

ITEM NO.305

COURT NO.6

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) NOS. 270-284/2013
IN
C.A. NOS. 2083-2097/2011

NARMADA BACHAO ANDOLAN

PETITIONER(S)

VERSUS

RAJNISH VAISH & ANR RESPONDENT(S)
[WITH APPLN.(S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND
OFFICE REPORT]
WITH
CONMT.PET.(C) NO. 315-316/2013 IN CIVIL APPEAL NOS.2115-2116 OF
2011
(WITH APPLN.(S) FOR DIRECTIONS AND FOR PERMISSION TO FILE
ADDITIONAL DOCUMENTS)

Date : 16/08/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. Sanjay Parikh, Adv.
Ms. Ninni Susan Thomas, Adv.
Mr. Gaurav Agarwal, Adv.

Mr. Sanjay Parikh, Adv.
Ms. Sumita Hazarika, Adv.

For Respondent(s) Mr. P.S. Patwalia, ASG
Mr. C. D. Singh, Adv.
Ms. Sakshi Kakkar, Adv.
Ms. Natasha Archit, Adv.

Ms. Suparna Srivastava, Adv.
Mr. Ram Swarup Sharma, Adv.

Signature Not Verified

Digitally signed by
VINOD LAKHINA
Date: 2016.08.17
17:16:38 IST
Reason:

UPON hearing the counsel the Court made the following
O R D E R

CONTEMPT PETITION (CIVIL) NO. 270-284 OF 2013 IN C.A.
NO.2083-2097 OF 2011

The contempt petitions are disposed of in terms of
the signed order.

List the contempt petitions after four weeks.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONMT.PET.(C) NOS. 270-284/2013
IN
C.A. NOS. 2083-2097/2011

NARMADA BACHAO ANDOLAN

...PETITIONER

VERSUS

RAJNISH VAISH & ANR.

...RESPONDENTS

ORDER

1. Heard the learned counsels for the parties.

2. The present contempt petitions allege willful disobedience of the respondents in respect of the directions of this Court in its judgment and order dated 11th May, 2011 passed in Civil Appeal Nos.2083-97 of 2011 - State of Madhya Pradesh versus Narmada Bachao Andolan and

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another [(2011) 7 SCC 639].

3. To understand the grievance raised in the present Contempt Petitions, paragraphs 127 and 132 of the order of this Court in Narmada Bachao Andolan and another

(supra) may be reproduced herein below:

127. S/Shri R.S. Prasad and P.S. Patwalia, learned senior counsel appearing on behalf of the appellants, have submitted that the High Court has committed an error by directing the rehabilitation of the occupants of the land in dispute in the said 5 villages, recording a wrong finding; that as the possession of the land had been taken by the government the acquisition proceedings cannot be reversed. The land stood vested in the State; the land in dispute would stand submerged actually and, therefore, withdrawal of the acquisition proceedings was not permissible, though the land acquisition proceedings had not been completed and

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the actual physical possession of the land in dispute has not been taken. The persons/tenure holders interested are still in possession of their respective lands. Therefore, the appellants have a right, not to acquire the land. Entries in the revenue records after mutation do not confer any title or interest in the property. The land in dispute would not be submerged even temporarily unless the flood situation occurs on back water level. Therefore, the authorities had taken a decision on 2.4.2009 to abandon the land acquisition proceedings. The land in dispute would be waterlocked unless the height of the road is enhanced. However, considering the cost of rehabilitation as very high, the authorities have taken a decision to raise the level of the road to the extent that no part of the land in dispute would ever be submerged or waterlocked and people residing there or occupying the land would have access to the said land. Therefore, the appeals deserve to be allowed and the

impugned order of the High Court is liable to be set aside.

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132. Therefore, the case of the State had been that the land in dispute measuring 284.03 hectares would not be submerged temporarily or permanently, rather it may at the most become in-accessible at the time of the highest flood situation exceptionally and in case the level of the road is raised, it may work as an embankment and this land would not be submerged. Thus, on this premise, the authorities thought it proper to abandon the acquisition proceedings."

4. It is on the basis of the above contents recorded in the said judgment (as underlined by us) that the petitioner in the present contempt petitions alleges that the respondents have failed to carry out their obligation of raising the height of the road to the requisite level so as to prevent submergence in the five villages in question, namely, (1) Dharadi, (2) Nayapura, (3) Guwadi, (4) Kothmir, and (5)

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Narsinghpura in the State of Madhya Pradesh which were involved in the writ petition in question.

5. The petitioner has further stated that apart from constructing five/six bridges and raising the level of the road in the immediate vicinity of the said bridges nothing further has been done in pursuance of the judgment of this Court in

Narmada Bachao Andolan and another (supra) resulting in heavy submergence of the villages in the year 2012-2013 leading to a large-scale destruction of crops.

6. The issue involved in Narmada Bachao Andolan and another (supra) was the correctness of the Government's action in releasing the land measuring 284.03 ha covered by the five villages from the

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process of acquisition on the ground that the construction of the Omkareshwar Dam would not lead to submergence of the said villages and, therefore, to avoid wastage of public money it would not necessary to go for the acquisition of the land.

7. To determine the issue, the Court had to constitute two fact-finding Committees to determine the question of possession of the land and also the level and extent of submergence. The first fact finding enquiry was conducted by the jurisdictional District Judge who came up with a report stating that the landowners had continued to remain in possession. On the basis of the said report, the Court, therefore, understood that there would be no legal impediment to the process of deacquiring the land as undertaken by the

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State Government. Insofar as the level of submergence of the five villages in

question is concerned, a report from the Central Water Commission (CWC) was called for and the details of the said report was exhaustively considered by this Court and has been extracted in paragraph 170 of the judgment in Narmada Bachao Andolan and another (supra) which is reproduced herein below:

170. In view of the serious controversy raised in these appeals, this Court vide order dated 24.2.2011, requested CWC to make a local inspection and submit its report as to whether the land measuring 284.03 hectares in these 5 villages, would be submerged temporarily or permanently or merely water locked. In pursuance of the aforesaid order, CWC after having spot inspection submitted its report dated 22.3.2011. The relevant part thereof reads as under:

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(i) Village Kothmir-

"115.53 hectare area (under reference) of this village falls between FRL and BWL. This will come under temporary submergence when water level exceeds FRL (196.60 m)."

(ii) Village Narsinghpura-

"Out of the total 21.58 hectare area (under reference) of this village, 19.30 hectare falls between FRL and BWL and will come under temporary submergence when water level is between FRL (196.60 m) and BWL."

(iii) Village Dharadi-

"The 103.09 hectare area of the village (under reference) falls between FRL and BWL, which will come under temporary submergence when the water level exceeds FRL (196.60m)."

(iv) Village Nayapura-

"The 33.83 hectare land (under reference) of the

village falls between FRL and
BWL which will come under
temporary submergence when
water level exceeds FRL
(196.60 m)."

(v) Village Guwadi-
"The 10.00 hectare land

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(under reference) of village
falls between FRL and BWL,
which will come under
temporary submergence when
water level exceeds FRL
(196.60m)."

(vi) Conclusion of the
Committee: Out of the total
land - subject matter of
dispute ad-measuring 284.03
hectare in the aforesaid five
villages, 281.75 hectare
falls between FRL and BWL,
which will come under
temporary submergence due to
back water effect. The
remaining 2.28 hectare area
will not come under
submergence due to back water
levels when water levels are
up to BWL."

8. Thereafter this Court in paragraph
178 proceeded to consider its earlier
decision rendered in Narmada Bachao Andolan
vs. Union of India [(2005) 4 SCC 32] and
came to the following findings:

179. If we read the above
referred to provisions of the

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R&R Policy, findings in NWDT
Award, project report
prepared by CWC in March 1997
and observations made in
Narmada Bachao Andolan - 2
(supra) [(2005) 4 SCC 32] and
analyse it properly, the
following picture emerges:

(i) In case the
land/dwelling unit of the
tenure holder is submerged
temporarily, he is entitled

for the benefit of R&R Policy;

(ii) In case of temporary submergence of the agricultural land between FLR and MWL and those affected by the back water affect resulting from MWL, only the buildings with their appurtenant land would be acquired. But the agricultural land is not to be acquired; and

(iii) In case, the dwelling units are acquired because of temporary submergence, such persons shall be entitled for the benefits under R&R Policy."

9. Thereafter in paragraph 182, this Court recorded its opinion that the

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agricultural land of the five villages is no longer required to be kept under acquisition as the possibility of submergence is minimal and even in such a situation the period of submergence may be very short. Besides, such submergence is also beneficial to agriculture as the land gets enriched and becomes more fertile.

10. Finally, in paragraph 185 this Court took the view that the decision of the State to abandon the land from acquisition in exercise of power under Section 48 of the Land Acquisition Act, 1894 would be justified except that 167 dwelling units on the said land needs to be acquired and the inhabitants rehabilitated as per the R&R policy in force. However,

in paragraph 185 of the judgment in Narmada Bachao Andolan and another (supra), the

following observation has also been recorded by this Court.

"The State shall establish the roads, etc. after raising the height of the bandh as proposed by the authorities."

11. Reading the judgment of this Court in Narmada Bachao Andolan and another (supra) in its entirety and taking into account the report of the CWC, the findings of the Court as recorded in paragraph 179 and the conclusions as recorded in paragraph 182, we cannot subscribe to the view that in terms of the said order there was an obligation on the part of the State to raise the level of the road to an extent that the same would act as a Bandh to prevent any kind of submergence of the five villages in question. What was, at best, expressed by the Court is that access to the extent possible should be provided to

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the five villages as the land of the said five villages may remain under water even though for a limited period. It was specifically noted by this Court that such submergence for short periods is, in fact, beneficial to agriculture. We, therefore, cannot accept the contention made on behalf of the contempt petitioner that under the Court's order in Narmada Bachao Andolan and another (supra) any obligation was cast on the respondent to raise the height of the road so as to erect a Bandh to keep the

five villages free from submergence at all times. At best, what was expressed is the necessity of providing access to the villagers to their lands which provision the State is even otherwise duty bound to make and provide. The perceived violation

on the part of the respondents to raise the level of the road, therefore, cannot make

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them liable in contempt. We, therefore, do not entertain the present contempt petitions any further and close the same in terms of the above.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

.....,J.
(A.M. KHANWILKAR)

NEW DELHI
AUGUST 16, 2016.