

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 9th OF AUGUST, 2024

WRIT PETITION No.22621 of 2023

SMT. RACHANA SHRIVASTAVA

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Ashish Shrivastava – Senior Advocate with Shri Vinod Mishra – Advocate for the petitioner.

Shri Pushpendra Yadav – Deputy Solicitor General for the respondents/Union of India.

Shri Swapnil Ganguly – Deputy Advocate General for the respondents/State.

Shri Greeshm Jain – Advocate for respondents No.4 & 5.

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WITH

WRIT PETITION No. 22619 of 2023

HARCHARAN SINGH BHATIA

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Ashish Shrivastava – Senior Advocate with Shri Vinod Mishra – Advocate for the petitioner.

Shri Pushpendra Yadav – Deputy Solicitor General for the respondents/Union of India.

Shri Swapnil Ganguly – Deputy Advocate General for the respondents/State.

Shri Greeshm Jain – Advocate for respondents No.4 & 5.

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WRIT PETITION No. 9906 of 2024

SATVINDER KAUR

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Ashish Shrivastava – Senior Advocate with Shri Vinod Mishra – Advocate for the petitioner.

Shri Pushendra Yadav – Deputy Solicitor General for the respondents/Union of India.

Shri Swapnil Ganguly – Deputy Advocate General for the respondents/State.

Shri Greeshm Jain – Advocate for respondents No.4 & 5.

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WRIT PETITION No. 9907 of 2024

GURJEET SINGH

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Ashish Shrivastava – Senior Advocate with Shri Vinod Mishra – Advocate for the petitioner.

Shri Pushendra Yadav – Deputy Solicitor General for the respondents/Union of India.

Shri Swapnil Ganguly – Deputy Advocate General for the respondents/State.

Shri Greeshm Jain – Advocate for respondents No.4 & 5.

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ORDER

By this common order, **W.P. No.9906/2024, W.P. No.9907/2024, W.P. No.22619/2023 and W.P. No.22621/2023** shall be decided.

2. For the sake of convenience, facts of **W.P. No.22621/2023** shall be considered.

3. This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

- 7.1 Issue a writ in nature of mandamus directing Respondent no.1-5 to acquire the land of the petitioner pursuant to the notification dated 06.09.2022. Annexure P/3.
- 7.2 Issue any other writ, order or direction as this Hon'ble Court deems fit.

4. Since the facts necessary for disposal of present petition are not complicated, therefore the same were summarized by this Court in its order dated 05/03/2024 which reads as under:-

“Dated : 05-03-2024

*Shri Ashish Shrivastava- Senior Advocate with
Shri Ankit Chopra- Advocate for petitioner.*

*Shri Devesh Bhojne- Deputy Solicitor General
for Union of India.*

*Shri Greeshm Jain- Advocate for respondent
No.4.*

It is submitted by counsel for petitioner that earlier by notification dated 04.04.2016 issued under Section 4 of Coal Bearing Areas (Acquisition & Development) Act, 1957, 1367 hectares of land was intended to be acquired. Thereafter, a notification under Section 7 was issued on 03.03.2017 but for the reasons best known to the respondents, final notification under Section 9 of Coal Bearing Areas (Acquisition & Development) Act, 1957 was not issued. Now on 12.09.2020, a fresh notification under Section 4 of Coal Bearing Act has been issued thereby decreasing the area to be acquired. Thereafter, a notification under Section 7 of Coal Bearing Areas (Acquisition & Development) Act, 1957 was issued on 06.09.2022. The area on which the hotel of the petitioner is standing has been excluded.

The petitioner is aggrieved by exclusion of the area on which his hotel is standing. He had also raised an objection and in the meeting it was held that the issue will be taken up at appropriate level but without deciding the objection raised by the petitioner, a final notification under Section 9 of Coal Bearing Areas (Acquisition & Development) Act, 1957 has been issued.

However, during the course of arguments it was fairly conceded by counsel for the petitioner that a long strip of land has been excluded from the subsequent notification on which multiple various properties are also standing.

Under these circumstances, this Court is of considered opinion that the owners of the other properties are necessary parties. because they may support the final notification under Section 9 of Coal Bearing Areas (Acquisition & Development) Act, 1957 or they may oppose the notification as is being done by the petitioner.

Faced with such a situation, the counsel for petitioner prays for and is granted a week's time to file necessary application to implead all the persons whose land has been excluded from the notification issued under Sections 4, 7 and 9 of Coal Bearing Areas (Acquisition & Development) Act, 1957.

List the case **on 21.03.2024.**”

5. Even during the course of arguments, it was submitted by counsel for petitioner that in the year 2017, a draft notification under Sections 4 & 7 of Coal Bearing Areas (Acquisition and Development) Act, 1957 (in short ‘Act, 1957’) was issued and certain lands including lands of the petitioner were proposed to be acquired but the final notification under Section 9 of Act, 1957 was not issued on the ground that with passage of time, it has lapsed. Now the fresh notification was issued on 12/09/2020 under Section 4 of Act, 1957 thereby decreasing the area to

be acquired and the land on which petitioner's building is standing has been excluded. Even in a notification issued on 06/09/2022 under Section 7 of Act, 1957, the lands of the petitioners have not been included. It is submitted that during the pendency of petition, a final notification under Section 9 of Act, 1957 has been issued and the areas belonging to the petitioner have been excluded.

6. Challenging the subsequent acquisition proceedings, it is submitted by counsel for petitioner that respondents have acquired all the lands which are surrounding the land of the petitioner and such acquisition would render the land of the petitioner valueless. Since the land is being acquired for extracting Coal, therefore with passage of time, there is every possibility that the building standing on the land of the petitioner would collapse. Petitioner is also likely to lose the business. It is submitted that petitioner is running a Hotel in which 30-35 people are working. With loss of business, they are also likely to lose their job. It is submitted that the act of the respondents in not acquiring the land of petitioner is violative of Articles 14 & 19 of Constitution of India. Therefore, respondents may be directed to acquire the land of the petitioner also. It is further submitted that as per the earlier notification issued under Sections 4 & 7 of Act, 1957, a satisfaction was recorded by the respondents to the effect that the acquisition of the land of petitioner is necessary for extracting Coal and now respondents cannot take a somersault to exclude the lands of the petitioner from acquisition.

7. *Per contra*, petition is vehemently opposed by counsel for the respondents. It is submitted by counsel for the respondents that the acquisition is always based on the report submitted by the expert body

like CMPDIL. The notification under Section 4 of Act, 1957 was a preliminary notification expressing the intention to prospect for Coal in any area. The process of acquisition of land is based on the feasibility of the Coal and the report in this aspect submitted by the expert body. On 01/07/2021 and 06/09/2022, notification under Section 7 of Act, 1957 has been issued for acquisition of 1211.75 hectares and 273.91 hectares respectively for expansion of Jayant OCP (Open Cast Mines), Dudhichua Expansion and Kakri North OCP of NCL. The aforesaid area has been proposed on the basis of conceptual note for future extension of Jayant OCP prepared by CMPDIL, Coal reserve in the deep side area of the Jayant Mine. The land of petitioner is situated in between the National Highway No.39 and Katni Chopan Railway Line which itself is a statutory restricted zone under Regulation 119 of Coal Mines Regulations 2017 (in short 'Regulations, 2017'). In view of the provisions of regulation 119 of Regulations, 2017, the 45 meters of land falling on either side of National Highway No.39 and Katni Chopan Railway line cannot be acquired. It is further submitted that 440 hectares of land which has been excluded from the acquisition is a densely populated area. Petitioner has no fundamental/ Constitutional/ human right for acquisition of their land. Petition is based on misapprehensions. So far as the possibility of collapse of building of petitioner is concerned, the same is misconceived because on one side of building of petitioner, Katni Chopan Railway line is situated, whereas on the other side, the buildings of NCL are situated which is also evident from the map (Annexure-P/11) annexed along with Rejoinder.

8. Heard learned counsel for the parties.

9. It is incorrect on the part of the petitioner to claim that the entire land surrounding the area of land of petitioner has been acquired for extraction of Coal. In fact an attempt has been made by petitioner to give false impression in the mind of the Court by pleading that since the entire acquired land is encircling the property of the petitioner, therefore they will lose access to their land but that is not the correct thing. On one side of the land of petitioner, Katni Chopan Railway line is situated, whereas on the other side of the land of petitioner, the official as well as residential buildings including hospital of NCL are situated. The map (Annexure-P/11) filed by petitioner along with Rejoinder makes the position clear. Therefore, it is held that the land which has been acquired as per Section 9 of Act, 1957 will not cordon of the land of the petitioner in any manner.

10. Furthermore, petitioner has not pointed out the distance of the nearest acquired land from the property of the petitioner and its possible effect on the value of the property of the petitioner. Furthermore during the course of arguments, petitioner had also admitted that in fact 440 hectares of land has been excluded.

11. It is the case of respondents that after the preliminary notification was issued in the year 2017, there were lot of complaints against the proposed acquisition of the area which is densely populated and after considering the same as well as after considering the feasibility of the areas coupled with the possibility of expansion of city of Singrauli towards the area which is densely populated, it was decided that 440 hectares of land should not be acquired.

12. Counsel for petitioner could not point out any illegality in the aforesaid satisfaction as disclosed by the respondents. Furthermore, it is the case of respondents that 440 hectares of land which is densely populated area has been excluded. None of the persons who wants that their land should not be acquired has been impleaded as respondent. In case if the petition is allowed and respondents are directed to acquire 440 hectares of land which was included in earlier notification, then all the persons who are satisfied with the present notification will be adversely affected, and therefore they are necessary party.

13. Under these circumstances, the Court gave an option to the petitioner to implead all the persons who are residing or carrying out their agricultural or commercial activities on the left out 440 hectares of land but it was submitted by counsel for petitioner that since they are not aggrieved by the impugned notification, therefore they are not necessary party.

14. Since the persons who are satisfied with exclusion of their land from acquisition will be adversely affected if the petition is allowed thereby compelling the respondents to acquire the remaining 440 hectares of land, therefore, it is held that they are the necessary party and in their absence no effective order can be passed.

15. Furthermore, counsel for petitioner could not point out any violation of fundamental/ statutory/ Constitutional/ human rights. Although counsel for the petitioner tried to develop his arguments by taking aid of Article 300-A of Constitution of India but it is not a case where petitioner will be deprived of his/her property but it is the case of petitioner that his/her property should also be acquired by the

respondents. The possibility of loss of business or damage to the property of petitioner is self-imaginary and no such situation has arisen so far.

16. Furthermore, counsel for petitioner could not meet out the bar of acquisition of land situated 45 meters on either side of the National Highway as well as the Railway line as provided under Regulation 119 of Regulations, 2017.

17. Regulation 119 of Regulations, 2017 reads as under:-

“Reg.119 — Working under Railways and Roads etc. — (1) No working shall be made and no work of obstruction or reduction of pillars shall be conducted at, or extended to, any point within 45 mtrs. of any railway, or any public works in respect of which this regulation is applicable by reason of any general or special order of the Central Govt., or any public road or building are of other permanent structure not belonging to the owner of the mine, without permission or writing of the chief inspector and subject to such conditions as he may specify therein.”

18. Under these circumstances, where the acquisition of a land within the radius of 45 meters from Railway line as well as National Highway is prohibited, even on that ground, this Court cannot compel the respondents to acquire the land.

19. Furthermore, acquisition of a densely populated land may not be financially viable because respondents will be required to pay compensation to the persons who will be dispossessed.

20. Considering the totality of facts and circumstances of the case coupled with the fact that no fundamental/ Constitutional/ statutory/ human rights have been violated on account of non-acquisition of land

belonging to the petitioner coupled with the fact that acquisition of land within the radius of 45 meters of either side of Railway line as well as National Highway is not legally permissible, no case is made out warranting interference.

21. Furthermore, the final notification issued under Section 9 of Act, 1957 has not been challenged. Accordingly, petition(s) fail(s) and is/are hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.