decided by a three Judge Bench vide its judgment and order dated 11.5.2011 reported in (2011) 7 SCC 639. As a consequence thereof, the three Judge Bench of this Court set aside the judgment and order dated 21.2.2008 passed in Writ Petition No. 4457/2007 and was pleased to hold that the adult sons are not entitled for allotment of separate holding of land as per the R R Policy.

17. It appears that the controversy did not set at rest even after this judgment as writ petition No. 48/2004 was filed by the respondent-Bheru Singh and others by way of a public interest litigation and the said writ petition was disposed of by judgment and order dated 11.8.2009 which is under challenge herein issuing certain directions quoted hereinbefore. As already stated, the State of Madhya Pradesh is aggrieved by some of the directions recorded hereinbefore and the oustees- Bheru Singh and others also are aggrieved in view of some other directions quoted hereinbefore. As such they have also filed an appeal arising out of SLP(C) No. 10163 of 2010. But this contention of the Respondent-Bheru Singh and Ors. who are Petitioners/Appellants in their appeal are common which shall be recorded and dealt with later at the appropriate stage.

18. However, while dealing with the submissions and contentions of learned counsel for the Appellant-State of M.P., it is necessary to record the submissions of the counsel for the appellant, State of M.P. who, while assailing the impugned directions of the High Court, first of all submitted that vague pleadings have been incorporated in the writ petition including multiple cause of action. It was submitted that a reading of the case of the respondent-Bheru Singh who was petitioner in the High Court would show that the petitioner challenged 426 different orders passed by the GRA without any factual basis. No factual details have been laid down in the petition either by giving facts relating to each of those cases or the circumstance under which the orders were passed. Commenting upon the contents of the writ petition, it was pointed out that the petition is claimed to have been filed on behalf of several thousand persons but there is no proper affidavit supporting the petition of any individual on whose behalf it is purported to have been filed. The petition contains a vague allegation of non-compliance of R R Policy which is actually a roving enquiry. It was submitted at this stage that this PIL was liable to be rejected by the High Court at the very threshold for want of proper pleadings and material to substantiate the averments/allegations contained therein.

19. However, the learned Judges of the High Court took notice of the fact that the Court had to strike a balance between the interest of the parties in a PIL and had to

take into consideration the pitiable conditions of oustees, their poverty, inarticulateness, illiteracy, extent of backwardness and unawareness also. However, the High Court should have taken note of the observation wherein it was observed that in future it was desirable that the Court must view presentation of any matter by the NBA with caution and care insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein. It was submitted that in view of this observation, the petition was fit to be dismissed as the same lacked material particulars being completely vague which was not supported by a proper affidavit and was, therefore, liable to be rejected at the threshold.

20. Learned counsel then raised the question of delay and laches on the part of the petitioner-Bheru Singh who is respondent in the main appeal as it was stated that the writ petition was filed by the respondent-Bheru Singh at a time when the Man Dam had already been completely constructed. It was thus an effort to upset a settled state of affairs at such a belated stage which has an upsetting effect on settled society. Such a belated petition was, therefore, liable to be rejected on the ground of laches and delay specially when this issue has already been dealt with by the IIIrd Narmada judgment which is reported in (2011) 7 SCC 639.

21. In so far as the contentions of the counsel for the State of Madhya Pradesh in regard to the main directions are concerned, it is the case of the State of M.P. that the R R Policy prescribes a comprehensive scheme as to who is entitled for land and simultaneously how the cost of land to be allotted is recoverable by the State. Clause 3.2(a) specifically envisages that it is only a displaced family from whom more than 25% of its land have been acquired who is entitled for land. This loss of land is the pre-requisite to create entitlement. The scheme then continues under Clause 5.1 which envisages that the cost of acquired land is to be made out of the compensation payable for the land which one has lost. Thus, if a person does not lose any land then he is not entitled to any compensation and would not be able to pay for the land for which he is not covered by the R R Policy. However, this does not mean that an adult son who is treated as a separate family is not entitled to any benefit in the policy. He still gets a number of benefits for which a family is entitled under Clause 6.1, 7.1 and 8.1 of the R R Policy.

22. Elaborating on the question involved, it was next submitted that under Section 4 of the Land Acquisition Act 1894 the adult son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act is considered to be a separate family and clause 3 of the R R also provides for allotment of land in lieu of land. Clause 3.2(a) provides for every displaced family

including major son from whom more than 25% of its land holding is acquired in revenue villages or forest villages shall be entitled to and as far as possible the land to the extent of the land acquired from it. This loss of land is essential before one can become entitled to land for land from the State Government. Reiterating the submission, it was submitted that as per Clause 3.2(a) of the R R Policy, adult son will be entitled for land as far as possible only if some land belonging to him as on date of the Section 4 notification under Land Acquisition Act, 1894 was actually acquired from him and clause 5 of the R R Policy provides for recovery of the cost of allotted land.

23. Learned counsel appearing the appellant-State of Madhya Pradesh further invited the attention of this Court to certain important features of the R R Policy in order to impress upon this Court that the oustees have been duly compensated for the acquired land with beneficial schemes incorporated therein. It was stated that clause 5.1 of the R R Policy provides that 50 of the compensation for the acquired land was permitted to be retained as initial instalment towards payment of the cost of the land to be allotted to the oustees. Clauses 5.2 and 5.3 further provided that the balance cost of the allotted land will be treated as interest free land to be recovered within 20 equal yearly instalments and clause 5.1 provided that if the displaced family did not wish to obtain land in lieu of land and claim full payment of the compensation, they could do so but with a rider that this option once exercised, the displaced families could not lay any claim for land afterwards. It was, therefore, submitted by the learned counsel that if impugned direction of he High Court in the judgment and order under challenge dated 11.8.2009 directing to allot land to each and every major son irrespective of the fact whether any land was acquired from them or not, would make the clauses 5.1, 5.2 and 5.3 of R R Policy as inoperative. It was contended that if no land was acquired from the adult son as a separate land holder then how would the cost of the land be recovered from them.

24. Learned counsel for the State of Madhya Pradesh in order to reinforce his submission on the aforesaid aspects first of all placed reliance on the judgment and order reported in (2000)10 SCC 664 commonly referred to as first Narmada judgment wherein this Court (Supreme Court) has held that the rehabilitation and resettlement packages in the three states were different due to geographical and economic conditions and availability of the land. The States have liberalised their policies and decided to allot land to adult son and daughter over and above the NWDT Award. Heavy reliance has been placed by the counsel on the judgment of this Court reported in (2011) 7 SCC 639 referred to as IIIrd Narmada judgment wherein this Court has examined the R R Policy of the State of Madhya Pradesh and inter alia has held that the issue has to be decided by strict adherence to the

amended R R Policy in view of which all adult sons of a displaced family is not entitled for allotment of separate unit of land as it would lead to absurd results and unjust enrichment at the expense of the State exchequer. The relevant paragraph specifically states as follows:

> 96. The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of the commencement of the proceedings under the 1894 Act. There was no intention on behalf of the State to have awarded more land treating a major son to be a separate unit. This would otherwise bring about an anomaly, as is evident from the chart that has been gainfully reproduced hereinabove. The idea of rehabilitation was, therefore, not to distribute largesse of the State that may reflect distribution totally disproportionate to the extent of the land acquired. The State has, therefore, rightly resisted this demand of the writ petitioners and, in our opinion, for the High Court to presuppose or assume a separate unit for each major son far above the land acquired, was neither justified nor legally sustainable.

25. It was submitted that the Supreme Court while further examining and scrutinizing the clauses 3.2, 5.1 and other provisions of the R R Policy of the State of M.P. as also that allotment of land to adult son from whom no land is acquired, will amount to unjust enrichment which is against the law.

26. In order to add further weight to the submission, it was submitted that in fact the IIIrd Narmada judgment (2011) 7 SCC 639 has examined the issues in detail after which it was concluded that if the interpretation is sought to be given by the Narmada Bachao Andolan and the same is accepted, it would lead to absurd results, for instance, if a family of three joint khatedars have 3-4 sons losing only 2 hectares of land and each major son would claim 2 hectares separately, then the family would end up getting 26 hectares of land. It was contended that this was never the intention of the R R Policy and the conclusion drawn by three Judge Bench cannot be overlooked. Thus the entire emphasis of the appellant-State of M.P. is on the three Judge Bench of (2011) 7 SC 639 as also other judgments reported in (2000) 10 SCC 664, (2005) 4 SCC 32 which has incorporated the NWDT Award. But it was also submitted that the 2005 judgment interpreting the NWDT Award which has no application to the R R Policy of the State of M.P. in regard to the displaced persons of the Man Dam Project.

27. Learned counsel submitted that in the first place there is, in fact, no discordant note between the IInd Narmada judgment reported in (2005) 4 SCC 32 and IIIrd Narmada judgment reported in (2011) 7 SCC 639. In fact, it was contended that the II nd Narmada judgment interpreting NWDT Award relates to an inter state project rather than R R Policy of the State of M.P. while the issue before the IIIrd Narmada judgment was interpretation of the State Policy i.e. R R Policy which was not an issue for consideration by the Hon'ble Judges delivering the IInd and IIIrd Narmada judgment reported in (2000) 10 SCC 664 and (2005) 4 SCC 32. According to the learned counsel , the IInd Narmada judgment contained an inadvertent error as it refers only to a particular paragraph (para 176) of the Ist Narmada judgment reported in (2000) 10 SCC 664 without considering the importance of other paragraphs at paragraphs 152 and 156. In paragraph 152, it was categorically noted by the Ist Narmada judgment that all states except Madhya Pradesh in that case were ready to give land to major sons and on this account the Court observed whether this inadvertent error should be allowed to perpetuate if the policy states otherwise.

28. Placing reliance on the IIIrd Narmada judgment reported in (2011) 7 SCC 639 holding therein that under the R R Policy there is no entitlement of land for land for major son, it was submitted that this finding recorded by three Hon'ble Judges Bench after noticing and interpreting the earlier judgments i.e. (2000) 10 SCC 664, (2005) 4 SCC 32 would be binding on the present Bench comprising of two Hon'ble Judges and hence the views expressed therein should hold the field in this appeal/matter also filed by the State of M.P. It was contended that a fresh interpretation of the R R Policy to the extent of giving land to major son would result in a total arbitrary implementation of the policy has not been approved by the Bench of three Judges vide (2011) 7 SCC 639 and in case this Court found that there were divergence of views in the judgment referred to hereinbefore and relied upon by the State of M.P., the matter may be referred to a larger bench. If this Hon'ble Court comes to the conclusion that there are divergent views of co-strength bench on the issue of the allotment of land to adult son in (2000) 10 SCC 664 I st Narmada Judgment and (2005) 4 SCC 32- IInd Narmada judgment and (2011) 7 SCC 639-IIIrd Narmada judgment.

29. In so far as the impugned direction of the High Court concluding that value of trees and wells could not have been deducted from the amount payable as SRG, it was submitted that compensation under the Land Acquisition Act is to be determined as per Section 23 of the said Act and apart from the market rate, value of the land, the damage sustained by taking standing crops or trees is part of compensation as also the damage sustained by person interested on account of loss

of land. Thus loss of trees and wells is part of compensation plaid under the Land Acquisition Act and the formula for calculating SRG is given in two Government orders dated 31.2.2002 which is a general order and dated 7.3.2002 which is a specific order for the Man Dam Project. It was submitted that once compensation payable under the Land Acquisition Act is to be deducted then the same would include the complete compensation paid for the land, trees, wells, solatium, interest etc. and, therefore, it was submitted that the finding of the High Court on this issue is liable to be reversed. Reliance was also placed on the ratio of the decision reported in (1995) Supp. 2 SCC 637 State of Haryana vs. Gurcharan Singh and Anr. wherein this Court had held that it is well settled law that the Collector or the Court who determined the compensation for the land as well as fruit bearing trees cannot determine them separately as the compensation is in regard to the value of the acquired land.

30. Shri Prashant Bhushan, learned counsel representing respondent -Bheuru Singh Ors. - who was the petitioner in the High Court and are also appellant in the connected appeal, refuted the contentions of the counsel for the State of M.P. and first of all referred to the relevant provisions of R R Policy relating to displaced family. He has, therefore, extracted the relevant provisions in this regard for ready reference which is as follows:-

> 1.1 (b) Displaced Family—
>
> > (i) A family composed of displaced persons as defined above shall include husband, wife and minor children and other persons dependent on the head of the family, eg. Widowed mother, widowed sister, unmarried daughter or old father.
> >
> > (ii) Every son/un-married daughter who has become major on or before the date of Notification under section 4 of the Land Acquisition Act, will be treated as a separate family.
>
> 3.2 (a) Every displaced family from whom more than 25 percent of its land is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it, and shall be allotted such land, subject to provision in 3.2 below.
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> (b) A minimum area of 2 ha. of land would be allotted to all the families whose lands would be acquired irrespective of whether government land is offered or private land is purchased for allotment. Where more than 2 ha. of

> land is acquired from a family, it will be allotted equal and, subject to a ceiling of 8 ha.
>
> (c) The government will assist displaced families in providing irrigation by well/tube-well or any other method on the land allotted, provided such land is not already irrigated...

31. Relying on the aforesaid provision it was contended that under the R R Policy every joint land holder is treated as a displaced family and is entitled to a minimum of 2 hectares of land. So if there are three joint land holders in a joint land holding they will each be entitled to a minimum of 2 hectares of land. While explaining this, it was stated that if the name of the adult son had been recorded on the title as a joint land holder, he would have been entitled to 2 hectares of land as a land holder had the acquired land been partitioned prior to acquisition, the adult son whose family land held in the name of the head of the family is being acquired and who undisputedly has rights on the land had he been recorded as joint title holder, he would have been entitled to a minimum of 2 hectares of land each. It was, therefore, submitted that it would be discriminatory to deny the opportunity to obtain a viable livelihood after displacement to the adult sons who have rights on these lands simply because there was no partition due to customary practices. It was sought to be explained that this is the tribal area where culturally lands are not partitioned till the death of the head of the family. Thus many of the adults sons are themselves very old. It was submitted that in fact para 2.1 of the R R Policy expressly required that all relevant land records would be brought up to date expeditiously for ensuring adequate compensation and allotment of land to displaced persons. However, the same was never done. It was contended that if the land records had been updated, the adult sons would have been included in the land records as joint holders and would have been entitled to a minimum of 2 hectares of land in their own right. The State Government in order to conclude the matter formulated the provision that every adult son will be treated as a separate family.

32. It was still further submitted that the vision of the R R Policy that every family dependent on land facing force displacement, which has to severe its link with family lands hitherto relied on, must be provided a viable land based livelihood on a minimum viable land holding 2 hectares of land which would be entirely in consonance with the socialist vision of the Constitution and the Fundamental Rights and Directive Principles of State Policy. The minimum entitlement of 2 hectares of land is also in consonance with the vision of the planning process indicating national development which requires both the victims and the beneficiaries of such product to become better off from the project and project

resources. It was submitted that this Court has also emphatically taken the view that the oustees on development projects must be made better off after their displacement at project cost and as per the R R Policy framed by the Government under Article 21 of the Constitution. It was also submitted that the R R Policy of the Government of Madhya Pradesh requires the allotment of land even to encroachers. The State of M.P. also has programme for the allotment of land to landless SC and ST families. Thus the well considered provisions of the R R Policy which require the allotment of a minimum of 2 hectares of land to the adult sons of cultivators whose family land is being acquired as separate families is a valuable part of the social- economic programme part designed to meet goals of the Constitution.

33. In reply to the submission of the learned counsel for the appellant-State of M.P., Mr. Bhushan submitted that the provisions for the treatment of adult sons as a separate family for the allotment of a minimum of 2 hectares of land is the same under the NWDT Award and the R R Policy of the State. Learned counsel has placed reliance on the IInd Narmada judgment of High Court for the definition of `adult son' as separate family and allotment of land reported in (2005) 4 SCC 32. It was submitted that as per the definition of oustee, an oustee means any person who at least one year prior to the publication of the notification under Section 4 of the Act has been ordinarily residing or cultivating land or carrying on any trade, occupation or calling or working for gain in the area likely to be submerged permanently or temporarily and the definition of family includes husband, wife and minor children and other persons dependent on the head of the family, for example, widowed mother.

34. Learned counsel for the respondent/appellant in the connected appeal also submitted that in fact the R R Policy was formulated by adopting the provisions of the NWDT Award which may be seen from the minutes of the meeting dated 9.6.1987 of the Committee of Secretaries which formulated the R R Policy. The High Court in the impugned judgment has also held that the State Government adopted similar definition of displaced family in the R R Policy as is present in the NWDT Award. It was, therefore, submitted that the provisions of the NWDT Award and the R R Policy are in pari materia on the basis of which it has been contended that the view taken by the learned Judges in the IInd Narmada judgment reported in (2005) 4 SCC 32, adult sons of cultivators are entitled to a minimum of 2 hectares of land as separate families wherein the specific question was considered as to whether adult sons of cultivators are entitled to a minimum of 2 hectares of land as per the NWDT Award. Learned counsel specifically referred to

the question which was considered in (2005) 4 SCC 32 judgment which is quoted as follows:-

> Whether adult sons are entitled to a minimum of 2 hectares of land as per NWDT Award and judgment of this Court?

35. Learned counsel placed reliance on certain portions of the judgment which was follows:-

> 59. The definition of family indisputably includes major sons. A plain reading of the said definition clearly shows that even where a major son of the land-holder did not possess land separately, he would be entitled to grant of a separate holding.
>
> 64. One major son comes within the purview of expansive definition of family, it would be idle to contend that the scheme of giving `land for land' would be applicable to only those major sons who were landholders in their own rights if a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr. Vaidyanathan, the definition of `family' to an extent would become obscure. As a major son constitutes `separate family' within the interpretation clause of `family' no meaning thereto can be given.

36. Placing reliance on the aforesaid portion of the judgment of this Court, it was submitted that this Hon'ble Court has decisively interpreted the treatment of adult sons as separate family and relying on similar provisions for treatment of adult sons as separate family and for allotment of a minimum of 2 hectares of land in the NWDT Award and the R R Policy, the High Court vide its impugned judgment has rightly held that the oustees of the Man Dam Project are also entitled to a minimum of 2 hectares of land as per the R R Policy. It was submitted that the judgment and order dated 15.3.2005 of this Court was accepted and fully implemented by an order of the State Government dated 16.6.2005 by providing benefits to several thousands adults sons which may be seen from the order of the State Government dated 16.6.2005 which states that it is in compliance of judgment and order of this Hon'ble Court dated 15.3.2005 holding that in the case of cultivators losing more than 25% of the land, the adult sons will be entitled to 2 hectares of land and while computing the SRG for adult sons, the previous compensation will be taken to be zero.

37. It was next contended on behalf of the oustees/Respondents that in this case, the State has relied on the reasonings of the judgment and order of a three Member Bench dated 11.5.2011 reported in (2011) 7 SCC 639 referred to as IIIrd Narmada judgment in order to challenge the finding of the judgment and order dated 11.8.2009 reported in (2005) 4 SCC 32 i.e. II nd Narmada judgment with regard to land allotment to adult sons which is not legally permissible and in case this court finds conflicting judgment the matter may be referred to a Larger Bench.

38. While considering the rival submissions of the counsel for the contesting parties in both the appeals, it is manifestly clear that the principal contentious issue between the State of Madhya Pradesh and the displaced persons/oustees is in regard to the claim of land for each major son of the land holders family as according to the oustees, the definition of displaced family in paragraph 1(b) of the R R Policy discloses that every son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act, will be treated as a separate family. As already noted, this has given rise to several rounds of litigation in the High Court of Madhya Pradesh due to which three judgments have been delivered by this Court and for facility of reference they have been termed as Narmada Bachao Andolan Ist, Narmada Bacaho Andolan IInd and Narmada Bachao Andolan IIIrd judgments. However, in Narmada Bachoa Andolan I, the question of entitlement of land in favour of each major son of the family was neither considered but Narmada Bachao Andolan II reported in (2005) 4 SCC 32, the question clearly came up for consideration regarding entitlement of land by major sons which according to the learned three Judge Bench indisputably includes major sons in view of the definition of family. A three Judge Bench of this Court in the said matter observed that even on a plain reading of the definition, it clearly shows that even where a major son of the land holder did not possess land separately, he would be entitled to grant of separate holding. It was held that the definition of `family' has to be read along with that of ` oustee' and it was noted that `outsee family' and `displaced family' have interchangeably been used in the award. It was, therefore, observed that they thus carry the same meaning. This Court also took notice of paragraph 152 of the main judgment i.e. Naramda Bachao Andolan I judgment wherein this Court noticed that every affected family must be allotted land, house, plot and other amenities and this was in terms of the tribunal's award wherein it was held that the sons who had become major on or prior to the issuance of notification of Land Acquisition Act were entitled to be allotted land and since the interpretation clause used an inclusive definition, it would be expansive in nature. It was, therefore, held that as follows:

> Once major son comes within the purview of the expansive definition of family, it would be idle to contend that the scheme of giving land for land would be applicable to only those major sons who were landholders in their own rights. If a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr. Vaidyanathan, the definition of family would to an extent become obscure. As a major son constitutes separate family within the interpretation clause of family, no meaning thereto can be given.....The court further observed that the award provided that every displaced family whose 25% or more agricultural land holding hs been acquired , shall be entitled to be allotted irrigable land to the extent of land acquired subject to prescribed ceiling of the State with a minimum of 2 hectares of land.

39. Thus in view of this judgment the respondent oustees could have approached the Grievance Redressal Authority (GRA) for allotment of land in terms of the judgment if they felt that the GRA was not examining the grievance in the light of the law laid down by this Court in the IInd Narmada Judgment (2005) 4 SCC 32. However, the oustees respondents Bheru Singh and others instead of approaching the G.R.A. approached the High court by way of a writ petition No. 48/2004 in which judgment was delivered by the Division Bench on 11.8.2009 out of which these appeals arise and in this judgment the learned Judges followed the judgment and order of the IInd Narmada Bachao Andolan referred to hereinabove as the subsequent IIIrd judgment of 2011 (Supra) had not been delivered by that time. Hence the High Court was pleased to hold vide the impugned judgment that although there has been substantial compliance of R R Policy which provides for allotment of agricultural land government or private to the displaced family and there is no violation of fundamental right to livelihood guaranteed under Article 21 of the Constitution, it was further pleased to direct that every son who had become major on or before the date of notification under Section 4 of the Land Acquisition Act but who was part of their family from whom land had been acquired will be treated as a separate displaced family and would be allotted agricultural land in accordance with paragraph 3 and 5 of the R R Policy for the Man Dam Project and in case he does not opt land for land in accordance with paragraph 5 of the R R Policy, he will be paid Special Rehabilitation Grant (SRG) in addition to the compensation under the Land Acquisition Act in accordance with the order dated 7.3.2002 of the Government of Madhya Pradesh Narmada Valley Development Authority by the respondents within four months from that date.

40. As already stated, the State of Madhya Pradesh and the oustee respondents Nos. 1 2 along with social activist respondent No.3 filed separate special leave petition in this Court on 9.11.2009 and 1.2.2010. But it appears that in the meantime, another appeal had been entertained by this Court bearing Civil Appeal Nos. 2115- 2116/2011 arising out of an interim order passed by the High Court of Madhya Pradesh in writ petition No.4457/2007 entitled Narmada Bachao Andolan vs. State of Madhya Pradesh wherein the High Court as an interim measure had issued direction inter alia for allotment of agricultural land to the displaced persons in lieu of the land acquired for the construction of the dam in terms of the Rehabilitation and Resettlement Policy as amended on 3.7.2003. The High Court direction applied even to those oustees who had already withdrawn the compensation if such oustees opted for such land and refund 50% of the compensation amount received by them. The balance cost of the allotted land was to be deposited by the allottee in 20 equal yearly instalments as per clause 5.3 of the R R Policy and it further directed to treat a major son of the family whose land had been acquired as a separate family for the purpose of allotment of agricultural land. During the pendency of the appeals of the State of Madhya Pradesh and the respondents, the judgment and order was delivered by a Bench of three Judges of this Court wherein the question of entitlement of each major son of a displaced family was taken into consideration and it was observed therein that the rehabilitation has to be done to the extent of the displacement. It was further held that rehabilitation was compensatory in nature with a view to ensure that the oustee and his family are at least restored to the status that was existing on the date of commencement of the proceedings under the Land Acquisition Act, 1894. There was no intention on behalf of the State to have awarded more land treating a major son to be a separate unit. It was further observed that the idea of rehabilitation was not to distribute largesse of the State that may reflect distribution of total disproportionate to the extent of land acquired and therefore, the State had rightly registered this demand of the oustee- writ petitioners directing a separate unit for each major son for the above land acquired, was neither justified nor legally permissible. It was, therefore, held that in effect the major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fiction definition as stated in the impugned judgment. The major sons, however, would be entitled to his share in the area which is to be allotted to the tenure holder on rehabilitation in case he is entitled to such share in the land applicable to the particular State.

41. On perusal of the ratio of the two decisions of this Court referred to hereinabove viz. 2005 (4) SCC 32 and (2011) 7 SCC 639, they undoubtedly appear to be in conflict with each other in regard to the claim of share by each major son

of the family of land holder whose land has been acquired. This Court, therefore, is clearly confronted with two conflicting views on the claim of entitlement of a major son for a separate share in the land holders family and in view of this it would have been a fit case for reference of this matter before a Constitution Bench of 5 Judges for determination of the question as to whether all major sons of a displaced family would be entitled to 2 hectares of land in view of the R R Policy of the State of M.P.

42. But on a careful consideration of the matter, it is manifestly clear that the dispute between the State of M.P. and the displaced family on the question of entitlement of a major son do not arise out of a statute like the Land Acquisition Act, 1894 or the Hindu Succession Act or Land Ceiling Act or any other similar Act in order to treat the issue as the purely a legal controversy giving rise to a conflicting situation regarding the entitlement of land to a major son of a family which would give rise for determination of the question as to whether all major sons of the land holders family who might be constituting joint family would be entitled to 2 hectares of land separately or only through the main land holder of a displaced family in order to be entitled to 2 hectares of land arising out of a Policy decision. This marathon exercise that have been done giving rise to repeated rounds of litigation for determination of the question as to whether major sons would be included in the definition of the displaced family or not in our view is not really a legal issue emerging from any statutory provision which needs to be addressed since the entire issue is merely a question which arises out of a policy decision of the Government of M.P. and at the most would be confined to interpretation of the R R Policy formulated by the State of M.P. We, therefore, refrain from referring this question of entitlement of major son to a separate holding to a larger Bench as it needs to be highlighted that this controversy arises out of Policy decision and has clearly not emerged from any ambiguity in the Land Acquisition Act or any statute or an Act having a bearing in future on other similar controversy so as to refer it to a Constitution Bench of this Court.

43. Thus, when the claim or entitlement of land is based exclusively on a Policy decision of the Government of M.P. which have been incorporated in the R R Policy, the entitlement clearly would be based strictly on the Policy decision formulated by the Government of M.P. which clearly lays down as follows:

> 24(IV(7) Allotment of agricultural lands.--Every displaced family from whom more than 25% of its land holding is acquired shall be entitled to and be allotted irrigable land to the extent of land acquired from it subject to the

> prescribed ceiling in the State concerned and a minimum of 2 hectares (5 acres) per family.....

44. This policy holds a displaced family entitled to 2 hectares of land but it further envisages actual displacement from the acquired land which is 25% meaning thereby that only such displaced family from whom more than 25% of its land holding has been acquired would be entitled for compensation of 2 hectares of land from whom land has been acquired and this displacement from land would not merely be notional. The R R policy unequivocally lays down its entire emphasis on acquisition of land from a displaced family and that displacement also has to be 25% of the land acquired from the family by the Government. Thus even if the displaced family had several major sons, allotment on account of acquisition to each major son do not arise in terms of the policy. Even at the risk of repetition it needs to be highlighted that when there has been no acquisition from each major son of the family, the question of allotment of land to all major sons of the family would be clearly contrary to the provision of the R R Policy. The entire right of the respondent/oustee in this litigation flows from the R R Policy of the State of M.P. and it is crystal clear that the redeeming feature of the policy is acquisition of 25% land of the displaced family. Therefore, even if the displaced family constituted of several major sons, the acquisition of 25% of land from each major son is completely missing, and, therefore, we do not see any reason as to why we should allow the parties to be bogged down into further litigation for determination of the question as to whether all major sons of a displaced family are entitled to a separate unit of 2 hectares of land or only the land holder of the displaced family would be entitled. Hence, the direction of the High Court of Madhya Pradesh vide its impugned judgment for allotment of land to each major son of the displaced family needs to be overturned.

45. There is yet another reason for us for disapproving the direction of the High Court as the High Court, in our view, was not justified in entertaining a writ petition by way of public interest litigation when the High Court of Madhya Pradesh had already dealt with the question against which the appeal also travelled upto this Court and was seized of other writ petitions on the question. In regard to the above question, we take note of a decision of this Court in Ors., reported in (2011) 2 SCC 706 wherein this Court had been pleased to hold that the jurisdiction even of the Supreme Court:

> in a public interest litigation cannot be pressed into service where matters have already been completely and effectively adjudicated upon not only in

> individual petitions but even in writ petitions raising the larger question as was raised in the earlier writ petition.
>
> The learned Judges have been pleased to hold that:
>
> principles of finality and fairness demand that there should be an end to litigation and it is in public interest that issues settled by judgment of the court which have attained finality should not be permitted to be re-agitated all over again.

46. Taking note of the aforesaid observation fraught with wisdom, we are of the view that the High Court was not correct in entertaining a writ petition all over again by way of a Public Interest Litigation when the question of implementation of R R Policy had been considered and decided by the High Court of Madhya Pradesh earlier giving rise to appeals up to this Court. Besides this, the High Court in the impugned judgment itself has laid down that there had been substantial compliance of the R R Policy of the Government of M.P. and yet it was pleased to direct the respondent-State/appellant herein to consider the question of allotment of 2 hectares of land to each major son of a displaced family overlooking the fact that if each major son of the displaced family had not been separately deprived of 25% of the acquired land, then even as per the Policy, they were not entitled to 2 hectares of land. In that view of the matter also the direction of the High Court travels beyond the scope of R R Policy. The High Court in any view had no reason to expand the scope of R R Policy by directing the State of M.P. to allot land to each of the displaced family.

47. However, we are conscious of the fact that in the process of allotment, it is quite possible that some of the oustees might have been deprived of the land who were separately holding the acquired land. But in order to ensure effective implementation, there is already a Grievance Redressal Authority (GRA) and if the oustees have any grievance in regard to non-implementation of the R R Policy in so far as their entitlement as per the policy is concerned, they would be free to move the GRA for redressal of their grievance. But a blanket direction as given out by the High Court to allot land to each major son of a displaced family without any averment to the effect that they were deprived of 25% of acquired land separately, the plea that the State of M.P. should consider their grievance and allot them land appears to be contrary to the R R Policy. Acquisition of 25% of land is a condition precedent to become eligible for allotment of 2 hectares of land. We, therefore, feel the need to clarify that we have not entered into the area of determination of the question as to whether major son of a family is entitled to a separate unit or not as

in our view even if we were to follows (2005) 4 SCC 32 and were to hold that each major son of a displaced family is entitled to a separate unit of compensatory land, deprivation of 25% of land from them is totally missing and if that is so, we fail to understand as to how we can allow the respondents to reopen this question after four years of revision of R R Policy. Learned counsel for the respondent Bheru Singh, no doubt, had submitted that this Court had to take into consideration the indigent status of the affected parties. But when a social activist takes up the cause for the oustees, it is expected of them to take a balanced view of the cause raised on behalf of the affected party in the light of the policy which is formulated and made effective by the State authorities. We undoubtedly also appreciate the laudable effort made by the social activist taking up the cause for the rehabilitation of the oustees but in the process we are under constraint as we cannot overlook the practical fall out/consequences by allowing them to take up the cause of the oustees oblivious of its consequence or the administrative fall out since a cause cannot be allowed to be raised incessantly by indulging in multiplicity of proceedings which at times do more harm to the cause than seek cure for the misery of the affected parties. In fact, in our view, if anyone concerned including an activist genuinely and bona fide feels that full justice has not been done to the cause they raised would do well to use their effort and good offices by persuading the administrative machinery with the assistance, the leadership for rectifying the policy decision and getting the matter clarified rather than travelling to the court by filing one writ petition after the other unsettling the settled position by way of fresh round of litigation in the form of Public Interest Litigation.

48. However, in view of the meticulous analysis of the R R Policy in the instant matter in the light of the statement of the counsel for the parties as also the decisions relied upon by them, we are of the view that the direction of the High Court in spite of its finding that R R Policy has been substantially complied, has gone beyond the ambit of the R R Policy and has generated a controversy as to whether all major sons of a displaced family are entitled to a separate unit of land or not under the R R Policy which has clearly laid emphasis on the fact that only those displaced families would be entitled to 2 hectares of land from whom 25% of their separate holding of land had been acquired which inference in our view is the only inference which can reasonably be drawn from the relevant provision of the R R Policy.

49. However, the counsel for the respondent/appellant Bheru Singh and others have given out large number of factual details stating that the GRA has committed grave errors while dealing with the representation and grievance of the oustees which is not possible for this Court to examine nor it lies within the ambit and

scope of Article 136 of the Constitution. Nevertheless, we find substance in the argument advanced that the oustees/displaced persons come from the weak and vulnerable tribal population whose plea may get ignored or are not properly addressed. Hence for this purpose and in order to impart full justice to the cause in terms of the R R Policy, it is desirable that the State Government may constitute an appellate forum where the aggrieved party may challenge the decision of the GRA in case there is any justifiable reason to do so. This appellate forum in our view should include a sitting or retired District Judge and an administrative member under the Chairmanship of a retired Judge of the High Court which will oversee whether the R R Policy has been effectively and accurately implemented and whether the SRG have been properly distributed in the light of the grievance raised by the displaced persons. This appellate forum in our view appears to be essential in order to supervise and oversee by way of an appellate forum and hear the grievance of the affected displaced persons arising out of implementation of the R R Policy and SRG as also to ventilate the grievances of affected persons. However, this appellate forum shall not enter into any question relating to interpretation of the R R Policy but by and large examine whether the benefit of the R R Policy has been allowed to be availed by the oustees or not. In effect it would confine itself to the questions relating to compliance of the R R Policy and distribution of Special Rehabilitation Grant (SRG) in terms of the provisions enumerated therein.

50. As a consequence of the above analysis, deliberation and consideration, the appeal arising out of special leave petition(c) No.30685/09 of the State of Madhya Pradesh stands allowed and the appeal arising out of special leave petition (c) 10163/2010 of the oustees is disposed of with liberty to the respondents-oustees to approach the GRA or the Appellate Forum of GRA in case they have been deprived of adequate compensation or benefit in any manner which is not in consonance with the R R Policy. We further grant liberty to the respondents including the social activist-Respondent No.3 to take up the matter before the Government of M.P. for rectification or further amendment of the Policy in case they are able to establish and make out a case that the revision of R R Policy 2003 still further requires rectification or improvement as there can be no limitation of time for reviewing or reframing a Policy decision if it has to serve the cause of eradicating human suffering specially if it has emerged as a consequence of the state activity like the land acquisition where the affected parties lost their home and cultivable land. However, under the circumstance, there shall be no order as to costs.