

Madhya Pradesh High Court

Narmada Bachao Andolan vs The State Of Madhya Pradesh ... on 21 February, 2008

Equivalent citations: AIR 2008 MP 142, 2008 (2) MPHT 490

Author: A Patnaik

Bench: A Patnaik, A Singh

ORDER A.K. Patnaik, C.J.

1. The petitioner, an organization working for the legal rights of oustee families affected by the large dams in the Narmada Valley, has filed this Public Interest Litigation for appropriate directions for the rehabilitation and resettlement of the oustee families of the Omkareshwar Project in the State of Madhya Pradesh.

Facts of the case

2. The background facts in short are that on 6th July, 1968, the State of Gujarat made a complaint to the Government of India under Section 3 of the Inter-State Water Disputes Act, 1956 stating that a water dispute has arisen between the States of Gujarat, Madhya Pradesh and Maharashtra over the use, distribution and control of water of Narmada, an inter-State river. The Central Government constituted the 'Narmada Water Disputes Tribunal' (for short 'the NWDT') for adjudication of the water dispute, by notification dated 6th October, 1969 and made a reference of the water dispute to the NWDT. The NWDT made an award, called, the 'Narmada Water Disputes Tribunal Award' (for short 'the NWDT award'). The NWDT award inter alia apportioned the utilisable quantum of Narmada water between the States of Madhya Pradesh, Gujarat, Rajasthan and Maharashtra and also provided inter alia for regulatory releases to be made by the State of Madhya Pradesh for requirement of the Sardar Sarovar Project in Gujarat.

3. In November 1993, a detailed project report of the Omkareshwar Dam was prepared by the Government of Madhya Pradesh, Narmada Valley Development Department. In this Project report, Omkareshwar Dam is described as one of the series of major dams to be constructed across the Narmada River for generation of power and for irrigation from the regulatory releases of upstream reservoir which was to ensure supplementary releases to Gujarat to enable use of its share of water as per the directions in the NWDT award and the dam was to be constructed near Mandhata island in the Omkareshwar town in Khandwa district of Madhya Pradesh and was to submerge thirty villages in the area affecting thousands of families.

4. For rehabilitation and resettlement (R&R) of these project affected families, the Narmada Valley Development Department, Government of M.P. submitted in August, 1993 the R&R Plan to different agencies of the Government of India. By letter dated 8th October, 1993, the Government of India, Ministry of Welfare approved the R&R Plan of the Omkareshwar Dam submitted by the Government of M.P. By letter dated 13th October, 1993, the Ministry of Environment and Forests accorded environmental clearance and by letter dated 22nd October, 1993, the Ministry of Environment and Forests also accorded forest clearance to the Omkareshwar Dam.

5. On 16th May, 2000, a Memorandum of Understanding (for short 'MOU') was drawn up between National Hydro-Electric Development Corporation (a Government of India Undertaking) and the Government of M. P. agreeing to set up a joint venture Company under the Companies Act, 1956 to complete and manage the dam and the power houses of the Indira Sagar and Omkareshwar Multipurpose Projects, and it was stipulated in the MOU that the joint venture Company would comply with the provisions of the NWDT award and the work of R&R of the oustees of the two projects would be the joint responsibility of the joint venture Company and the State of Madhya Pradesh. Pursuant to the MOU, the respondent No. 2 was incorporated as the joint venture Company and registered under the Companies Act, 1956 on 11th August, 2000 for managing the dams and power houses of the two projects. Clause 63 of the Articles of Association of the respondent No. 2 Company stipulates that the respondent No. 2 Company would comply with the provisions of the NWDT award and Clause 64 of the Articles of Association of the respondent No. 2 Company stipulates that the work of R&R of the oustees of the two projects would be the joint responsibility of the respondent Nos.1 and 2.

6. By letter dated 15th May, 2001, the Planning Commission conveyed its acceptance for investment in the Omkareshwar Multipurpose Project in the State Plan with an estimated cost of Rs.1784.29 crores subject to the conditions enumerated in the Government of India's letter dated 13th October, 1993 according environmental clearance letter dated 22nd October, 1993 according forest clearance and letter dated 8th October 1993 according approval to the R&R action plan. By Office Memorandum dated 24th July, 2001, the Central Regulatory Authority of the Government of India also accorded approval to the revised estimated cost of the Omkareshwar Multi-purpose Project subject to fulfillment of inter alia the conditions that the respondent No. 2 shall get transferred the environment and forest clearances in their favour and also shall comply with the requirements stipulated by the Ministry of Environment and Forest in their clearances.

7. The construction of the Omkareshwar Dam was over in October 2006 and by letter dated 28th March, 2007, the Narmada Valley Development Authority permitted the respondents to close the radial and sluice gates of the dam so as to achieve a water level of 189 meters at the dam site. The petitioner then filed the present writ petition contending that in judgments delivered in connection with Sardar Sarovar and Tehri Projects, the Supreme Court has held that there can be no submergence of villages without rehabilitation of the people living in such villages, and that all entitlements as per the R&R Policy must be given before one year and rehabilitation must be completed in all respects six months before submergence. The petitioner also stated in the writ petition that though acquisition of properties and R&R measures were initiated by the respondents in the villages which were to be submerged, these are yet to be completed. The petitioner prayed for appropriate writs and directions to the respondents for providing the various R&R entitlements to the project affected families. The petitioner also prayed that eviction of all project affected families and severing of drinking water and electricity supplies be stopped and the respondents be restrained from taking any coercive measure and from closing the gates of the Omkareshwar Dam Project until all the project affected families are rehabilitated as per the R&R Policy of the Government, R&R plans, NWDT award and orders/judgments of the Supreme Court, conditions stipulated by the Ministry of Environment and Forest, Government of India clearances, MOU and as per their fundamental and constitutional rights guaranteed under Arts. 14, 21 and 300A of the Constitution of

India.

8. On 30th March, 2007, the Court after hearing Learned Counsel for the parties issued notice of the writ petition to the respondents and fixed the matter to 9th April, 2007 for consideration of the interim prayer and in the meanwhile, directed the Grievance Redressal Authority (for short 'GRA') for the Omkareshwar Project to submit a report of rehabilitation work already done and the rehabilitation works still to be done and to indicate in the report the consequences of closure of the gates of Omkareshwar Dam on the people residing in the area which is to be submerged. By the order passed on 30th March, 2007, the Court also directed that till the matter was taken up on 9th April, 2007, status quo would be maintained by the respondents with regard to closure of the gates of the Omkareshwar Dam and the supply of drinking water and electricity to the people of the area will not be severed. Thereafter, the interim matter was heard from time to time and on 18th May, 2007, the Court directed that the interim order passed on 30th March, 2007 shall continue till further orders. The respondents challenged the order dated 18th May 2007 of this Court before the Supreme Court in SLP (Civil) No. 10368 of 2007 and on 11th June, 2007, the Supreme court stayed the interim order passed by this Court but did not express any opinion on the merits of the case and disposed of the SLP.

9. Thereafter, the petitioner filed an interim application (I.A. No. 4594 of 2007) stating that as a consequence of closure of the gates of the Omkareshwar Dam and filling up the water up to 189 meters at the dam site, only five villages, namely Gunjari, Paladi, Sailani, Bakhatpur and Rampura were to be submerged and the consistent case of the respondents was that only in these five villages, acquisition and rehabilitation measures were complete. The petitioner also stated in the interim application that in the remaining 25 villages, acquisition and rehabilitation measures were yet to be completed and yet the respondents were taking all kinds of coercive measures including severing of water and electricity supplies and were demolishing houses and public buildings, such as schools etc. On 22nd June, 2007, the Court, after hearing Learned Counsel for the parties passed orders restraining the respondents from severing electricity and water supplies and demolishing public buildings such as schools etc. in the other 25 villages and from taking any coercive steps which would force the oustees to leave these village during the pendency of the petition or until further orders were passed by the Court.

10. Again, the petitioner filed I.A. No. 6779 of 2007 complaining that although by order dated 22nd June, 2007, the Court had restrained the respondents from severing electricity and water supplies and demolition of houses and public buildings such as schools etc. in the remaining 25 villages and had also restrained the authorities from taking coercive measures in the 25 villages which would force the villagers to leave the villages, the respondents had decided to raise the water level at the dam above 189 meters. A reply was filed on behalf of the respondents to the I.A. stating that by order dated 22nd June, 2007, the Court did not prohibit raising of water level above 189 meters but only directed that there will be no severing of electricity and supply of water and demolition of houses and public buildings etc. during the pendency of the petition or until further orders were passed by the Court and that no coercive measures will be taken so as to force the oustees to leave the villages. After hearing the Learned Counsel for the parties, the Court passed orders on 17th August, 2007 directing the respondents to maintain the water level at 189 meters in the

Omkareshwar Reservoir. The respondents challenged the order dated 17th August, 2007 of This Court before the Supreme Court in SLP (Civil) No. 14919 of 2007 and the Supreme Court disposed of the SLP by its order dated 5.9.2007 observing that if the water level goes above 189 meters, it may cause severe problems to the residents of 25 villages who are yet to receive rehabilitation measures and hence the respondents shall maintain the water level at 189 meters till the final order was passed by the High Court. The Supreme Court also expressed the view that the High Court should finally dispose of the matter at the earliest and in the meantime, the respondents would take steps to make all efforts to rehabilitate the affected oustees.

WHETHER DISPLACED FAMILIES FROM WHOM AGRICULTURAL LAND IS ACQUIRED AND LANDLESS AGRICULTURAL LABOURERS ARE ENTITLED TO ALLOTMENT OF AGRICULTURAL LAND ?

Contention of the petitioner

11. Ms. Chittroopa Palit, appearing for the petitioner submitted that in *Narmada Bachao Andolan v. Union of India and Ors.*, (hereinafter referred to as 'the first Narmada Bachao Andolan case') one of the issues before the Supreme Court was whether displacement of tribals as a result of construction of Sardar Sarovar Dam violates the rights under Article 21 of the Constitution of India and Kripal, J. delivering the majority judgment held in para 62 at page 702 of the judgment as reported in SCC that displacement of tribals and other persons would not per se result in the violation of their fundamental or other rights and what has to be seen is whether such tribals who are displaced and are rehabilitated at new locations are better off than what they were and enjoy more and better amenities than those they enjoyed in their tribal hamlets. She submitted that in *N.D. Jayal and Anr. v. Union of India and Ors.* in which Rajendra Babu, J. reiterated in paragraph 60 at page 394 of the S.C.C. that rehabilitation of oustees of a dam is a logical corollary of Art. 21 of the Constitution and the oustees should be in the better position to lead a decent life and earn livelihood in the rehabilitated locations. She submitted that again in *Narmada Bachao Andolan v. Union of India and Ors.* (hereinafter referred to as 'the second Narmada Bachao Andolan case'), S.B. Sinha, J. noted the opinion of the three Judge Bench Judgment of first *Narmada Bachao Andolan v. Union of India and Ors.* (supra) that displacement of tribals would not per se result in the violation of their fundamental or other rights if on their rehabilitation at new locations they are better off than what they were and enjoy more and better amenities than those they enjoyed in their tribal hamlets.

12. Ms. Palit submitted that for the tribals and others, who were to be displaced by construction of the Omkareshwar Multi-purpose Project, the State Government formulated a R&R Policy and also prepared a R&R Plan in the year 1993. She submitted that paragraph 3 of the R&R Policy provided for allotment of agricultural land and reads as follows:

3.0 ALLOTMENT OF AGRICULTURAL LAND:

3.1 Displaced families would be rehabilitated in accordance with their preferences on land at the new sites, taking as far as possible, the social groups as a unit.

3.2(a) Every displaced family from whom more than 25 percent of its land holding is acquired in revenue villages or forest villages shall be entitled to and be allotted land to the extent of land acquired from it, subject to provision in 3.2 (b) below.

(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 land, subject to a ceiling of 8 Ha.

c) The Government will assist displaced families in providing irrigation by well/tubewell or any other method on the land already irrigated. In case the allotted land cannot be irrigated (which fact would be certified by the Agriculture Department), the displaced family would be allotted a minimum of 4 Ha. of land instead of 2 Ha. provided at 3.2 (b) above. In other cases, where irrigation is not possible, the development of dry land would be subsidised by the State Government to the extent of 75% of the cost involved, unless higher subsidies are provided to farmers in any other scheme of the Government.

3.3 Entitlement of Encroachers for allotment of land: Encroachers, whether on revenue land or forest land will also be entitled for allotment of land, where the area of the land acquired from an encroacher is upto 1 Ha. he will be entitled to 1 Ha. area of land. In those cases where acquisition of land from an encroacher is more than 1 Ha., he will be entitled to 2 Ha. of land irrespective of the fact that the land acquisition from such an encroacher may even be greater than 2 Ha.

13. Ms. Palit submitted that paragraph 5 of the R&R Policy of the State of M.P. formulated in the year 1993 was titled 'Recovery of cost of allotted land' and provided as follows:

5.0 RECOVERY OF COST OF ALLOTTED LAND:

5.1 At least fifty percent amount of compensation for the acquired land shall be retained as initial instalment towards the payment of the cost of land to be allotted to the oustee family. However, if an oustee family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer. In such cases oustee families will have no entitlement over allotment of land and shall be paid full amount of compensation in one instalment. As option once exercised under this provision shall be final, no claim for allotment of land in lieu of the acquired land can be made afterwards. If any oustee family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry certify that this will not adversely affect the interests of the oustee family. Such application of the Scheduled Tribes oustee families will be accepted only after the above said certification by the Collector.

5.2 The balance cost of the allotted land will be treated as an interest-free loan and the proportionate area of the land will be mortgaged with the Government for that amount.

5.3 There will be no recovery of this loan for the first 2 years. Thereafter, the loan would be recovered in 20 equal yearly instalments.

5.4 Grant-in-aid would be paid to cover the gap between the amount of compensation and the cost of allotted land in those cases where the cost of allotted land is more than the amount of compensation. This grant would be payable to all displaced land owning Scheduled Castes and Scheduled Tribe families and other families losing up to 2 Ha. of land. For other families from whom more than 2 Ha. up to 8 Ha. of land of land is acquired, grant-in-aid an addition to amount of compensation will be given by the Narmada Valley Development Authority on the following rates:

a) Rs. 2000/- per Ha. or

(b) 50 percent of the difference of the price of the allotted land and the amount of compensation, whichever is less.

Taking into consideration the appreciation in the cost of land with the lapse of time period, the amount of compensation will be revised by the Authority. For the families from whom more than 8 Ha. of land is acquired, the amount of grant-in-aid under 5.4 (b) above shall be calculated on the basis of the amount of compensation for 8 Ha. of land and the cost of the allotted land.

5.5(a) Notwithstanding the provisions in Clause 5.1 (a), a displaced person may deposit more than 50% of the compensation amount payable towards cost of land at the new site if he so desires.

(b) In those cases, where the option of interest- free loan is not availed of and the family pays full cost of land, such family would be assisted by a further grant-in-aid or Rs.1,000/- per Ha. per year for 2 years.

14. Ms. Palit submitted that for complying with the provisions of paragraphs 3 and 5 of the R&R Policy, the Government of M.P. also prepared a R&R Plan and in this R&R Plan, the State Government clearly stated that a total of 2,688.45 Ha. of land would be required for resettlement of the families out of which 180.31 Ha. would be required for relocation of house sites and 2,508.14 Ha. would be required for allotment of agricultural land and also indicated how such required land was to be made available for allotment amongst the oustee families. Paragraph 2 of the R&R Plan of the Government of M.P. is extracted herein below:

2.0 Resettlement:

The total command areas of the dam comprises of 617 villages covering service area of 1.468 Lakh Ha. in Barwaha, Maheshwar, Kasrawad, Dharampuri, Manawar and Kukshi tehsils of Khargone and Dhar districts. Efforts will be made to resettle the oustees in the nearest tehsils, i.e., Khandwa, Barwaha, Maheshwar and Bagli, so that the oustee families are not put to any undue hardship and inconvenience.

2.1 In brief, the requirement of land for the rehabilitation of the oustees is as follows:

i. For abadi purposes 180.31 Ha.

ii. For agriculture (compen- 2,508.14 Ha. satory agricultural lands) 2.2 As regards the availability of lands for abadi, there are several villages in the affected/benefitted zones, wherein nistar lands far in excess of the minimum, prescribed under the existing policy of the State Government is available. A portion of such lands is proposed to be diverted for abadi purposes to rehabilitate the oustees. As shown in Annexure-4, it is proposed to utilise 180.31 Ha. (which is all that is required), out of 636.96 Ha. of excess nistar land in 10 villages of Khandwa, Bagli and Barwaha tehsils for this purpose.

2.3 As regards the lands to be allotted for agricultural purposes, Annexure-5 gives the village-wise details of the area proposed to be acquired under the M.P. Pariyojana Ke Karan Visthapit Vyakti (Punahsthan) Act, 1985) (in short, Rehabilitation of PAP Act). It may be mentioned that the above Act provides for acquisition of land from bigger cultivators owning more than 4 Ha. of land in the command area in varying degrees depending upon the size of their holdings. A list of such big cultivators holding more than 4 Ha. of agricultural lands within the command area of the project has been prepared and the exact area which can lawfully be acquired out of these holdings under the provisions of Section 11(4) of the said Act has also been calculated. To ensure a better integration of the oustee families with the host population, land acquisition through consent awards will also be encouraged and purchase committee will be constituted to give a better deal to all concerned.

2.4 The total population of live-stock in the affected tehsils is 12,799 (Annexure-7), it is presumed that only such oustee families whose house-sites are affected due to the construction of the dam will carry their live-stock to the relocation sites. The population of live-stock in such host villages here the relocation of house-sites for these outstee families have been proposed is 4,271. The total grazing land available in these villages is 371.966 Ha. Besides, 4,604.997 Ha. of other Government land is also available, which can be used for nistar and other common purposes. The village-wise list of such lands has been appended at Annexure-8. It is, thus, clear from the above figures that enough land for grazing and other nistar purposes will be available in the host villages and there will be no serious adverse affect on the carrying capacity of these villages.

2.5 From what has been discussed above, it is evident that the problem of displacement of people in this project is very small and easily manageable. Only 1,653 families are to be assisted in relocating their houses. The number of families to be provided with compensatory agricultural lands along with house-sites, is also quite small, i.e. 752 only. The requirements of abadi land (180.31 Ha.) and of the agricultural lands (2,508.14 Ha.) for the oustee families is indeed so modest that it should pose no problem to make arrangements for these in the neighbouring villages/command areas of the project. With a power generation potential of 520 MW, which will be an excellent peaking back-up to the hydel power deficient supply system of Madhya Pradesh, and an irrigation potential of 1.47 Lakh Ha., Omkareshwar Project is, by far, the most attractive projects in the Narmada Valley in terms of benefits.

15. Ms. Palit vehemently submitted that the State Government has not complied with the provisions of paragraphs 3 and 5 of the R&R Policy inasmuch as it has not offered agricultural land to any of

the displaced families of the Omkareshwar Multi-purpose Project. She argued that the members of the displaced families who were carrying on agricultural operations in their respective lands acquired for the Omkareshwar Multi-purpose Project were dependent upon agriculture for their livelihood and knew the skills of an agriculturist and therefore, have to be provided with agricultural land to enable them to earn their livelihood after their displacement on account of the Omkareshwar Multi-purpose Project but since the respondents have not provided such agricultural land in terms of paragraphs 3 and 5 of the R&R Policy, the displaced families have been reduced to paupers without any means of livelihood and their fundamental right under Art. 21 of the Constitution have been affected. In this context, she pointed out that a survey of land purchased by cultivators who were entitled to allotment of agricultural land but were denied agricultural land in 12 villages affected by the Omkareshwar Dam shows that only 11 percent of the displaced families were able to purchase agricultural land and the rest of the farmers have been pauperized. The details of this survey have been given in paragraph 65 of the rejoinder filed on behalf of the petitioner.

16. Ms. Palit next submitted that the R&R Policy and Plan of 1993 of the Omkareshwar Multi-purpose Project of the Government of Madhya Pradesh had been approved by different departments and agencies of the Government of India and were binding on the respondents. She submitted that the Ministry of Environment and Forest, Govt. of India accorded environmental clearance to the Omkareshwar Multi-purpose Project in its Office Memorandum dated 13th October, 1993 and expressly stipulated in the environmental clearance that the Rehabilitation Programme should be extended to landless labourers by identifying and allocating suitable land as permissible. She submitted that in the said Office Memorandum dated 13th October, 1993, it was clarified that all the measures will be implemented under the provisions of Environment Protection Act, 1986 and the Ministry reserved the right to take action including revoking the clearance under the provisions of the Environment Protection Act, 1986 to ensure effective implementation of the suggested safeguards in a time bound and effective manner. She submitted that the Government of India, Ministry of Environment and Forests also permitted diversion of 5829.85 Ha. of Omkareshwar Project in Khandwa, Khargone and Dewas districts of Madhya Pradesh by letter dated 31st August, 2004 under Section 2 of the Forest Conservation Act, 1980 subject to the conditions stipulated therein and condition No. 5 stipulated that displaced shall be resettled on non-forest lands as per the Resettlement and Rehabilitation Plan. She submitted that the Planning Commission in its letter dated 15th May, 2001 conveyed its acceptance to the Omkareshwar Multipurpose Project for investment with the estimated cost of Rs.1784.29 crores and clearly stated in the said letter dated 15th May, 2001 that the Scheme may be executed subject to the conditions stipulated in the Government of India OM dated 13th October, 1993 according environmental clearance, Government of India OM dated 22nd October, 1993 according forest clearance and the Government of India OM dated 8th October, 1993 according approval to the R&R Action Plan. She further submitted that by OM dated 24th July, 2001, the Central Electricity Authority of the Government of India also accorded approval to the estimated cost of the Omkareshwar Multipurpose Project and stipulated that the according of clearance would be subject to fulfillment of inter-alia the conditions that the respondent No. 2 shall get transferred the environment and forest clearances and also shall comply with the requirements stipulated by the Ministry of Environment & Forest in its clearances.

17. She submitted that in the MOU between the National Hydroelectric Development Corporation, which is a Government of India Undertaking, and the Government of Madhya Pradesh under which a joint venture company was set up for completing and managing the dams and power-houses of Indira Sagar and Omkareshwar Multipurpose Projects, it was clearly stipulated that the work of R&R of the oustees of the two Projects would be the joint responsibility of the joint venture company and the State of Madhya Pradesh and pursuant to the said MOU, the respondent No. 2 Company was incorporated and registered as a joint venture Company and Clause 64 of the Articles of Association of the respondent No. 2 Company stipulates that the work of R&R of oustees of the two Projects would be the joint responsibility of the respondents 1 and 2. She argued that the respondents were bound by the terms of the MOU and the Articles of Association to comply with the R&R Policy of 1993.

18. Ms. Palit submitted that the respondents were also bound under Section 5 of the Environment Protection Act, 1986 to comply with the environment clearance and were bound under Section 2 of the Forest Conservation Act, 1980 to comply with the forest clearance and were also bound under Section 29 of the Electricity Supply Act, 1948 to comply with the clearances of the Central Electricity Authority. She submitted that under Article 65 of the Articles of Association of the respondent No. 2 Company, the directives issued by the President of India from time to time were also binding on the respondent No. 2 and, therefore, the respondent No. 2 Company has to follow the conditions stipulated in the different directions of the Government of India in the Ministry of Forest and Environment, Planning Commission and the Central Electricity Authority. The Supreme Court in the first Narmada Bachao Andolan case (supra) held that compliance of the conditions under which the statutory approval was given including completion of relief and rehabilitation works and taking of all compensatory measures for environmental protection in compliance of the Scheme framed by the Government will have to be ensured by the Court while giving directions for protecting the rights under Article 21 of the Constitution. She vehemently submitted that since land for land acquired was stipulated in paragraphs 3 and 5 of the R&R Policy of the Government of M.P. formulated in 1993, which received the clearances of the Government of India, Ministry of Welfare, Ministry of Environment and Forests, Planning Commission and the Central Electricity Authority and land for landless agricultural labourers was a condition stipulated in the environment and forest clearances of the Government of India, Ministry of Environment and Forests, this Court should issue directions to the respondents to comply with the said conditions and provide land for land acquired in accordance with paragraphs 3 and 5 of the R&R Policy of the Government of M.P. framed in the year 1993 and the land for landless agricultural labourers in accordance with the clearances of the Ministry of Forest and Environment, Government of India so as to ensure protection of the rights under Art. 21 of the Constitution.

19. Ms. Palit next submitted that land for land acquired was also one of the terms and conditions of the NWDT award. She submitted that although initially the dispute relating to the Narmada waters arose out of the Sardar Sarovar Project located in Gujarat, after the award was made by the NWDT, an agreement was reached between different States so as to cover all the Projects planned in the Narmada Basin and as a consequence the Omkareshwar Multi-purpose Project planned in the Narmada Basin, which was formed to release water as contemplated by the NWDT award for the Sardar Sarovar Project from the upstream river, also came within the purview of the NWDT award

and this would be clear by the notification dated 3rd June, 1997 under Section 6A of the Inter-State Water Disputes Act, 1956 issued by the Ministry of Water Resources. She submitted that it will be clear from the notification dated 3rd June, 1997 that protection of environment and preparation of scheme for the welfare of oustees and other affected persons were to be part of the responsibility of the authority and the authority was to ensure the faithful compliance of the terms and conditions of the NWDT award at the time of clearance of the projects. She argued that by virtue of these developments, the respondents were bound to provide land for land acquired in terms of the NWDT award to the oustees and other project affected persons.

20. Ms. Palit submitted that the stand taken by the respondents in their replies that due to non-availability of fertile agricultural lands, the Government of M.P. changed its policy and as per the revised policy, land was to be given for land acquired only if it was possible to give such land should not be accepted by the Court because the change of policy was by the Government of M.P. without any approval of the Government of India, Ministry of Welfare and Ministry of Environment and Forests. She submitted that in any case, the respondents had indicated in their R&R Plan how and from where the land will be obtained for purposes of offering the same to the displaced families but nothing has been indicated in the replies filed on behalf of the respondents that it was not possible to offer such agricultural land to the displaced families and the landless agricultural labourers. She referred to the documents annexed to the rejoinder of the petitioner Annexure.RJ/17 and Anneure.RJ/18 to show that the State Government, on the other hand, had undertaken to make available huge areas of land required for the Special Economic Zone by acquiring private land under the Land Acquisition Act. She submitted that if big areas of land could be acquired by the State Government for setting up of Special Economic Zones for industries in the State of M.P., refusal to offer agricultural lands to displaced families and landless agricultural labourers for the reason that it was not possible to give such land was patently discriminatory. She placed reliance on the observations of the Supreme Court in *Motilal Padampal Sugar Mills v. State of U.P.* that if the Government wants to resist its liability based on promissory estoppel, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government.

Contention of Respondent No. 2:

21. In reply, Mr. Ravi Shankar Prasad, learned Senior Counsel appearing for the respondent No. 2 submitted that Art. 21 of the Constitution only guarantees that life and personal liberty of a person cannot be taken away except by a procedure established by law and in *Maneka Gandhi v. Union of India and Ors.*, the Supreme Court has held that such procedure established by law contemplated in Art.21 of the Constitution must satisfy the test of Art. 14 of the Constitution and, therefore, must be reasonable. He argued that the right under Article 21 of the Constitution cannot therefore be expanded by Courts to include the right to be given land for land acquired. He submitted that the right to land for land in fact has a flavour of right to property but the right to property is subject to the power of eminent domain of the State and if land is taken for a public purpose by following a reasonable procedure as provided in the Land Acquisition Act, it will not be violative of Art. 21 of the Constitution. In support of this submission, he cited *New Riviera Cooperative Housing Society v.*

Special Land Acquisition Officer in which the Supreme Court has held that if the contention that acquisition of land by the State for public purpose violates Art. 21 of the Constitution is given credence, then no land can be acquired under the Land Acquisition Act, 1894 for any public purpose since in all such cases, owners and all other persons would be deprived of their property. He also relied on the decision in *Chameli Singh v. State of U.P. and Ors.* in which the Supreme Court has similarly held that in every acquisition of land which is compulsory in nature, the owner may be deprived of land, the means of his livelihood, but the State exercises its power of eminent domain for public purpose and so long as the exercise of the power is for the public purpose, the individual's rights as the owner of the land must yield place to a larger public purpose and a plea of deprivation of right to livelihood under Art. 21 of the Constitution in such cases is unsustainable.

22. Mr. Prasad next submitted that the right guaranteed under Art. 21 of the Constitution has to be balanced by the resources available with the State. He submitted relying on the averments in paragraphs 36 to 41 of the reply filed on behalf of the respondent No. 2 that because of scarcity of fertile land in the State, the Government of M.P. had to amend its R&R policy from time to time. In this context, he submitted that in and around the Narmada Basin area, 10% of the Government land called 'Charnoi' had been kept reserved for cattle grazing in every village but by order dated 4th March, 1998 of the Government of M.P., the Charnoi land in each village was reduced to 5% of the total land in the village and this percentage was reduced to 2% by order dated 19th September, 2000. He submitted that Charnoi land thus available was further reduced for providing land to S.C. and S.T. in the form of pattas and this resulted in non-availability of fertile land in the State. He further submitted that initially the State Government considered setting up of 'land banks' for generating availability of fertile land but since most of the land was either unfertile or encroached/encumbered, the State Government had no option but to revise its R&R Policy and provide therein that lands will be made available lands for the displaced persons on 'as far as possible' basis. He submitted that in the revised R&R Policy, it was stipulated that land was to be given to the Project oustees only if it was possible to allot land, otherwise not. He further submitted that under the revised R&R policy, Special Rehabilitation Grant (for short 'SRG') was allowed to oustees whose lands were acquired and as a consequence, the oustees whose lands were acquired were provided with large amount of cash compensation as SRG. He argued that the various packages under the revised R&R policy of the State Government given to the oustees had made them better off and the contention of the petitioner that the oustees have been reduced to paupers and the rights of the oustees under Art. 21 of the Constitution have been violated is not correct.

23. Mr. Prasad cited the Division Bench judgment of this Court in *Narmada Bachao Andolan v. Narmada Hydro-Electric Development Corporation and Ors.* 2006 (3) M.P.J.R. 218 delivered in the case of Indira Sagar Project in which it has been held in paragraph 79 that the R&R policy of the State Government was rational and reasonable and has been made keeping in view the interest of the weak and marginal sections of the oustees and did not offend or play foul with Arts. 14 and 21 of the Constitution of India. He also relied on the decision in *State of Punjab and Ors. v. Ram Lubhaya Bagga and Ors.* in which the new policy of the State of Punjab relating to reimbursement of medical expenses of its employees was challenged as being violative of Art. 21 of the Constitution, but the Supreme Court held that the right of the State to change its policy from time to time in changing circumstances cannot be challenged. He submitted that in *Balco Employees' Union (Regd) v. Union*

of India and Ors. , the Supreme Court has further held that it is neither within the domain of the Courts nor within the scope of judicial review to embark upon an enquiry whether a particular public policy is wise, or whether a better public policy can be evolved and the Courts would not be inclined to strike down a policy at the behest of the petitioner merely because it has been urged that another policy would have been fairer or wiser or more scientific or more logical.

24. Mr. Prasad next submitted that under Art. 162 of the Constitution, the executive powers of the State extends to the matters with respect to which the Legislature of the State has power to make law and the State Legislature has power to make law in respect of irrigation and water power projects and rights in and over land under Entries 17 and 18 of List-II of Seventh Schedule to the Constitution read with Art. 246 of the Constitution and therefore R&R for families displaced on account of an intra-state irrigation and water power project including offer of land for land acquired are within the exclusive powers of the State Government and the State Government need not consult the Union Government if it wants to lay down a R&R policy or make changes in such R&R policy. He submitted that in *Kesawanand Bharati and Ors. v. State of Kerala* , C.J., S.M. Sikri has taken a view that federal character of the Constitution is one of the basic features of the Constitution which cannot be destroyed by a constitutional amendment. He submitted that this being the position of law, the Government of India, Ministry of Environment and Forests, while granting environmental and forest clearances, cannot encroach upon the executive powers of the State to formulate its own policy of R&R or change its policy of R&R. He also relied on the observations of Sabharwal, J, as he then was, in *ITC Limited v. Agricultural Produce Market Committee and Ors.* that while maintaining Parliamentary supremacy, one cannot give a go-bye to the federalism which has been held to be a basic feature of the Constitution in *S.R. Bommai v. Union of India* .

25. Mr. Prasad next submitted that from the Statement of Objects and Reasons as well as the provisions of the Environment Protection Act 1986, in particular Sections 7 to 13 of the said Act, it will be clear that the Act intends to ensure that environment is free from pollution. In support of this contention, he cited the decisions of the Supreme Court in *Virender Gaur and Ors. v. State of Haryana and Ors.* and in *T.N. Godavarman Thirumalpad v. Union of India and Ors.* . He argued that any direction issued by the Central Government in exercise of its powers under Section 5 of the Environment Protection Act, 1986 thus will have to be confined to only such directions as will ensure that the environment is free from pollution and such directions cannot include a stipulation that land should be offered to displaced families from whom land has been acquired or that land should be offered to landless agricultural labourers. He submitted that in any case, environmental clearances of the Omkareshwar Dam Project which were granted were not under any statutory rule and were administrative in nature. He cited the observations of Kripal, J. in the first Narmada Bachao Andolan case (supra) that environmental clearances granted in 1993 were administrative in nature. He argued that the Court therefore cannot issue a mandamus to enforce a purely administrative decision of the Government of India, Ministry of Environment and Forests for providing land to displaced families whose land has been acquired and to landless agricultural labourers.

26. Mr. Prasad finally submitted that in *N.D. Jayal v. Union of India (Tehri Dam case)* (supra), the Supreme Court has held that it is for the Government to decide how to do its job of execution of a

project and when it has put a system in place for execution of a project and such a system cannot be said to be arbitrary, then the only role which the Court has to play is to ensure that the system works in the manner it was envisaged. He submitted that in the aforesaid case the Supreme Court also observed that Courts are not well equipped to adjudicate on a policy decision and that the duty of the Courts is only to see that while taking a decision, no law is violated and people's fundamental rights as guaranteed under the Constitution are not transgressed upon except to the extent permissible under the Constitution. He also referred to the observations of the Supreme Court in this case that if the Government authorities after due consideration of all view points and full application of mind take a decision, then it is not appropriate for the Court to sit in judgment and interfere in such matters, which should be left to the matured wisdom of the Government or its executive. He submitted that in this decision, the Supreme Court also observed that the adherence to sustainable development principle is a sine qua non for maintenance of symbiotic balance with the right to environment and development and to ensure such development is one of the goals of the Environment Protection Act, 1986 and this is quite necessary to guarantee right to life under Art. 21 of the Constitution. He submitted that in the aforesaid case, the Supreme Court also considered the contention that all major sons should be given 2 Ha. of land as minimum, but the contention was not accepted by the Supreme Court because it was thought that on account of scarcity of land it may not be feasible to provide land to every family. He submitted that the contention of the petitioner therefore that land should be offered to displaced families from whom land has been acquired and to landless agricultural labourers even when there is scarcity of land in the State of M.P. should be rejected outright by the Court.

27. Mr. R.N. Singh, learned Advocate General, appearing for respondent No. 1, adopted the arguments of Mr. Prasad and further submitted that as per the plan, the Omkareshwar Dam is to generate 520 MW of Power and a balance has to be struck between the power requirements of the State and the interests of the outstees. He submitted that it will be clear from Clauses (ix), (x) and (xi) of the NWDT award that the directions therein with regard to rehabilitation do not apply to the displaced families of the Omkareshwar Multipurpose Project but only apply to the displaced families of Sardar Sarovar Project and therefore the provisions made in subclause iv(7) of Clause XI for allotment of the agricultural land do not apply to the displaced families of the Omkareshwar Dam Project. He submitted that nonetheless the policy of the State of Madhya Pradesh is to properly rehabilitate and resettle the displaced families of the Narmada River Project located in the State of Madhya Pradesh. Relying on the averments in the reply filed on behalf of the State of Madhya Pradesh, he submitted that the Government of Madhya Pradesh has amended the R&R Policy of Omkareshwar as originally framed in the year 1993 to offer better, liberal and more suitable R&R packages to the displaced families which has resulted in improving their quality of life. He submitted that the Government of Madhya Pradesh had to amend the R&R Policy on the basis of experience at the ground level and the intention of the Government was to make the R&R Policy more friendly for the displaced families so that they can start their life afresh. He submitted that the Narmada Valley Development Authority, Government of Madhya Pradesh, in its meeting held on 27.4.2002 took the decision to allot land "as far as possible" to the oustees and accordingly introduced the changes in Clauses 3.2(a), (b) and (c) of the R&R Policy of the Government of Madhya Pradesh of the Narmada Valley Project as it would be clear from a copy of the minutes of the meeting annexed to the reply of the respondents to the additional rejoinder as Annexure AR-22. He submitted that it will be clear

from the minutes of the aforesaid meeting of the Narmada Valley Development Authority that this change of policy has been made for allotting land as far as possible because there were no cultivating lands available in the villages and it was not possible for the Government to arrange sufficient agriculture land for allotment to the displaced families.

28. Relying on the reply of the respondents to the additional rejoinder, Mr. Singh further submitted that only 14 outstees opted for land before receiving compensation but by the time their applications for land reached the concerned Land Acquisition Officer/Rehabilitation Officer, the 14 outstees had accepted cash compensation and this shows the unwillingness of the outstees for opting land for land. He submitted that the 14 outstees have perhaps accepted the cash compensation because they realised the hardship of repaying a long term loan under paragraph 5 of the Rehabilitation Policy. He further submitted that besides these 14 outstees, 551 outstees applied for land after receiving compensation. He referred to copies of some of the applications filed by such outstees annexed to the reply of the respondents to the additional rejoinder as Annexure AR/25 to show that these applications were filed in June-July, 2007 much after the applicants received their compensation for land.

29. Regarding landless agricultural labourers, Mr. Singh submitted that they have been paid Rs.18,700/-as rehabilitation grant, Rs.49,300/-for creating employment and assets, Rs.20,000/-for purchasing of plot, Rs.5,000/-for transportation of belongings. He submitted that landless agricultural labourers thus were placed better off than they were before their displacement and were happy in their new place of settlement. He further submitted that since the displaced persons are still purchasing land, at this juncture, it would be early to say that the majority of them were unable to purchase land. Referring to the statements annexed to the reply of the respondents to the additional rejoinder as Annexure AR/24, he submitted that till date 376 outstees have purchased land worth Rs.9.39 crores after availing exemption from stamp duty and therefore the contention of the petitioner that the outstees are not able to purchase land out of the amounts granted to them is not correct.

30. Mr. Singh further submitted that a notification was issued under Section 10 of the Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punahsthan) Adhiniyam, 1985 (for short 'Adhiniyam, 1985') for Indira Sagar Project for the purpose of acquiring agricultural land for resettlement of displaced families of the Indira Sagar Project, but the Government faced a lot of difficulties in enforcing the provisions of the Adhiniyam, 1985 and considering these practical difficulties, the notification issued for the Indira Sagar Project was revoked and no notification was issued under Section 10 of the Adhiniyam, 1985 for the Omkareshwar Multipurpose Project. He submitted that Section 17 of the Adhiniyam provides for acquisition of land by the State Government for the purpose of resettlement of the displaced families, but acquisition of land thereunder would have resulted in causing lot of hardship to the persons whose land is acquired. He cited the observations of the Supreme Court in *Gramin Sewa Sanstha v. State of M.P. and Ors.* 1986 (Supp) SCC 578 that if in order to resettle one set of displaced persons, the State Government would have to displace another set of persons, the remedy might be worse than the disease. He also relied on the decision of the Supreme Court in the first Narmada Bachao Andolan's case (supra) for the proposition that the only role which the court has to play is to ensure that the system devised by the

Government works in a manner as envisaged and that the Court in exercise of its power will not go beyond its jurisdiction into the field of policy decision. He submitted that this is therefore not a fit case in which the court should entertain the contention of the petitioner at this belated stage that the displaced families and the landless agriculturists have not been offered land as per the original R&R Policy of the Government of Madhya Pradesh and as per the conditions stipulated in the different clearances of the Government of India and its agencies.

Findings & Conclusions:

31. In the first Narmada Bachao Andolan case, *N.D. Jayal v. Union of India* and the second Narmada Bachao Andolan case (*supra*), the Supreme Court has held that so long as the displaced persons are rehabilitated and resettled in such a manner that they are in a better position to lead a decent life and earn their livelihood in the rehabilitated location, their fundamental right guaranteed under Article 21 of the Constitution would not be violated by construction of a dam. Rehabilitation and resettlement of the displaced persons being part of the fundamental right of the displaced persons guaranteed under Article 21 of the Constitution are thus constitutional obligations of the State. Rehabilitation and resettlement of displaced persons are not powers of the State Government under Article 162 of the Constitution read with entries 17 & 18 of List II in the Seventh Schedule of the Constitution read with Article 246 of the Constitution as contended by Mr. Prasad. Accordingly, if construction of dam is undertaken by the State Government exclusively as an Intra-State river project within its powers under Article 162 of the Constitution read with entries 17 of List II in the Seventh Schedule of the Constitution, the State Government has to rehabilitate and resettle the persons displaced on account of the construction of a dam in such a manner as to place them in a better position to lead a decent life as part of its constitutional duty under Article 21 of the Constitution. But if a construction of a dam is to be undertaken jointly by the State Government and Central Government or through their agencies, then the State Government, the Central Government or such agencies of the Central Government and the State Government will have to discharge the constitutional obligation under Article 21 and ensure rehabilitation and resettlement of the persons displaced on account of the construction of dam so that they lead a better life in the rehabilitated locations.

32. The requirement of Article 21 of the Constitution, as has been held by the Supreme Court in the first Narmada Bachao Andolan case, *N.D. Jayal v. Union of India* and the second Narmada Bachao Andolan case (*supra*) is that the displaced persons must be rehabilitated and resettled in such a manner that they are better off than what they were before their displacement and they enjoy more and better amenities than those they enjoyed before their displacement and it is for the Government or the agency constructing a dam to consider all relevant aspects including its resources and decide how exactly the displaced persons will be rehabilitated and resettled so as to lead a decent and better life at the new locations. As has been held by the Supreme Court in *N.D. Jayal v. Union of India* (*supra*), if there is scarcity of agricultural land, the Government may not offer land to the displaced families and the landless agricultural labourers in its R&R Policy. For example, the Government or the agency may provide employment to a displaced person or it may provide sufficient capital for self-employment of the displaced person and may not offer allotment of agricultural land to the displaced persons for their rehabilitation. But if the Government or the agency undertaking the

construction of a dam after considering all relevant aspects assures in its R&R policy that it will offer agricultural land to displaced persons with a view to ensure that they continue to earn their livelihood from agriculture, but later on does not offer such agricultural land as promised in the R&R Policy to the displaced persons and as a consequence their right under Article 21 of the Constitution is violated, it will be the duty of the Court to enforce the R&R Policy and ensure allotment of such agricultural land to the displaced persons because the Government or the agency had itself decided to fulfill its constitutional obligation under Article 21 of the Constitution by offering agricultural land to the displaced persons to enable them to continue their occupation of agriculture as a means of their livelihood.

33. In *Maneka Gandhi v. Union of India and Ors.* (supra) cited by Mr. Prasad, the question whether construction of a dam without rehabilitation and resettlement of persons displaced on account of the construction of the dam would violate Article 21 of the Constitution was not an issue and the Supreme Court was only called upon to decide whether the procedure for impounding a passport of a person was reasonable and satisfied the tests of Article 14 and 21 of the Constitution. This decision therefore has no application to the facts of the present case.

34. In *New Riviera Cooperative Housing Society v. Special Land Acquisition Officer* (supra) on which Mr. Prasad placed reliance, several flats of the New Riviera Cooperative Housing Society, Bombay were notified for acquisition for public purpose. A contention was raised that the acquisition was violative of Article 21 of the Constitution inasmuch as it deprived the owner of the flat the right to shelter, but the Supreme Court held that if this contention is accepted then no land can be acquired under the Land Acquisition Act, 1894 for any public purpose. In this case again, the Supreme Court was not deciding the effects of displacement of a large number of tribals and other persons on account of construction of dam on their right to livelihood under Article 21 of the Constitution. In this case, moreover there was no policy of the Government for allotment of agricultural land to displaced persons from whom land was acquired for the purpose of the dam.

35. Similarly, in *Chameli Singh and Ors. v. State of U.P. and Anr.* (supra), land to the extent of 5 bighas, 6 biswas and 14 biswas in Village Bairam Nagar, Pargana Nahtaur, Tahsil Dhampur, District Bijnore were notified for acquisition for providing houses to Scheduled Castes and the acquisition was challenged on the inter alia ground that it is violative of the right to livelihood under Article 21 of the Constitution of the owner of the land, but the Supreme Court repelled the challenge holding that the State exercises its power of eminent domain for public purpose and acquires the land and so long as the exercise of power is for public purpose, the individual's right as an owner must yield place to the larger public purpose. In this case again, the Supreme Court was not confronted with a case where a big population including tribals and Scheduled Castes dependent on agriculture were being displaced on account of construction of a dam nor was there any R&R Policy of the Government assuring that agricultural land will be allotted to them to mitigate the hardships of displacement.

36. In *Gramin Sewa Sanstha v. State of M.P. and Ors.* (supra) cited by Mr. R.N. Singh, the Supreme Court did observe that if to resettle one set of displaced persons the State Government would be displacing another set of persons, the remedy would be worse than the disease, but the Supreme

Court also directed the State Government to consider whether the cultivable land at any other place or places are available for the tribals who are displaced on account of the Hasdeo Bango Dam Project. The Supreme Court observed:

The State Government will also bear in mind the problem of rehabilitation and resettlement of tribals' communities settled in the land which is sought to be acquired for the project and it is therefore necessary that the provision for re-settlement which is made for them must be a provision which does not affect their homogeneity or communal life. There are guidelines for re-settlement and rehabilitation of tribals which have been laid down in various reports and particularly in the report of the World Bank in regard to the dams which are being constructed in Gujarat and those guidelines may serve as useful indicators for the purpose of considering what provisions can be made for re-settlement and rehabilitation of the tribals who would be displaced on account of the present project.

37. The Division Bench Judgement of this Court in *Narmada Bachao Andolan v. Narmada Hydro-Electric Development Corporation and Ors.* (supra) cited by Mr. Prasad, has dealt with different issues relating to rehabilitation of the displaced persons of the Indira Sagar Dam, but in this case we are concerned with rehabilitation of the persons displaced by the construction of the Omkareshwar Dam. Moreover, the contentions and issues raised in this writ petition are substantially different from those raised in the aforesaid case relating to the Indira Sagar Dam.

38. Coming now to the facts of the present case, the Omkareshwar Multipurpose Project was to be constructed out of the resources of the State Government as well as the resources of the Central Government and the Narmada Hydro-Electric Development Corporation which is an agency of the Central Government and the State Government. Hence, both the State Government and the Central Government were under a constitutional obligation under Article 21 of the Constitution to work out a R&R Policy for rehabilitation and resettlement of the displaced persons of the Omkareshwar Multipurpose Project which would ensure that the persons displaced by the Project were better off after their displacement and were not deprived of their very livelihood by the project. As has been observed by Beg, C.J. in *State of Rajasthan and Ors. v. Union of India and Ors.* :

In our country national planning involves disbursements of vast amounts of money collected as taxes from citizens residing in all the States and placed at the disposal of the Central Government for the benefits of the States without even the "conditional grants" mentioned above. Hence, the manner in which State Governments function and deal with sums placed at their disposal by the Union Government or how they carry on the general administration may also be matters of considerable concern to the Union Government.

Thus, the contention of Mr. Prasad that R&R Policy was within the exclusive domain of the State Government of Madhya Pradesh is misconceived.

39. The R&R Policy and R&R plan were accordingly prepared in the year 1993 by the State Government of Madhya Pradesh and approved by the Government of India, Ministry of Welfare by letter dated 8th October, 1993. Paragraph 3 of the R&R Policy provided for allotment of agricultural

land. Sub-para 3.2(a) stipulated that every displaced family from whom more than 25 percent of land holding is acquired in revenue villages or forest villages shall be entitled to and be allotted land to the extent of land acquired from them. Sub-para 3.2(b) further stipulated that 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, but where more than 2 ha. of land is acquired from a family, it will be allotted equal land subject to a ceiling of 8 ha. Sub-para 3.2(c) further provided that the Government will assist displaced families in providing irrigation by well/tubewell or any other method on the land already irrigated and in case the allotted land cannot be irrigated, the displaced family would be allotted a minimum of 4 ha. of land instead of 2 ha. provided in Sub-para 3.2(b). Sub-para 3.3 further provided that encroachers whether on revenue land or forest land will also be entitled for agricultural land and where the area of land acquired from an encroacher was upto 1 ha. he will be entitled to 1 ha. area of land and where acquisition of land from an encroacher is more than 1 ha., he will be entitled to 2 ha. of land.

40. Some changes to paragraph 3 of the R&R Policy of 1993 were made in the year 2002. On 27.4.2002, the Narmada Valley Development Authority, Government of Madhya Pradesh took a decision to make the provisions of the Policy more realistic and provided in Sub-paragraphs 3.2(a), 3.2(b) and 3.2(c) that the land would be allotted "as far as possible". This change introduced in 2002 did not require a fresh approval from the Government of India and its agencies because under law the respondents were not liable to perform an impossibility even without this change of Policy. In re. Presidential Election, 1974 AIR 1974 SC 1682, Ray, C.J. has discussed this maxim of law thus:

The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit adimpossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability of perform the mandatory part of the law that *impotentia excusat*. The law does not compel one to do that which one cannot possibly perform. "Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.

41. This change introduced in the R&R Policy of 1993 on 27.4.2002 by the Narmada Valley Development Authority of Government of Madhya Pradesh in any case did not absolve the respondents from allotting agricultural land to the displaced families and the encroachers as stipulated in sub-paragraphs 3.2(a), 3.2(b), 3.2(c) and 3.3. All that the change meant was that so far as it was possible, the respondent would allot agricultural land in terms of subparagraphs 3.2(a), 3.2(b) and 3.2(c) of the Policy, but if it was not possible for the State Government to allot agricultural land to the displaced families it need not allot such agricultural land. As a matter of fact, in para 4 of the minutes of the meeting of the Narmada Valley Development Authority held on 27.4.2002, it is stated that where Government lands are available, they will certainly be allotted to the outstees, but where such lands are not available, there the oustees should be encouraged to purchase agricultural lands in the villages of their choice on their own and in this they will be appropriately assisted.

42. The real question to be decided is whether it was not possible for the State Government to allot agricultural land to the displaced families in accordance with Paragraph 3 of the R&R Policy of 1993

as amended on 27.4.2002. In the para 2 of the R&R Plan of the Government of Madhya Pradesh extracted above prepared in the year 1993, it has been assessed that a total of 2,508.14 ha. of agricultural land would be required for allotment to the displaced families as per the R&R Policy of 1993 and such land was proposed to be acquired from big cultivators holding 4 ha. of land in the command area of the project under Section 11(4) of the M.P. Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Act, 1985 and it was also proposed that to ensure a better integration of the oustees with the local population, land acquisition through consent awards will also be encouraged and purchase committee will be constituted to give a better deal to all concerned. It was further stated in para 2 of the R&R Plan of the Government of M.P. that agricultural land measuring 2,508.14 ha. for the oustee families was indeed so modest that it should pose no problem to make arrangements for these in the neighbouring villages/command areas of the project. But these proposals in para 2 of the R&R Plan prepared in the year 1993 have not been executed by the Government of M.P. and the plea taken by the respondents in their replies filed in this case is that notification issued under Section 10 of the M.P. Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Act, 1985 in respect of the Indira Sagar Dam had to be revoked after difficulties were faced on the ground level to enforce the provisions of the 1985 Act. No material has been placed by the respondents to show that efforts were made to locate any other Government land for allotment to the displaced families and the encroachers as promised in paragraph 3 of the R&R Policy of 1993 as amended in 2002. All that is stated in the replies of the respondents is that after the Government passed the order dated 4th March, 1998, the Charnoi land which had been kept reserved for cattle grazing was reduced from 10% to 5% in every village and again after Government passed the order dated 19th September, 2000 Charnoi land was further reduced to 2%. The reduction of Charnoi land from 10% to 2% by Government orders dated 4th March, 1998 and 19th September, 2000 is Government's own doing and cannot be accepted by a Court as an impossibility on the part of the Government to make available agricultural land for allotment to the displaced families and the encroachers in accordance with the R&R Policy of 1993 as amended in 2002. As has been noted by Ray, C.J., In re. Presidential Election, 1974, the party pleading impossibility must be disabled from performing a legal duty without any fault in him and has no remedy over it. The respondents have not placed any material to show that any effort was at all made to locate private land which could be purchased for allotment to the displaced families and the encroachers in accordance with the para 3.2(b) of the R&R Policy of 1993 as amended in 2002. On the other hand, it appears from the documents annexed along with the rejoinder of the petitioner as Annexure RJ/17 and RJ/18 that the State Government has made available huge areas of land required for the Special Economic Zone by acquiring private land under the Land Acquisition Act, 1894 for setting up industries in the State of Madhya Pradesh. As a matter of fact, as per the survey conducted by the petitioner, 11% of the displaced families were able to purchase private agricultural land. This goes to show that if not Government land, private land was available for sale to the displaced families and the encroachers and yet the respondents have not made any efforts to even assist displaced families and the encroachers to purchase private agricultural land in terms of para 3 of the R&R Policy of 1993 as amended in the year 2002. On the pleadings and materials filed before us therefore we are unable to accept the stand of the respondents that on account of scarcity of cultivable land in the State it was impossible on the part of the State Government to comply with paragraph 3 of the R&R Policy of 1993 as amended in the year 2002.

43. We cannot also accept the stand of the respondents that the oustees have all accepted the full compensation for acquisition of land which would go to show that they were not really interested for allotment of agricultural land in their favour and that if they were really keen for allotment of agricultural land they would have accepted only 50% of the amount of compensation for the acquired land and submitted an application to obtain land in lieu of the acquired land and allowed 50% of the amount to be retained as initial instalment towards the payment of the cost of the land to be allotted to them in accordance with sub-para 5.1 of the R&R Policy of the State of Madhya Pradesh as formulated in the year 1993. It appears from the return filed by the respondents that admittedly 14 oustees opted for land before receiving compensation and yet they were paid the cash compensation for the acquired land later on. This only establishes that cash compensation for the acquired land was paid to the oustees by depositing the same in their accounts irrespective of whether they wanted land in lieu of the land acquired. Before crediting the accounts of the oustees with the full compensation for the land acquired from them, the authorities ought to have inquired from the oustees who were rural agriculturists whether they would opt for allotment of agricultural land in lieu of land acquired from them and if the oustees opted for allotment of land only 50% of the compensation for the land ought to have been credited in the accounts of the oustees and the balance retained towards the cost of the land. It is also difficult to believe that the oustees perhaps accepted the cash compensation and did not opt for allotment of agricultural land in lieu of the land acquired from them because of the stipulation in sub-para 5.2 of the R&R Policy of 1993 that the balance cost of the allotted land was to be treated as interest-free loan and the proportionate area of land was to be mortgaged to the Government for the amount of the loan. It was for the oustees to exercise the option for allotment of agricultural land in lieu of a land acquired from them after considering all the terms and conditions of allotment as stipulated in para 5 of the R&R Policy of 1993 and it is not for the respondents to make their own guesses that the oustees were perhaps not interested in allotment of land in lieu of the land acquired from them. Moreover, we find from sub-para 5.1 of the R&R Policy of 1993 that if any oustee family belongs to Scheduled Tribes submitted an application that he would have no claim for allotment of land in lieu of the acquired land, it was essential to obtain the orders of the Collector who after necessary enquiry was to certify that this will not adversely affect the interests of the oustee family and such an application of the Scheduled Tribes oustee family was to be accepted only after such a certification by the Collector. Sub-para 5.4 of the R&R Policy of 1993 further provides that grant-in-aid would be paid to cover the gap between the amount of compensation and the cost of allotment of land in those cases where the cost of allotted land is more than the amount of compensation and such a grant was payable to all displaced land owning Scheduled Castes and Scheduled Tribes families and other families losing up to 2 ha. of land. We find that in a hot-haste to somehow complete the rehabilitation process and start the power project of the Omkareshwar Dam, these provisions for grants to SC/ST families and other families have been withheld contrary to assurances in the R&R Policy of 1993 on the plea that none of the oustee families were interested in allotment of agricultural land and were more keen on the taking the full compensation for the agricultural land.

44. In any case, the plea taken by the respondents that by accepting the full compensation for acquisition of land, the oustees cannot thereafter ask for allotment of agricultural land in lieu of land acquired from them in accordance with the R&R Policy of 1993 as amended in 2002 is a plea based on estoppel or waiver. As we have held, once the Government of Madhya Pradesh framed the R&R

Policy with the approval of the Ministry of Social Welfare and Justice to offer agricultural land to displaced families with a view to ensure that they continue to earn their livelihood from agriculture, it was the constitutional obligation of the Government to offer agricultural land to the displaced persons in accordance with the policy and correspondingly the oustees had a fundamental right to claim allotment of agricultural land in lieu of the land acquired from them in accordance with such R&R Policy of the Government and such a claim based on fundamental right cannot be defeated by plea of estoppel or waiver taken by the respondents. In *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.* , a preliminary objection was raised on behalf of the Bombay Municipal Corporation that the pavement dwellers had conceded before the High Court that they did not claim any fundamental right to put up huts on pavements or public roads and had given an undertaking to the High Court that they will not obstruct the demolition of the huts after 15th October, 1985, and therefore they were estopped from contending before the Supreme Court that the huts constructed by them on the pavements cannot be demolished because of their right to livelihood guaranteed under Article 21 of the Constitution but the Supreme Court relying on its earlier decision *Bheshwar Nath v. Commissioner of Income-tax, Delhi* rejected the preliminary objection and held that there can be no estoppel against the Constitution and that the principle of estoppel can have no application to representations made regarding assertion or enforcement of fundamental rights.

45. We cannot also accept the contention of Mr. R.N. Singh, learned Advocate General that we should not entertain the contention of the petitioner at this belated stage that the displaced families have not been offered land as per the original R&R Policy of the Government of Madhya Pradesh. Although the R&R Policy was framed as far back in the year 1993, it was to be implemented at least six months before completion of the dam. The construction of Omkareshwar Dam was over in October 2006 and it was only in March, 2007 that the Narmada Valley Development Authority permitted the respondents to close the gates of the dam and cause submergence of the land of the project affected families and the petitioner filed the writ petition promptly on 30.3.2007 making a grievance inter alia that the agricultural land has not been allotted to the project affected families in accordance with para 3 of the R&R Policy of 1993 but yet the gates of the dam were going to be closed so as to cause submergence of the existing agricultural land of the project affected families as a consequence of which they would not be able to cultivate their existing land and earn their livelihood. The Supreme Court has held in *Ramchandra Shankar Deodhar and Ors. v. State of Maharashtra and Ors.* , that the Court which has been assigned the role of a sentinel on the qui vive for protection of fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like. Moreover, this is not a case where on account of the delay, if any, in filing the writ petition third party rights have been created or parties have altered their position. All that has happened is that Government has paid full amount of compensation instead of paying 50% of the compensation to the project affected families in their efforts to expeditiously complete the rehabilitation process and start the power project. Such excess compensation can be refunded or adjusted by appropriate directions of the Court and the reliefs claimed in the petition can be moulded accordingly. In a recent decision of the Supreme Court in *Bombay Dyeing & Manufacturing Company Ltd. v. Bombay Environmental Action Group and Ors.* , the Supreme Court has held that delay although may be the sole ground for dismissing the public interest litigation in some cases, each case must be considered having regard to its facts and circumstances and keeping in view the magnitude of the public interest, the Court may consider the

desirability of relaxing the rigours of the accepted norms. In the present case, since the fundamental right of the oustees under Article 21 of the Constitution are at stake, we do not think that we should dismiss this writ petition espousing the claim of the displaced families for allotment of agricultural land as per the R&R Policy of the Government on the ground of delay and laches.

46. Mr. Prasad and Mr. Singh, Learned Counsel for the respondents, however, are right in their submission that the rehabilitation measures including allotment for agricultural land to the displaced persons of the Omkareshwar Dam Project were not part of the NWDT award. In Clause XI of the final orders of the NWDT, directions were given by the NWDT regarding submergence, land acquisition and rehabilitation of displaced persons. Sub-clause II of Clause XI deals with lands which were to be compulsorily acquired and provides for land to be acquired by Madhya Pradesh and Maharashtra for the Sardar Sarovar Project. Sub-clause IV of Clause XI deals with provisions for rehabilitation and it provides for rehabilitation of 6147 oustee families spread over 158 villages in Madhya Pradesh as a consequence of the Sardar Sarovar Project. Sub-clause IV(7) of Clause XI which provides for allotment of agricultural land to displaced families is quoted herein under:

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, the irrigation facilities being provided by the State in whose territory the allotted land is situated. This land shall be transferred to the oustee family if it agrees to take it. The price charged for it would be as mutually agreed between Gujarat and the concerned State. Of the price to be paid for the land a sum equal to 50% of the compensation payable to the oustee family for the land acquired from it will be set off as an initial instalment of payment. The balance cost of the allotted land shall be recovered from the allottee in 20 yearly instalments free of interest. Where land is allotted in Madhya Pradesh or Maharashtra, Gujarat having paid for it vide Clause IV(6)(i) supra, all recoveries for the allotted land shall be credited to Gujarat.

Thus, the price charged for the land was to be mutually agreed between Gujarat and the concerned States (Madhya Pradesh or Maharashtra) and where the land was allotted in Madhya Pradesh or Maharashtra and Gujarat has paid for it, all recoveries for the allotted land was to be credited to Gujarat. This is because the submergence of the land and acquisition of the land were for the Sardar Sarovar Project in which Gujarat was interested. Thus all the aforesaid directions in the NWDT Award were in relation to the Sardar Sarovar Project and were not applicable to displaced families affected by the acquisition of land for the Omkareshwar Project.

47. We shall now deal with the contention of Mr. Prasad and Mr. Singh, Learned Counsel for the respondents that sufficient cash compensation has been paid to the oustees in addition to the other amenities provided to them for residence, transportation etc. which have put them in a position in which they are better off than what they were prior to their displacement. In paragraph 42 of the reply filed by the respondent No. 2, it is stated that initially compensation paid to the displaced families under the Land Acquisition Act were determined on the basis of "lagan" for land acquisition but thereafter the administration came up with the Special Rehabilitation Grant (for short 'the SRG') to ensure that the land holders of very poor quality of land got enough compensation to buy equal

amount of land of "average quality" and such SRG amounting to Rs.1,561.41 lacs has been disbursed to the Omkareshwar oustees and the whole objective of SRG was to ensure that the displaced persons of the Omkareshwar Dam Project are in a position to buy land of the same or better quality regardless of the quality of their land acquired. We are of the considered opinion that SRG disbursed to the oustees cannot absolve the respondents from allotting agricultural land to the displaced families under paragraph 3 of the R&R Policy of 1993 as amended in 2002. SRG paid to the displaced families appears to have been only a measure adopted by the administration to ensure that every displaced family got adequate monetary compensation for the land acquired from it and to enable it to pay for the costs the land, Government or private, allotted to it for carrying on agricultural operations. As has been very fairly admitted by Mr. Prasad and Mr. Singh, Learned Counsel for the respondents, SRG was not a substitute for para 3 of the R&R Policy of 1993 as amended in the year 2002 for allotment of agricultural land to the displaced persons. Para 3 of the R&R Policy of 1993 as amended in 2002 provided for allotment of agricultural land to the displaced persons as far as possible and this part of the policy was not replaced by SRG by any amendment of the R&R Policy.

48. We now come to the question whether landless agricultural labourers are also entitled to allotment of agricultural land. Admittedly, the R&R Policy as amended of the Government of Madhya Pradesh and as approved by the Ministry of Welfare for Omkareshwar Multipurpose Project of the Government of Madhya Pradesh, does not provide for allotment of agricultural land to landless agricultural labourers. Instead, it provides for a grant of Rs.49,300/-for purchase of productive employment creating assets for the purposes of livelihood after displacement and further provides that special efforts will be made for effective rehabilitation of the families of the landless agricultural labourers and adequate arrangements will be made by the Narmada Valley Development Authority for the upgradation of existing skills or imparting of new skills so as to promote full occupational rehabilitation and also provides that suitable provisions will be incorporated in the tender documents of the Local Competitive Bidding (LCB) and other forms to ensure the employment of displaced persons in the project works. The contention of petitioner is that although the R&R Policy for Omkareshwar Multipurpose Project does not contain a provision for allotment of agricultural land to the agricultural landless labourers, Clause 7 of the Office Memorandum dated 13th October, 1993 of the Ministry of Environment and Forest, Government of India stipulates that the rehabilitation programme should be extended to landless labourers by identifying and allocating suitable land and similarly condition No. 5 of the letter dated 31st August, 2004 of the Government of India, Ministry of Environment and Forest granting forest clearance under Section 2 of the Forest Conservation Act, 1980 provides that the project affected persons should be rehabilitated by allotment of non-forest land.

49 Condition No. 5 in the letter dated 31st August, 2005 of the Government of India, Ministry of Environment and Forest permitting diversion of 5,829.85 ha. of forest land for the Omkareshwar Multipurpose Project is quoted herein below:

5. No forest land shall be utilised for rehabilitation of project affected persons. Displaced people shall be resettled by the State Government immediately on non- forest lands as per the Resettlement and Rehabilitation Plan to avoid any kind of encroachments on forest lands.

It will be clear from the condition No. 5 of the letter dated 31st August, 2004 that it only says that no forest land should be utilised for rehabilitation of project affected persons and that the displaced people should be resettled by the State immediately on non-forest land as per the Resettlement and Rehabilitation Plan to avoid any kind of encroachments on forest land. This condition meant that rehabilitation and resettlement of the displaced people should be in accordance with the R&R Policy and Plan of the Government and the State Government should ensure that no forest land is utilised for rehabilitation and resettlement of displaced persons as per the R&R Policy of the Government. We cannot therefore hold that the condition No. 5 of the letter dated 31.8.2004 of the Ministry of Environment and Forests granting forest clearance for diversion of forest land for the Omkareshwar Project stipulates that land will also be allotted to the landless agricultural labourers even though the R&R Policy did not provide for such allotment of agricultural land to the landless agricultural labourers.

50. Clause (vii) of the Office Memorandum dated 13th October, 1993 of the Ministry of Environment and Forest, Government of India which accorded environmental clearance to the Omkareshwar Multipurpose Project is quoted herein below:

(vii) The Rehabilitation Programme should be extended to landless labourers and the people affected due to canal by identifying and allocating suitable land as permissible. A time bound programme should be submitted by December, 1993.

The aforesaid clause stipulates that rehabilitation programme should be extended to landless labourers and people affected due to canal by identifying and allocating suitable land as permissible. The words "as permissible" clearly indicates that if allotment of suitable land to landless labourers was permissible under the law, the rules or the policy of the Government, such land should be allotted to the landless labourers and people affected due to the canal, otherwise not. Thus, the consideration and entitlement to allotment of land to landless labourers would be as per the law, the rules or the policy of the Government and not by virtue of the stipulation in condition No. 5 in the Office Memorandum dated 13th October, 1993. Except referring to the definitions of 'landless person' and 'uneconomic holding' in the M.P. Land Revenue Code, 1959, the petitioner has not been able to show any provision of law or rule or policy of the Government under which agricultural landless labourers are entitled to allotment of land. Hence, we cannot hold while deciding this writ petition that agricultural landless labourers would be entitled to allotment of agricultural land.

51. We have already held that it is for the Government to lay down a policy of R&R to ensure that the oustees or project affected families are placed in a better position than what they were and that their fundamental right to livelihood is not violated. The State Government after considering all relevant facts including the resources of the State has decided that instead of allotting land to landless agricultural labourers it will give a grant of Rs.49,300/-to purchase productive employment creating assets besides providing other amenities and it will also upgrade their existing skills and impart new skill in them so as to promote full occupational rehabilitation and it will also make suitable provisions in the tender documents of Local Competitive Bidding in other forms to ensure the employment of the displaced persons in the project works. Agricultural landless labourers, it is true, were also dependent on agriculture for their livelihood, but on the submergence and acquisition of

agricultural land on which they were working, they may or may not get employment in the agricultural land and hence the State Government appears to have adopted a policy of R&R under which they are paid Rs.49,300/-to buy some productive employment creating asset and of teaching them new skills to ensure their occupational rehabilitation so as to ensure that their fundamental right under Article 21 is not violated and it is not for the Court to interfere with such a policy decision of the State Government and to direct the respondent No. 1 to allot agricultural land to landless agricultural labourers.

52. Our conclusion therefore is that displaced families and encroachers are entitled to allotment of agricultural land in terms of para 3 of the R&R Policy of 1993 as amended in the year 2002 and are thus entitled to a writ/direction to the respondent No. 1 to make all possible efforts to locate Government land or the private land and allot such Government land or private land to the displaced families and encroachers if they opt for the same and refund 50% of the compensation amount received by them to be retained towards the instalment of price of the land and if they also agree to the other terms stipulated in para 5 of the R&R Policy of 1993. Our further conclusion is that agricultural landless labourers are not entitled to allotment of agricultural land by virtue of the forest and environmental clearances given by the Ministry of Environment and Forests and hence no writ/direction can be issued to the respondents in this writ petition for such allotment of agricultural land. It will however be open for such landless agricultural labourers to apply for such allotment of agricultural land under any law, rule or policy of the Government other than the R&R Policy of 1993 as amended in the year 2002.

ALLOTMENT OF AGRICULTURAL LAND FOR ADULT SON AS A SEPARATE FAMILY.

Contention of the petitioner:

53. Ms. Palit, appearing for the petitioner, submitted that in subparagraph 1.1(b) of R&R Policy of 1993, the definition of 'displaced family' is as follows:

1.1(b) Displaced Family:

(i) A family composed of displaced persons as defined above shall mean and include husband, wife and minor children and other persons dependent on the head of the family....

(ii) 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.

She submitted that it is very clear from the definition of 'displaced family' that a son who has become a major on or before the date of notification under Section 4 of the Land Acquisition Act has to be treated as a separate family and accordingly the family of every major son will be treated as displaced family and would be entitled to the benefits of the R&R Policy including allotment of agricultural land. She submitted that in the second Narmada Bachao Andolan case(supra), the Supreme Court interpreting similar provisions in the NWDT award held that once a 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. She submitted that a major son of a landholder who did not possess land separately would therefore be entitled to grant of separate land in accordance with para 3 of the R&R Policy of 1993. Contention of the respondent No. 1

54. The contention of the respondent No. 1 in its reply is that the provision in the R&R Policy is that agricultural land would be allotted to those displaced families from whom more than 25% land would be acquired and thus when no land is acquired from major sons they are not entitled to allotment of agricultural land and they are to be treated as landless families and are entitled to benefits that are being given to landless families. Findings and conclusion:

55. It is clear from the definition of displaced family given in sub-para 1.1(b) of the R&R Policy of 1993 that it will compose of and includes husband, wife and minor children and other persons dependent on the head of the family and it will not include a son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act. Para 3.2 of the R&R Policy of 1993 states that every displaced family from whom more than 25% of its land is acquired in revenue villages or forest villages shall be entitled to the extent of land acquired from it subject to the provisions of para 3.2 and shall be allotted such land as far as possible. There is no separate definition of displaced family given in para 3 of the R&R Policy of 1993. Hence, the same definition as has been given in sub para 1.1(b) of the R&R Policy of 1993 would be applicable to para 3 of the R&R Policy and the 'displaced family' in para 3.2 will include husband, wife, minor children and other persons dependent on the head of the family and every son who has become a major on or before the date of notification under Section 4 of the Land Acquisition Act but who was part of the larger land owning family from whom land was acquired will have to be treated as separate displaced family from whom land is acquired under the Land Acquisition Act. While calculating however the extent of landholding of a displaced family for the purposes of determining the area of land to be allotted to the displaced family, the share of the displaced family without the major son may only be taken. Similarly, while calculating the extent of land to be allotted to the separated family of such major son, the share of the major son in the land may be taken into consideration

56. In the second Narmada Bachao Andolan case (supra), one of the points for consideration was whether adult sons were entitled to 2 ha. of land as per the NWDT award and the Supreme Court held as under:

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 landholder did not possess land separately, he would be entitled to grant of a separate holding.

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 is his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive 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.

It will be clear that the Supreme Court found in the aforesaid case that the definition of "family" clearly shows that even where a major did not possess separate land he would be entitled to grant a separate holding. In the NWDT award, 'family' was defined to include husband, wife and minor children and other persons dependent on the head of the family and every major son was to be treated as a separate family. Similar definition of 'displaced family' has been adopted in para 1.1(b) of the R&R Policy of 1993 for the Omkareshwar Multipurpose Project and hence we hold that every adult son and his family who was part of the bigger family from whom land was acquired would be entitled to allotment of agricultural land in accordance with para 3 and 5 of the R&R Policy of 1993 for the Omkareshwar Dam Project.

DENIAL OF OTHER ENTITLEMENTS AS PER THE R&R POLICY OF 1993 TO THE OUSTEES Contention of the petitioner

57. Ms. Palit appearing for the petitioner submitted that sub-para 1.1 (a) of the R&R Policy of 1993 states that any person who is ordinarily residing or carrying on any trade or vocation for his livelihood for atleast one year before the date of publication of notification under Section 4 of the Land Acquisition Act or has been cultivating the land atleast three years before such notification is issued in an area which is likely to come under submergence, whether temporary or permanent, or is otherwise required for the Project, is a project affected family and under sub-paragraphs 6.1, 6.3, 7.1 and 7.2, these project affected families are entitled to rehabilitation grant, transportation assistance, house plots, house construction assistance or grant in aid, but the respondents have arbitrarily left out all those who are going to lose their land and their adult sons and daughters from the family list and they have been denied their R&R entitlements. She further submitted that similarly there are many families who have been denied their grant-in-aid under sub-paragraph 7.2 of the R&R Policy. She submitted that the respondents have also left out persons who possess BPL status before the displacement from the list of beneficiaries. She submitted that although the R&R policy of 1993 provides for an appeal against the decision of the Rehabilitation Officer to the Collector and also Grievance Redressal Authority (for short 'the GRA'), the Appellate Authority and the GRA are not at all effective and have not been ensuring that the oustees get their entitlements as per the R&R Policy of 1993.

Contention of the respondents

58. Mr. R.N. Singh, learned Advocate General for the State of M.P., on the other hand, submitted that it is not correct that the various entitlements under the R&R Policy have not been given to the oustees as contended by the petitioner. He submitted that in any case these grievances can be brought before the Appellate Authority or the GRA. Conclusion:

59. Whether the oustees have been given their entitlements as per the R&R Policy of 1993 as amended from time to time, involve determination of disputed questions of fact. That apart, grievances of individual oustees have to be considered separately on the peculiar facts as applicable to the oustees. It is only after the GRA takes a decision in this regard that the oustees or the petitioner on their behalf may approach this Court for appropriate direction under Art. 226 of the Constitution if the oustee still feels aggrieved. In paragraph 67 of the decision in the second Narbada

Bachao Andolan case (supra), the Supreme Court has held:

67. Several contentions involving factual dispute had, we may notice, not been raised before GRA, GRA had been constituted with a purpose, namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. GRA being headed by a former Chief Justice of the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extraordinary situation emerges.

UNTIL THE REHABILITATION IS COMPLETE, SUBMERGENCE CANNOT BE ALLOWED BY THE COURT Contention of the petitioner

60. Ms. Palit appearing for the petitioner further submitted that the Environment Management Plan of 1993 for the Omkareshwar Dam Project envisaged that R&R would be completed one year before submergence. She further submitted that the Apex Court has also held in *B.D. Sharma v. Union of India and Ors.* (supra) that rehabilitation should be complete atleast six months before the area is likely to be submerged. She submitted that similarly in *N.D. Jayal v. Union of India* (supra), the Supreme Court has held that rehabilitation should take place six months before submergence. She submitted that since the entitlements of the oustees under the R&R Policy of 1993 including allotment of agricultural land have not been given, the Court should not allow any submergence at all until the rehabilitation measures are complete and a notification in that regard is issued by the authorities after being satisfied that the rehabilitation measures are complete.

61. Mr. Prasad and Mr. Singh, appearing for the respondents, on the other hand, submitted that the Supreme Court has in the first Narmada Bachao Andolan case (supra) observed that while issuing directions and disposing of the case the Court will have to keep in mind the completion of the Project at the earliest.

CONCLUSIONS

62. We find that in the *B.D. Sharma v. Union of India and Ors.* (supra), the Supreme Court observed in paragraph 7 of the order as reported in the S.C.C. that rehabilitation should be so done that atleast six months before the area is allowed to be submerged the rehabilitation is complete. Thereafter, in the first Narmada Bachao Andolan case (supra), Kripal, J., as his Lordship then was, observed in paragraph 254 as reported in the S.C.C.:

254. While issuing directions and disposing of this case, two conditions have to be kept in mind, (i) the completion of the project at the earliest, and (ii) ensuring compliance with the conditions on which clearance of the project was given including completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection in compliance with the scheme framed by the Government thereby protecting the rights under Article 21 of the Constitution....

Again in *N.D. Jayal v. Union of India* (supra), Rajendra Babu, J. as his Lordship then was, observed:

60. ...The overarching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted. And none of them should be allowed to wait for rehabilitation. Rehabilitation should take place before six months of submergence. Such a time-limit was fixed by this Court in *B.D. Sharma v. Union of India* and this was reiterated in *Narmada*. This prior rehabilitation will create a sense of confidence among the oustees and they will be in a better position to start their life by acclimatizing themselves with the new environment.

63. The law is thus settled that submergence cannot take place until rehabilitation of the oustees is complete as otherwise their fundamental right under Article 21 of the Constitution would be affected and their trust and confidence on the authorities will be shaken but at the same time the Court must ensure early completion of project. We have taken a view that the displaced families and encroachers are entitled to allotment of agricultural land as per para 3 of the R&R Policy of 1993 as amended in 2002 and the State Government has not placed materials before the Court to show that it was not possible for the State Government to offer Government or private land to such displaced families and encroachers. The petitioner has also contended before us that other entitlements as per R&R Policy of 1993 have not been given to the oustees as yet. Following the law laid down by the Supreme Court, we hold that till rehabilitation is complete, no further submergence can be allowed of the remaining 25 villages. Regarding the five villages already submerged, the submergence took place after the orders were passed by the Apex Court on 11th June, 2007 in SLP (Civil) No. 10368 of 2007 and we do not think it will be proper for us to direct the respondents to restore status-quo ante for the five villages. Reliefs:

64. In the result, we dispose of this writ petition with the following declarations and directions:

(i) The displaced families and encroachers are entitled to allotment of agricultural land as far as possible in terms of paragraphs 3 and 5 of the R&R Policy of 1993 as amended in 2002, and we accordingly direct the respondent No. 1 to locate Government land or private land and allot such land as far as possible, to the displaced families and encroachers, if they opt for such land and refund 50% of the compensation amount received by them to be retained towards the instalments of price of land and if they also agree to other terms stipulated in paragraph 5 of the R&R Policy of 1993.

(ii) Landless labourers are not entitled to allotment of agricultural land under the R&R Policy of 1993 and the conditions of the forest and environment clearances given by the Ministry of Environment and Forests and hence, no writ/direction is issued to the respondents to allot such agricultural land in their favour but it will be open for them to apply under any law, rule or policy of the Government for allotment of land as landless persons.

(iii) A 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 displaced family, if he was part of a bigger family from whom land was acquired and would be entitled to allotment of agricultural land as far as possible in

accordance with paragraphs 3 and 5 of the R&R Policy of 1993, as amended in 2002 and we accordingly direct the respondent No. 1 to locate Government land or private land and allot such land as far as possible to such major sons if they opt for such land and also agree to the terms stipulated in paragraph 5 of the R&R Policy of 1993 but the extent of land to be allotted to them will be determined on the basis of their share in the land before acquisition as observed in this judgment.

(iv) Any oustee who has a grievance that he has not been given his entitlement as per the R&R Policy of 1993, as amended from time to time and as per the observations in this judgment, may lodge a grievance directly with the GRA by 31st March, 2008 and the GRA will look into all pending grievances and such new grievances which may be filed by 31st March 2008 and will ensure that all grievances are redressed by 14th June, 2008 and will submit a report in this Court by 14th June, 2008 and the matter will be listed before the Court on 17th June, 2008.

(v) On such a report being filed by the GRA and on the Court being satisfied that rehabilitation is complete, appropriate directions will be given for allowing submergence of the remaining 25 villages.

The writ petition is allowed with cost of Rs.10,000/-to be paid by the respondents to the petitioner within a month from today.