A MAHANADI COAL FIELDS LTD. & ANR.

v.

MATHIAS ORAM & ORS.

(SLP (Civil) No. 6933 of 2007)

JULY 19, 2010

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[AFTAB ALAM AND DR. B.S. CHAUHAN, JJ.]

Land Acquisition:

C *Acquisition of land in tribal areas – Resolving of socio-economic issues – Need for – Explained – HELD: In the instant case, the lands were taken in acquisition as far back as in the year 1987, but the land-owners were never paid any compensation for their lands – After more than 20 years of* D *acquisition, de notification of lands proposed – It has been stated that even no steps were taken for determining the market value of the lands – At the instance of the Court, the Solicitor General of India framed a scheme through which the whole matter could be resolved and compensation be paid* E *not only to writ petitioners-respondents but to all those whose lands were acquired – The scheme stated to have been agreed to by the Central Government and the company for which the lands were acquired – Counsel for the writ petitioners-respondents has given his express consent to the Scheme – The scheme approved by the Court with certain* F *clarifications and modifications as stated in the order – Coal Bearing Areas (Acquisition and Development) Act, 1957 – ss. 4(1), 7, 9, 11 and 13 – Mines and Mineral (Development & Regulation) Act, 1957 – Indian Forest Act, 1927 – Forest Conservation Act, 1980 – Land Acquisition Act, 1894.*

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Words and Phrases:

'Grss Domestic Product' and 'Human Development Index' in Indian context—Need to maintain a balance—Discussed.

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Constituent Assembly debate dated 25.11.1949— referred to. A

Human Development Report 2009 (published by UNDP)—referred to.

CIVIL APPELLATE JURISDICTION : SLP (CIVIL) No. 6933 of 2007. B

From the Judgment & Order dated 13.11.2006 of the High Court of Orissa in W.P. (C) No. 11463 of 2003.

Mahabeer Singh, Aishwarya Bhati, Rashid Khan, Karan Singh Bhati for the Petitioners. C

Gopal Subramanium, Sol. General, Balaji Subramanian, J.R. Das, S. Mishra, P.P. Nayak for the Respondents.

The order of the Court was delivered by D

ORDER

AFTAB ALAM,J. 1. Speaking in the Constituent Assembly on November 25, 1949 Dr. B.R. Ambedkar, the chief architect of the Constitution of India made one of the most incisive remarks on it: E

> "On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again? This is the second thought that comes to my mind and makes me as anxious as the first... F G
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> ...On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one H

A vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality
B in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy
C which this Assembly has so laboriously built up."

What would have been Dr. Ambedkar's reaction to the facts of this case? This is one of the thoughts in our mind while dealing with the case.

D 2. Since independence India has indeed covered a long way on the path of development and economic growth. It continues to take long strides on that path. But how far have we been able to live down the fears expressed by Dr. Ambedkar about our democratic Constitution? How far have
E we been able to get rid of the contradictions in our life? This case raises these difficult questions.

3. We are anxious that India should develop and grow fast and become strong to take its rightful place in the comity of nations.
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4. Development is reckoned in terms of investments in urban infrastructure, roads and highways, communication, technology, extraction and commercial exploitation of minerals, generation of power, production of steel and other essential
G metals and alloys. Creation of wealth is of utmost importance. Redemption lies in GDP (Gross Domestic product).

5. India does not lack material resources required for development. There are vast treasures of minerals lying buried
H deep inside its earth. But excavation of minerals from the

bosom of the earth and putting them to good industrial and commercial use require lots of initial investment and highly advanced technology. Those too are now available as blessings of globalization. The imperialist's formula of "philanthropy plus five percent" is the accepted norm. Public-Private Partnership (PPP) is the latest mantra. For some reasonable profits, companies and corporations, both Indian and multinational are willing and ready not only to do the mining for us but also to undertake the development of the region by providing schools, hospitals, and many similar amenities and facilities to the local population. Even the public sector undertakings are not lagging far behind in the race.

6. But there is one catch. There is also the involvement of the human factor. Most of the mineral wealth of India is not under uninhabited wasteland. It lies mostly under dense forests and areas inhabited by people who can claim to be the oldest dwellers of this ancient country. Any large scale mining, therefore, needs not only huge investments and application of highly developed technology but also en masse relocation of the people dwelling upon the land that needs to be mined or at any rate getting the land freed from its inhabitants, for whom it may be the only source of sustenance. But then we have the laws to handle such situations. There is the Mines and Minerals (Development & Regulation), Act 1957, the Indian Forest Act, 1927, the Forest Conservation Act, 1980, (in many States) laws restricting and regulating trade in forest produce and above all the Land Acquisition Act, 1894 and its clone the Coal Bearing Areas (Acquisition and Development) Act, 1957 that envisage compulsory acquisition of land by the government for any public purpose on payment of its market value (plus solatium for the compulsory nature of acquisition!) to the land holder. The law is based on the twin sound principles of the eminent domain of the sovereign and the largest good of the largest number.

7. Seen thus, the whole issue of development appears to be so simple, logical and commonsensical. And yet, to millions

A of Indians, development is a dreadful and hateful word that is aimed at denying them even the source of their sustenance. It is cynically said that on the path of 'maldevelopment' almost every step that we take seems to give rise to insurgency and political extremism (which along with terrorism are supposed B to be the three gravest threats to India's integrity and sovereignty).

8. The resistance with which the state's well meaning efforts at development and economic growth are met makes one to think about the reasons for such opposition to the state's C endeavours for development. Why is the state's perception and vision of development at such great odds with the people it purports to develop? And why are their rights so dispensable? Why do India's GDP and HDI (Human Development Index, which is broadly used as measure of life expectancy, adult D literacy and standard of living) present such vastly different pictures? With the GDP of $ 1.16Trillion (for 2008) Indian economy is twelfth largest in US Dollar terms and it is the second fastest growing economy in the world. But according to the Human Development Report 2009 (published by UNDP), E the HDI for India is 0.612 (for 2007) which puts it at the 134th place among 182 countries. India has maintained the same HDI and rank since the previous year, and it continues to be categorized under "Medium Human Development".

F 9. The counter argument goes like this. It is very often the process of development that most starkly confirms the fears expressed by Dr. Ambedkar about our democracy. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a G cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens.

10. This is not to say that the relevant laws are perfect and

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very sympathetic towards the dispossessed. There are various studies that detail the impact of dispossession from their lands on tribal people. It is pointed out that even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively (and that happens rarely!), uncomfortable questions remain. For a people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

11. On many occasions laws are implemented only partially. The scheme of land acquisition often comes with assurances of schools, hospitals, roads, and employment. The initial promises, however, mostly remain illusory. The aims of income restoration and house resettlement prove to be very difficult. Noncompliance with even the basic regulations causes serious health problems for the local population and contamination of soil and water.

12. But there is yet another far worse scenario where even the most basic obligation under the law is not complied with and even the fig leaf of legality is dispensed with.

13. The case in question is a textbook example.

14. But before going into the facts of the case two other things need to be stated. This case comes from Orissa which is one of the seven states where a particularly violent group of political extremists, has been able to gain sufficient strength to pose a threat to Constitutional governance of the state. This group openly defies the democratic system of the country and is committed to overthrow the Constitution by brutal and murderous means. According to news paper reports, in the district of Sundergarh, where the acquired lands are situated, the extremist group looted 550 kilograms of explosives in April 2003 and in August 2009 blew up a railway station.

15. The other fact is that this is not an isolated case. We

A have come across many such cases of land acquisition.

16. Now, to the facts of the case: Mahanadi Coalfields Ltd., the petitioner before this Court, is one of the subsidiaries of Coal India Ltd., the biggest coal producing organisation in the country and one of the 'Navratnas' among India's public sector undertakings. Mahanadi Coalfields Ltd. has filed this SLP against the judgment and order passed by Orissa High Court on November 13, 2006 in Writ Petition (Civil) No.11463 of 2003. By the impugned judgment the High Court directed the Central Government and the petitioner (respondent no.1 before the High Court) to "proceed forthwith in accordance with the provisions of the [Coal Bearing Areas (Acquisition and Development) Act, 1957] to determine the compensation payable to the land owners including the (writ) petitioners and make payment of the compensation as would be determined in accordance with law as expeditiously as possible, preferably within six months from the date of receipt of our order."

17. This order was passed in connection with lands of the writ petitioners (respondents 1 to 27 before this court) and others that were taken in acquisition as far back as in the year 1987.

18. The Central Government issued the preliminary notification under section 4(1) of the Coal Bearing Areas (Acquisition and Development) Act, 1957 Act on February 11, 1987, giving notice of its intention to prospect for coal in Revenue Village Gopalpur, District Sundergarh, Orissa. The notification also covered the lands of the respondents. This was followed by another notification under section 7(1) of the Act on July 27, 1987 giving notice of the Government's intention to acquire the notified lands. Finally, the declaration of acquisition under section 9 of the Act was made by the notification issued on July 10, 1989 as the result of which the notified lands, along with all rights therein, vested absolutely in the Central Government. On March 20, 1993, the Central Government

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issued the notification under section 11 of the Act vesting the acquired land and all rights therein in the petitioner company, retrospectively, with effect from November 17, 1991. It is undeniable that the lands of the writ petitioners (respondents before this court) were covered by the notifications under sections 7, 9 and 11 of the Act. Nevertheless, the writ petitioners, and others whose lands were similarly acquired, were never paid any compensation for their lands. After a futile running from pillar to post for about fourteen years, the writ petitioners knocked the doors of the High court, claiming compensation for their lands. Before the High Court, the relevant facts as noted above, were all admitted. But it seems that the claim of the writ petitioners was over shadowed by the dispute between the coal company and the Central Government. The coal company took the stand that the lands of the writ petitioners, and some other lands, were not required by it and it proposed de-notification of those lands (This, after more than twenty years of acquisition!). On behalf of the Central Government, however, it was stated that the coal company's proposal for de-notification was rejected by order dated September 12, 2006. The High Court then referred to section 13(5) of the Act and pointed out that any person whose land is acquired under section 9 of the Act must be paid compensation after taking into consideration the factors enumerated under that sub-section of section 13. The High Court expressed its concern that the writ petitioners were not paid compensation for their lands taken away from them more than two decades ago and disposed of the writ petition with the direction to both the coal company and the Central Government, as noted above.

19. The Central Government, apparently, did not take much notice of the High Court order but the coal company brought the matter to this court. It seeks to challenge the High Court order on the plea that it has no liability to pay compensation for the lands acquired by the Central Government since they are of no use for the purpose of mining operations nor are they likely to be needed in the near future as per the

A mining plan approved by the Central Government. Apart from this, the petitioner has taken some rather strange pleas. It is pleaded that the acquisition proceedings were still incomplete because no steps were taken for determining the market value of the lands and no compensation was paid to the land holders. B If this is not adding insult to injury we do not know what else is! It is also alleged the lands are not in possession of the coal company and they are still in the possession of the land holders, including the writ petitioners. This last allegation is strongly denied by the writ petitioners.

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20. The SLP remains pending in this Court for the last three years. Now, twenty three years have passed and the writ petitioners remain unpaid of the compensation for their lands. In the meanwhile some of them (respondents 5 and 24) are reported to be dead. It was in these circumstances that on D January 9, 2010 we requested Mr. Gopal Subramanium, the Solicitor General for India, to assist the court on behalf of the Central Government. He immediately realised the gravity of the matter and the deep distress caused to the court by this case. He asked for some time to try to resolve the matter between E the Central Government and the coal company at his own level and to ensure that the land holders whose lands were acquired are paid lawful compensation without any further delay. On the last date (May 13, 2010) he informed this Court that he had been able to make the Central Government and the coal F company agree to a scheme through which the whole matter may be resolved and compensation may be paid not only to the writ petitioners but to all the land holders whose lands were acquired. The scheme proposed by Mr. Subramanium and agreed upon by the Central Government and the Coal G Company is as follows:

"1. The land in Village Gopalpur, District Sundergarh, Orissa stands acquired by the Central Government and ownership is vested with MCL, which will determine and pay compensation to the erstwhile landowners.

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"2. In respect of vast portions of the acquired land (excluding the area where mining activities are being undertaken), actual physical possession was never taken. The State of Orissa and its officers are directed to assist MCL in taking actual physical possession of the acquired land.

"3. Since the matter pertains to an acquisition of 1987 i.e. more than two decades ago, the extent of actual physical possession needs to be re-ascertained, it is necessary that the genuine landowners, amount of compensation payable, status of possession, use to which the land has been put in the last two decades, is discovered. The entire land needs to be surveyed again.

"4. In accordance with the advice of the learned Solicitor General, a Claims Commission needs to be set up with representatives of the Central Government as well as MCL. It is submitted that the Claims Commission will consist of 3 Members:-

(a) A former Judge of the High Court of Orissa (Chairman);

(b) An officer who has held a post/office equivalent to the rank of Secretary to the Government of India;

(c) An officer to be nominated by Chairman, Coal India Ltd.

The Claims Commission will carry out the exercise referred to above and submit a report on the compensation payable and the persons to whom it should be paid, within a period six months.

"5. The above-said report will be submitted to the Central Government, and upon formal approval by the Central Government, MCL will make payment within a further period of two months.

A "6. Some portions of the land have been determined to be unsuitable for the Petitioner having regard to physical features (mining being impossible, area being heavily populated, etc.). The Claims Commission will examine whether possession of such portions has been taken over
B by the Petitioner. It would be open to the Claims Commission to recommend de-notification/release of the said land from acquisition.

"7. In view of the special facts obtaining above, the Central Government may be permitted to de-notify the said
C land from the acquisition as a special case, since the land is not required and possession also was never taken.

"8. Even in the case of the de-notified land, suitable compensation, in appropriate cases, may have to be paid
D to the landowners. The Claims Commission may also give a report on this aspect of the matter.

"9. The learned Solicitor General has opined that such matters of uncertain acquisition or pending compensation
E claims lead to unnecessary social tensions and the Petitioner must act in a spirit of good governance. Upon examination of all the surrounding villages. in the light of the opinion of the learned Solicitor General, for the sake of uniformity as well as fairness, the above exercise would
F be carried out for the following villages as well:

i. Sardega

ii. Jhupurunga

iii. Ratansara
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iv. Tikilipara

v. Siarmal

vi. Tumulia
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vii. Karlikachhar

viii. Kulda

ix. Bankibahal

x. Balinga

xi. Garjanbahal

xii. Bangurkela

xiii. Kiripsira

xiv. Lalma R.F.

"It must be noted that in the case of Sardega and Tikilipara Villages, part-payment has already been made. Further, in the case of Bankibahal and Balinga Villages, full payment has already been made but possession has not been fully taken.

"10. The Petitioner and the Central Government shall assist in the establishment of the Commission including the provision of suitable infrastructure. The honorarium payable to the Commission may be determined by this Hon'ble Court.

"11. This Order is being passed with the agreement of all parties and in the peculiar facts and circumstances of this case. The said order shall not operate as a precedent."

21. The scheme proposed by Mr. Subramanium was shown to Mr. Janaranjan Das, counsel, appearing for the writ petitioners-respondents and he also gave his express consent to it. We, accordingly, approve the scheme but with certain clarifications and modifications as stated below.

22. We nominate Mr. Justice A.K. Parichha, a former

A Judge of the High Court of Orissa as Chairman of the Commission. Mr. Solicitor General in consultation with the Secretary, Ministry of Coal, Government of India, shall nominate an officer who has held a post/office equivalent to the rank of Secretary to the Government of India as one of the members
B of the Commission within two weeks from today. Similarly, the Chairman, Coal India Ltd. shall nominate an officer as the other member of the Commission. Mr. Justice A.K. Parichha, shall be paid honorarium, equal to the monthly salary of a sitting High Court Judge and he shall be entitled to all other facilities as
C available to a sitting judge of the High Court. The officer nominated by Mr. Subramanium/Secretary, Ministry of Coal, Government of India, shall similarly be entitled to honorarium and other facilities available to a serving officer of his rank. All the expenses of the Commission shall be borne by Coal India
D Ltd. The Commission shall prepare its report as envisaged in the scheme, first in respect of the lands in village Gopalpur, District Sundergarh, Orissa, as soon as possible and in any event not later than four months from today. In case the Commission recommends de-notification/release of any portion
E of the lands earlier acquired, it would also determine the rate or the amount of compensation/mesne profit payable to the land holder. The Commission shall submit its report not to the Central Government but to this Court for approval and further directions. Any de-notification/release of the land would be only subject to further orders passed by this Court in light of the
F Commission's report. The Commission may proceed with the survey in relation to the acquired lands in other villages, as suggested in paragraph 9 of the scheme only after submitting its report in respect of village Gopalpur and subject to further orders by this court.

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23. The officers of the State Government and the coal company shall extend full help and cooperation to the Commission in preparing the report and in the discharge of their duties in terms of the scheme.

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24. We record our deep appreciation of Mr. Subramanium for sharing the feelings of the court and for his effort to resolve this matter. We may, however, remind him that his task is not over. It has only begun. A

25. Put up on receipt of the Commission's report. B

R.P. Matter Adjourned.