

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO. 2279 OF 2015
IN WRIT PETITION NO.5304 OF 2015

(Central India Power Company Ltd. and another vs. State of Maharashtra and others)

WITH WRIT PETITION NO.6181 OF 2012

(Central India Power Co. Ltd. vs. Union of India and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

C.A. NO. 2279 OF 2015 IN W. P. NO.5304 OF 2015

Shri S.P. Dharmadhikari, Senior Advocate with Shri C.S. Samudra, Advocate for applicant/respondent no.4.

Shri S. Dewani, Advocate and Shri D.V. Chauhan, Advocate for petitioners.

Smt. K.S. Joshi, Assistant Government Pleader for respondent nos.1 and 3.

Shri M.M. Agnihotri, Advocate for respondent no.2.

W.P. NO. 6181 OF 2012

Shri D.V. Chauhan, Advocate for petitioner.

Shri S.C. Mehadia, Advocate for respondent nos.2 and 3.

Shri M.M. Agnihotri, Advocate for respondent no.4.

Smt. K.S. Joshi, Assistant Government Pleader for respondent nos.7 and 8.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : APRIL 28, 2016

By Civil Application No.2279/2015 in
Writ Petition No.5304/2014 applicant/respondent
no.4 M/s. Western Coalfields Limited seeks vacation
of interim order dated 16/9/2015 by pointing out that

35.49 hectares of land consisting of 23 plots/surveys from village Telwasa, Tahsil Bhadravati, District Chandrapur are needed by it for the purpose of mining of coal.

By order dated 16/9/2015, we have noted that though petitioners claimed not to be in possession of lands, for the lands sought to be returned to farmers, compensation was already paid. Therefore, in writ petition, relief is sought against respondent no.2 not to return those lands to farmers.

On 16/9/2015 after noticing this contention, we had directed parties to maintain status quo.

The parties to the petition are State of Maharashtra, Maharashtra Industrial Development Corporation and Collector, Chandrapur. The applicant Western Coalfields Ltd. has been added as respondent no.4 as per our order dated 2/12/2015 and Union of India has been added as respondent no.5 consequent to order dated 18/1/2016.

The land is to be allotted by respondent no.2 to petitioners to enable them to construct a Thermal Power Station upon it. There are several factual disputes between petitioners on one hand and respondent no.2 on the other hand. While deciding application moved by respondent no.4 Western

Coalfields Ltd., it is not necessary for this Court to look into those disputes.

After hearing respective Counsel, on 6/4/2016, we had passed an order to enable parties to explain to the Court impact of withdrawal of 35 hectares of coal bearing land from the offer of allotment to petitioners. Accordingly, respective parties have filed their affidavits.

The applicant Western Coalfields Ltd. has placed on record a map pointing out that portion needed by it is located at one corner of the entire land, which is offered to the petitioners. Senior Adv. Dharmadhikari with Adv. Samudra submits that thus withdrawal of that land from offer of allotment does not prejudice the project of petitioners in any way. He states that Maharashtra Industrial Development Corporation has got other land in the vicinity and if grievance of the petitioners is accepted, equal land adjacent to land claimed by the petitioners can be allotted by Maharashtra Industrial Development Corporation to them.

Adv. Agnihotri appearing for respondent no.2 MIDC submits that compensation to farmers has been paid by respondent no.2 only. The petitioners have paid certain amount to farmers, but that is in lieu of their entitlement to claim service.

Adv. Dewani for petitioners states that petitioners have paid some amount to respondent no.2 and compensation has been paid to farmers out of that amount.

There is a dispute between parties in relation to these facts. However, we do not find it necessary to resolve that dispute. Prayer in the petition is to quash and set aside the decision to return land back to farmers.

The petitioners have filed their submissions to explain the effect of withdrawal of land. A rough draft showing location of actual plant with three chimneys has been placed on record. On northern side of those chimneys, three rectangles are shown and it is stated that Generators are to be placed at that place. It is explained that looking to place of plant and placement of chimneys, location of Generators is ideal and cannot be changed.

Facts show that land is still not in possession of petitioners. As such, it is only a proposal, which has been placed before this Court.

We have specifically asked petitioners about the expenditure incurred by them and in petition, though certain expenses are pointed out, no amount paid for preparation of any project report or then any plan as such has been pointed out.

In any case, the land is claimed to possess coal and is, therefore, being claimed by the Western Coalfields Ltd. We, therefore, find that at this stage, petitioners are not in a position to point out any prejudice to be caused to them if land is allowed to be withdrawn from the offer of allotment and is given to Western Coalfields Ltd. It is apparent that as and when dispute is looked into on merits and petitioners are found entitled to any land before commencement of actual project work, additional land can be made available to them by respondent no.2.

It needs to be noted that present petitioners have also filed Writ Petition No.6181/2012 and in that petition, there is challenge to cancellation of letter of assurance issued by respondent no.3 Western Coalfields Ltd. in that matter after its meeting dated 2/5/2012. The decision to cancel linkage is sought to be justified by Western Coalfields Ltd. by pointing out inability of petitioners to achieve necessary milestone. The petitioners are disputing this. However, it is apparent that unless and until that petition is decided and linkage is restored, perhaps the project may not come up.

In this situation, we allow Civil Application No.2279/2015 and vacate interim order dated 16/9/2015 to enable respondent no.2 MIDC to

hand over possession of 35.49 hectares of land mentioned in prayer clause (A) thereof to applicant Western Coalfields Ltd.

At this stage, Adv. Dewani on behalf of petitioners seeks continuation of status quo as granted on 16/9/2015 for a period of four weeks more so as to enable petitioners to approach Hon'ble Apex Court.

The request is being strongly opposed by Senior Adv. Dharmadhikari for applicant.

However, considering the fact that the interim order is in force since 16/9/2015, we continue it for a period of four weeks. This direction shall cease to operate automatically thereafter.

List Writ Petition No.5304/2015 and Writ Petition No.6181/2012 for further consideration/admission before appropriate Bench after Summer Vacation.

JUDGE

JUDGE

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