

IN THE HIGH COURT OF JUDICATURE: :ANDHRA PRADESH: : AT HYDERABAD
(SPECIAL ORIGINAL JURISDICTION)

TUESDAY THE TWELFTH DAY OF FEBRUARY: TWO THOUSAND AND TWO

PRESENT
THE HONOURABLE MR. JUSTICE B. SUDERSHAN REDDY
WRIT PETITION NO: 8476 OF 2001

Between:

1. Sarapu Chinna Potharaju Dora
2. Samata a voluntary non profit organisation rep. by its Executive Director Rabba Pragada Ravi, Petitioner No. 2 impleaded as per court order dt: 5-9-2001 in wpmp 22313/2001.
.. petitioners

And

1. The District Collector, E.G.Dist. Kakinada
2. The Revenue Divisional Officer, Rampachodavaram, E.G. Dist.
3. The Mandal Revenue Officer, Gangavaram Mandal, E.G.Dist.
4. The Superintending Engineer (Irrigation) Dowleswaram, E.G. Dist.
5. State of A.P. rep. by its principal Secretary, Social WelfareDept., Hyderabad.
R.6 is impleaded as per court order in W.P. 8476/2001 dt: 6.11.2001

.. Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring the action of the respondents in resorting to acquiring the land of the petitioner in Denoelapalli village, Gangavaram mandal, agency area in E.G.Dist. belonging to the petitioner to the extent of Ac. 5.70 in sy. No. 77/3, 25/4, 25/5 is without fulfilling the guidelines issued by the Govt. of India on 11.11.1998 and section 242(F) of A.P. Panchayat Raj Act, L.A. Act and is therefore unconstitutional and consequently set aside the 4(1) notification and the subsequent section 6 notification of respondents.

For the petitioners: Mr. K.s. Murthy, Advocate
For the Respondent 1 to 3: Addl. AG and GP for LA
For the Respondent No. 4: The G.P. for Irrigation
For the Respondent No. 5: The G.P. for Social Welfare

The court made the following orders:

THE HONOURABLE SRI JUSTICE
B. SUDERSHAN REDDY

W.P. No. 8476 of 2001

Order:

The decision of the respondents proposing to acquire the lands in Surampalem, Donelapalli, Kothada and Tekuluveedhi villages of Gangavaram Mandal in East Godavari District (Agency Area) for construction of Surampalem Reservoir Project is assailed in this writ petition.

The first petitioner herein is a tribal and he is directly affected by the proposed acquisition of the land by the respondents. The second petitioner is a voluntary organisation representing the cause of the tribal. The proposal is challenged on various grounds.

The petitioners contend that the proposed acquisition is contrary to the mandatory provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'PR Act') as made applicable to the scheduled areas of the State of Andhra Pradesh. It is the further case of the petitioners that the proposed acquisition is contrary to the guidelines issued by the Government of India from time to time and the policy decision of the Government of Andhra Pradesh reflected in G.O. Ms. No. 64, social Welfare (T) Department, dated 18-4-1990. The petitioners contend that all the safeguards and protection afforded to the tribal in the matter of providing rehabilitation are thrown to winds. The action of the respondents, according to the petitioners, may lead to a large-scale dispossession and displacement of tribal in the above villages and adjoining areas. The tribal are sought to be dispossessed without any comprehensive rehabilitation programme. It is submitted that the safeguards envisaged for the tribal under the Constitution of India are violated.

Initially, the first petitioner alone filed the writ petition *inter alia* stating that the belongs to 'Koya Dora' community. His family, consisting of two brothers, father and two sisters together, owns nearly Ac 20-00 of dry land. They are small farmers. The said land actually consists of slopes along the hillocks comprising of boulders and rocks. The family members personally cultivate the land by raising dry crops. The same is the only source of their livelihood.

Later on the second petitioner came on record presenting the interest of the tribals who are likely to be affected by the action of the respondents in proposing to acquire large extents of land belonging to the tribals of Surampalem, Donelapalli, Kothada, Tejuluveedhi villages etc. The credentials and bona fides of the second petitioner-organisation are not in dispute. The services rendered by the second petitioner-organisation and its contribution in espousing the genuine cause of the tribals are well recognised. Certain aspects, regarding the safeguards and the constitutional protection given to the tribals, perhaps could not have been highlighted by the first petitioner alone. The presence of the second petitioner-organisation in the instant proceedings made all the difference to the ongoing debate with regard to the constitutionality and validity of the proposals initiated by the respondents to compulsorily takeover the lands belonging to the tribals in the scheduled area.

It would be necessary to notice the kind of protection and the safeguards provided to the tribal people affected by the acquisition of land for public purpose in the scheduled area. The government having carefully considered the entire question of acquisition of land for public purpose and rehabilitation of tribal people in the scheduled areas and ensuring the tribal people in the scheduled area to enjoy the safeguards envisaged for them under the Constitution of India issued instructions in G.O.Ms. No.64, Social Welfare (T) Department, dated 18-4-1990 to all the concerned in order to avoid discontent and unrest in the scheduled areas on account of dispossession and displacement of tribals. The government having taken note of some of the special features of the tribal situation, such as, their association with the territory, their emphasis on community life and cooperation, non-monetised, self-sufficient and undifferentiated economy and self-governance, felt that these aspects have not been taken into consideration at the time of displacement and dispossession of the tribals while executing projects and establishing industries etc. Mere payment of compensation for the land acquired in the tribal areas without taking such factors into consideration was not enough to avoid social disorganisation and economic destitution of the affected tribals. Such social disorganisation and economic destitution of the affected tribals created conditions of discontent and unrest in the scheduled areas.

In the circumstances, the government issued orders and instructions inter alia directing that:

- i) There should no displacement of tribals nor any disturbance of tribal way of life for the purpose of execution of irrigation projects, mining activities, industries, 4establishment of wild life sanctuaries, etc.

- ii) The flora and fauna in tribal areas which help the tribal economy should not be disturbed.
- iii) Clearance of Tribal Welfare Department of the State shall be taken before taking up any schemes in the tribal areas of the State.
- iv) No new Irrigation Schemes should be taken up, areas where there will be submergence of tribal land. In such cases, construction of major and medium irrigation projects shall be avoided to the extent possible and small check dams, lift irrigation schemes etc., should be taken up.
- v) No projects including establishment of industries, mining projects wild life sanctuaries etc. shall be cleared in the scheduled areas unless detailed comprehensive plan for rehabilitation of the people adversely affected by the projects/including those directly displaced is prepared and the concerned authority satisfied the government that there is full administrative preparedness for the execution of the rehabilitation plan.
- vi) The plan for the rehabilitation of affected families shall be prepared in association with the people adversely affected and in accordance with the guidelines contained in the annexure to this G.O. It shall be approved by the ITDA concerned and it must be ensured that the people have not only been fully compensated for the loss of their economic base but are also rehabilitated completely.
- vii) The plan of rehabilitation shall form part of the Project Report and the entire costs of rehabilitation shall be the first charge on the project. If this cannot be done the amount that is required for meeting the rehabilitation cost may be given by the Government either as grant or as equity depending upon the merits of each case.
- viii) Wherever it is unavoidable to take up scheme involving submergence of tribal lands, rehabilitation shall be taken up on land to land basis and even if the extent of land lost by a tribal family cannot be entirely made good by alternative land, it must be ensured that some land is provided so that the family is not completely uprooted from its traditional occupation.
- ix) If adequate land cannot be provided, employment should be provided at least to one member of each family displaced. The list of displaced tribals and their dependents should be put on rolls of the project and if necessary, they should be sent for requisite training. If the displaced tribals cannot be accommodated within the projects, efforts shall be made to find jobs for them in other sister projects as well as in the Government.
- x) The rehabilitation plan shall be executed under the direct supervision of ITDA concerned. The concerned department shall provide logistic support to the ITDA for implementation of the rehabilitation plan before dispossession and displacement of tribals.
- xi)
- xii)
- xiii)
- xiv)
- xv)
- xvi)

The Central Government has enacted an Act to provide for extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas titled "The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996" (Act 40 of 1996). The said Act *inter alia* provides under sub-section (1) of Section 4 that "the Gram Sabha or the Panchayats at the appropriate level, shall be consulted before making the

acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas".

The Union of India issued executive instructions to describe the modalities of consultation with the Gram Sabhas or Panchayats and the procedure to be followed for acquisition of the land in the V schedule area Part - I of the said instructions prescribes the procedure to be followed by the requiring bodies for initiating land acquisition proposal in the V schedule area. The instructions *inter alia* provide that all the requiring bodies initiating any land acquisition proposal for acquiring any land in the V schedule area, shall require to enclose with their land acquisition proposals, *inter alia*, the following:

- i) Gram Panchayat-wise schedule of land proposed to be acquired (separate sheet for separate Gram Panchayat)
- ii) A separate letter of consent from each of the concerned Gram Panchayat, in favour of the proposed acquisition of land, with or without modifications, as the case may be. Such letter of consent shall be specifically enclosed with the land acquisition proposal, before sending it to appropriate authority or Land Acquisition Collector. It is further clarified that such letter of consent may be obtained in the form of a written resolution of the Gram Sabha, containing the full text of the resolutions consenting with or without modification and the date on which such Gram Sabha meeting was held shall be duly referred in the consent letter.

The Collector shall, on receipt of any land acquisition proposal concerning any land falling within the V schedule areas, examine whether requisite letter(s) of consent of the concerned Gram Sabha(s) of the Panchayat Raj Institutions consenting to such acquisition proposal is/are enclosed or not. The Collector shall, before issuance of any notice under Section 4 of the Land Acquisition Act, 1894, make a reference to the objecting Gram Panchayat concerned and arrange a joint meeting of the requiring body, land acquisition authorities and the concerned Gram Panchayat objecting to such acquisition and attempt, through such consultative meetings, to arrive at a consensus for selecting specified land agreed for acquisition. The Collector is entrusted with the duty to make an appropriate enquiry into the matter and of course authorised to reject the objections made by the Gram Sabhas and Panchayats, if they are frivolous in their nature.

The instructions *inter alia* provide a detailed procedure for organising re-settlement and rehabilitation of displaced families of any land falling within the V schedule areas. The resettlement and rehabilitation department and in the absence of such department, the Revenue Department of the State Government is required to monitor the progress of the

implementation of the land acquisition proceedings as well as the resettlement and rehabilitation scheme.

Part VI-A of the PR Act contains special provisions relating to the Panchayats, Mandal Parishads and Zilla Parishads located in the scheduled areas. The provisions contained in the said Part shall prevail over anything inconsistent therewith elsewhere in the provisions of the PR Act.

Section 242-F of the PR Act mandates that the Mandal Parishad shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resetting or rehabilitating persons evicted by such projects in the Scheduled Areas shall be coordinated at the State Level.

In the affidavit filed in support of the writ petition, it is categorically averred and stated that none of the provisions of the PR Act and Act 40 of 1996 referred to hereinabove and the instructions issued by the Government of Andhra Pradesh from time to time have been followed before setting the law in motion for acquisition of the lands belonging to the tribals and located in the Scheduled Areas. It is contended that no Gram Sabhas were conducted as is required and the proposals were never placed before the Gram Sabha for its opinion. The Mandal Parishad was not consulted. The local population was not informed. No resettlement and rehabilitation package/scheme is prepared.

Number of counter affidavits are filed - one by the District Collector, East Godavari district; Land Acquisition Officer (Revenue Divisional Officer, Ramapachodavaram); superintending Engineer, construction Circle, Dowlaiswaram, East Godavari District and another by the Secretary to Government, Irrigation & CAD Department (Projects). The proceedings of the Gram Sabhas are made available for perusal of the court.

The counter affidavit filed by the District Collector is an elaborate one, in which all the relevant facts are stated and placed before the court. It is evident from the counter affidavits that the land acquisition proposals were initiated in the year 2000. Draft notifications are published in the locality in respect of the lands located in Surampalem and Donelapalli villages on 29-11-2000 and 12-1-2001 respectively. Draft declarations were published in the locality on 29-11-2000 and 17-1-2001 respectively in the counter affidavit

filed by the District Collector it is stated that the Land Acquisition Officer-cum-Revenue Divisional Officer Rampachodavaram had submitted proposals for acquisition of the lands for construction of Surampalem Reservoir after conducting Gram Sabhas and public meetings. None of the proceedings of the Gram Sabhas that are made available for the perusal of the court would reveal any consultation with Gram Sabhas as such. There are no letters of consent obtained from any of the Gram Panchayats as such. There are no written resolutions of the Gram Sabhas consenting with or without modification, for land acquisition proposals. The proceedings make an interesting reading. None of them are certified by the Gram Panchayats. They are not in the form of resolutions. The Gram Sabhas are stated to have been convened by the Mandal Revenue Officers. The people in general and the Ryots who are likely to be effected by the land acquisition proposals are stated to have been informed by the Mandal Revenue Officers about the proposals and the details of rehabilitation scheme. Only one Gram Sabha held on 28-4-2000 at Surampalem appears to have been presided over by the person-in-charge of Surampalem Gram Panchayat. Even in that Gram Sabha there is no evidence that the proposals as such were placed for the consent and approval of the Gram Sabha.

At any rate, the land acquisition proposals are not placed before the mandal Parishad for its consideration.

The record does not disclose any compliance with the instructions issued by the Government under G.O.Ms. No. 64, Social Welfare (T) Department, dated 18-4-1990. In the affidavit filed by the District collector it is stated that action has already been initiated to get the consent of the Tribal Welfare Department for the scheme. The letter addressed by the District Collector dated 29th December, 2001 in this regard is self-explanatory. The proceedings requesting to accord consent of the Tribal Welfare Department are initiated after filing of the counter affidavit in the court. Nobody ever thought of seeking clearance of the Tribal Welfare Department of the State before taking up the scheme as is required under the instructions issued in G.O.Ms. No. 64, social Welfare (T) Department, dated 18-4-1990. Evidently, it is just an after thought. The Project Officer, ITDA, Rampachodavaram addressed a similar letter dated 28-12-2001 to the Secretary, Tribal Welfare Department requesting to accord consent for Surampalem Reservoir Project immediately. It appears that but for the writ petition filed by the petitioners, none of the authorities were even aware of the

governmental instructions issued in G.O.Ms. nO. 64, Social Welfare (T) Department, dated 18-4-1990. Such is the state of affairs.

It is thus clear that the respondents and all the concerned with impunity violated the provisions of the PR Act and Act 40 of 1996. The norms prescribed for formulating such schemes as the one on hand and instructions issued by the Government in G.O.Ms. No. 64, SocialWelfare (T) Department, dated 18-4-1990 are also violated.

The Surpreme Court in Samatha V. State of Andhra Pradesh¹ observed that "the agriculture is the only source of livelihood for Scheduled Tribes, Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of the abode and work and living. It is a security and source for economic empowerment. The tribes have great emotional attachment to their lands". The Supreme Court noticed that " Ninety per cent of the Scheduled Tribes predominantly live in forest areas and intractable terrains 95 per cent of them are below poverty line and totally depend upon agriculture or agriculture based activities." The Surpreme Court further observed:

"The object of Fifth and Sixth Schedules to the Constitution, as seen earlier, is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled areas for their economic empowerment, social status and dignity of their person. Equally exploitation of mineral resources national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the State are required to be adjusted without defeating rights of either. The Governor is empowered, as a constitutional duty, by legislative and executive action to prohibit acquiring, holding and disposing of the land by non-tribals in the Scheduled Areas. The Cabinet, while exercising its power under Article 298, should equally be cognizant to the constitutional duty to protect and empower the tribals. Therefore, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non-tribals."

The case on hand would reveal the pathetic state of affairs prevalent in the Scheduled Areas and the general apathy and utter disregard to the constitutional and legal rights of the tribals.

¹ AIR 1997 SC 3297

In the counter affidavit filed by the District Collector the circumstances leading to formulation of the Scheme are stated in the following words.

"I submit that there is an enormous irrigation potential in Sitapalli Vagu basin and Buradacalva basin located in the Agency tracts of East Godavari District. However, there is no assured water supply to the upland areas and the agency tracts. Besides lack of irrigation facilities, these areas are frequently subjected to floods, which destroy and devastate the standing crops, agricultural infrastructure etc., and sand cast the area. During monsoon season, the Burada calva is subjected to heavy and flash floods, fully laden with sand and silt. It has become a recurring feature for the flood banks to get breached. These floodwaters inundate the area and devastate the standing crops and sand cast the area to an extent of 1600 hectares. (approx. 4000 acres i.e., approx. 1500 acres in Tribal areas and 2500 Acres in upland areas), both in agency tracts as well as upland areas resulting in huge recurring losses every year. Therefore it became essential to formulate a scheme to utilize the available water resources for socio-economic upliftment of the people of the Area. The Reservoir Scheme cannot, therefore, be viewed in isolation but has to be examined comprehensively with the Sitapalli vagu Reservoir scheme."

It is further explained in the counter affidavit filed by the District Collector as under:

"I submit that for optimum utilisation of all available water resources, a reservoir at Surampalem village is proposed across Burada calva, a hill stream, envisaging irrigation facilities of an extent of 15482 acres, located in 9 tribal villages of Gangavaram Mandal (3466 acres) and 10 villages in drought prone upland Mandals, of Godavaram, Korukonda and Rajanagaram (12016 acres besides providing drinking water facility to the population residing in the 19 villages enroute the alignment of the main canal. Thus, the available water resources in Sitapalli vagu and Buradacalva are proposed to be utilised to provide irrigation to a tribal ayacut of approx. 15600 acres and then to extend the same to upland areas of 12016 acres which depend so far on rainfed agriculture. Further about 4000 acres in the above villages (in the command area of Buradacalva), which was hitherto subjected to the adverse effect of frequent flash floods in resulting in crop inundation and sand casting, are also proposed to be safeguarded by construction of the Surampalem Reservoir across Buradacalva.

The limited yield of Buradacalva was mainly in the form of flash floods resulting in inundation of the area and sand casting, as a result of which even this limited yield could not be utilised effectively. It was therefore necessary to construct a reservoir thereat for storage of available water and thereby prevent inundation of the area and provide assured water supply. The present site of location of Buradacalva project has been selected so as to connect the existing hillock on the right flank, with high margins of ground on the left side by means of an earthen dam. The present site is favourable because it provides maximum catchments in that vicinity with minimum submersion. Sites on the upstream side will not yield the required quantities of water which the sites below the present one increase the submergible area which would include Surampalem village also. The present site is also favourable for locating the spillway regulator at a lesser cost as good foundations are available. Hence aiming at the overall development of the backward area, this scheme is formulated and taken up after getting administrative approval from the Government of Andhra Pradesh. The scheme has been cleared at the highest level of the Government of Andhra Pradesh."

In the counter affidavit filed by the District Collector it is stated that the work was commenced in February, 2001 itself.

So far as the resettlement and rehabilitation scheme is concerned, it is stated:

"To ensure least disturbance to the traditional way of life of the Tribal population, the site for location of Rehabilitation villages has been identified very near to the original villages, located at non-submergible areas in the same vicinity. Besides construction of Houses, it is also proposed to construct temples, school buildings, internal roads, protected water supply, Farm service centre/community halls and other infrastructural facilities with project funds. No prominent flora and fauna, archeological monuments, Rare SPECIES of animals are affected due to construction of the project.

The comprehensive Rehabilitation and Resettlement package will be implemented through a separate cell under the Project Officer, Integrated Tribal Development Agency in association with the District Collector. Necessary funds required will be provided by the irrigation Department. Details of the submerged villages and assignment of land is furnished in the form of charts, which are as under.

Sl. No.	Mandal	Village	Assignment of land already provided to Tribals		Assignment of land being provided to Tribals		No. Of houses will be submerged and families affected	
			No.	Extent (Acs.)	No.	Extent (Acs.)	Houses	Families
1	Gangavaram	Donelapalli	21	43.37	31	53.37	50	62
2	-do-	Kothada	-	-	51	105.00	166	166
3	-do-	Surampalem	-	-	14	64.44	-	-
4	-do-	Chingari Apadu	-	-	-	-	-	-
		Total	21	43.37	96	222.81	216	228

Sl. No.	Mandal	Village	Extent of land proposed for Rehabilitation For houses (Acres)	Infrastructures to be Relocated
1	Gangavaram	Donelapalli	5.15	Ramalayam, GVVK School, 3 Hand Pumps, Roads and Electricity
2	-do-	Kothada	9.50	Ramalayams, Ashram School, Hand pumps, 5 Teacher Quarters, Roads and Electricity
	Total		14.65	

The District Collector in his affidavit assures that the rehabilitation measures will be completed on or before 30th June, 2002. No person will be displaced from his house till he is provided with an alternative house in the rehabilitation colony.

In the light of the foregoing discussion, the question that falls for consideration is as to what is the relief that may be granted at this stage?

It is required to notice that, whether intentionally or otherwise, the lands exclusively belonging to the Tribals in Agency Area are proposed for acquisition for the proposed Surampalem Reservoir. Admittedly, the benefit of the project goes both to the Agency Area and predominantly to the upland Mandals, which are adjoining the Agency Area. It is all in the name of the sustained development. The tribals have to leave their lands and face forced eviction.

In the half-century since independency, tens of thousands of medium and small irrigation projects have been executed and 1600 major dams built over the vast network of rivers and waterways crisscrossing the country. Consequently, an estimated 20 m people have been uprooted and uncountable hectares of fertile land and forests lost through clearing, water logging, salination and resettlement. In many cases, among those displaced were indigenous communities whose lives and livelihoods are intrinsically dependent on the ecosystem they inhabit. According to official estimates, while indigenous peoples make up 7.5% of the Indian population, over 40% of people displaced by dams till 1990 were from tribal communities and their proportion is steadily increasing.*

Sri. K. S. Murty, learned counsel for the petitioner, however made wide ranging submissions attacking the very policy of the State to have such dams and reservoirs in the Scheduled Areas inevitably leading to forcible eviction of Tribals from their land and community life. He made an attempt to contend that such unilateral development thrust upon Tribals may lead to discontentment among the tribals and ultimately resulting in their alienation from the mainstream of civil society.

Sri. Ramesh Ranganathan, learned Additional Advocate General appearing on behalf of the respondents contended that it is the prerogative of the elected government to follow its own policy. The court would not intervene and judicially review the policy decision unless it is demonstrated that such policy is contrary to any statutory provision or the Constitution. The relative merits of different economic policies can never be weighed by the courts in exercise of their judicial review jurisdiction, is the submission made by the learned Additional Advocate General.

In *Narmada Bachao Andolan Vs. Union of India*², The petitioners therein challenged the validity of the establishment of a large dam. It was held by the majority:

"It is now well settled that the Courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed, upon except to the extent permissible under the Constitution...."

In *BALCO Employees Union (Regd.) Vs. Union of India & Others*³ The Supreme Court reiterated the principle that "it is the prerogative of each elected Government to follow its own policy..... Unless any illegality is committed in the execution of the policy of the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that they policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts."

In the light of the law laid down by the Supreme Court in the decisions referred to hereinabove, it is not open for this court to judicially review the very policy decision of the government, which is undoubtedly economic in its nature to construct reservoir at Surampalem village. This court is bound by the law declared by the Apex Court.

The debate and the question raised 50 years ago when India began its 'tryst with destiny' whether the country would follow the Gandhian path towards the decentralised and sustainable village based social system or launch into a grand march on the highroad of growth oriented development continues and may have to be debated elsewhere.

* Source: *The Dispossessed - Victims of Development in Asia*; Editors - Vinor Raina, Aditi Chowdhury and Sumit Chowdhury

² (2000) 10 SCC 664

³ 2001 (8) supreme 660

Be that as it may, in the instant case, it is clear from the averments made in the counter affidavit and the records made available for the perusal of the court that the respondents have not followed the mandatory prescriptions before initiating proposals for acquisition of the land for construction of the reservoir in the scheduled area. It is needless to emphasize that the officers of the Government are bound by the instructions issued by the government and particularly such instructions which are not routine in their nature. We have in detail, adverted to the instructions of the government in the matter of acquisition of lands belonging to Tribals in the Agency areas and the procedure required to be followed by the authorities concerned. The authorities have neither followed the executive instructions nor the provisions of the PR Act and Act 40 of 1996.

Sensitive issues have been dealt with by the respondents in a very casual and mechanical manner. No attempt has been made by the authorities concerned to involve the local tribal population in the proposed scheme. Nobody ever thought of taking the tribals into confidence. All the concerned failed to appreciate that the very object of establishment of the panchayats in tribal areas backed by the authorities is to instill confidence in the tribesmen that they could run their affairs without being influenced and interference from outsider. It is well known that even the well intent innovations could not be sustained because the tribesmen were mentally not adjusted to economic pursuits different from the traditional way of gaining livelihood. It is precisely for the said reason, a provision is made to involve the local tribal population and get their consent before the schemes are taken up for implementation. The Tribal Welfare Department of the State IS supposed to be the custodian of the interest of the tribals. Clearance of the Tribal Welfare Department of the State is required to be taken before taking up any scheme in the tribal areas of the State. This procedure is observed more in breach than practice.

It cannot be heard in saying that the State is bound to protect the interest of the Tribals and as well as the non-tribals in the scheduled areas. Necessary priorities and measures are required to be taken by the State and its instrumentalities in order to protect the interest of the Tribals and their development. It is inherent in any plan for the protection and support of tribal minorities that whatever benefits are envisaged for tribesmen must adversely affect the interests of some more advanced sections of the population. In its very nature any policy of tribal rehabilitation arouses the opposition of vested interests. It is said that only an administration of high integrity can successfully implement a policy of tribal development,

"and it would seem that the failure of many plans for tribal betterment is due to the lack of such integrity in high places and not to any inherent fault in the plans worked out by civil servants."

Lack of interaction and involvement of the tribesmen in the developmental schemes inevitably leads to confrontation and alienation.

A few quotations from a report prepared in 1975 by D. Bandyopadhyaya, Joint Secretary, Ministry of Labour, Government of India, and B.N. Yugandhar, Special Assistant to the Deputy Chairman, *

Planning Commission, which are thought provoking are apt and worth reproducing: ⁴

The Girijans came in touch with the administration only in a state of confrontation when they were tackled for infringement or infraction of one or the other regulation which in fact abridged, annulled or tinkered with their customary rights and privileges. Thus the Girijans of the, Parvathipuram agency tract found themselves totally alienated from the administrative machinery and newly set up self-governing institutions and were denied opportunities of gainful economic activities. They suffered not only from poverty but also from a deep sense of insecurity. They found themselves deprived at each point and at each front. A deep sense of grievance and injustice enveloped the entire tribal population through decades of neglect by the local administration. The indifference and the neglect was so much that when the agency tracts were redefined large areas of hill tracts inhabited by the tribal Girijans were left outside the agency through an administrative mistake..... Later attempts by some energetic district officials to bring them within the fold of the agency tracts have not met with any success.... The Girijan is suspicious of every move of the administration. He cannot rely on it. Today after the experience he had of the Naxalite movement and its consequences, he is slightly confounded but not cowed down. He has a sullen look and defiance is apparent.

The government and its officials are fully aware of the reasons for the justified sense of grievance felt by the so many tribal populations. It is precisely for the said reason and in the light of its own experience, the government thought it necessary to formulate its policy and enunciate the same by way of consolidated instructions to all the concerned as to the steps required to be taken in order to avoid displacement and dispossession of tribals due to projects, industries, mines etc. It is shocking to realise that each of the instructions has been

* Tribes of India - The Struggle for Survival - CHRISTOPH VON FURER - HAIMENDORF

⁴ Reprinted in Social Life in Rural India, ed. M.K. Pandhe, pp.210-12

violated in formulating the scheme leading to acquisition of the lands of the tribals which may ultimately result in forcible evictions.

In the normal course, this court would have interfered in the matter and quashed the very proceedings initiated for compulsory acquisition of the lands in the Agency areas on account of noncompliance of the statutory requirements and execute instructions issued by the government. But the work of the project had already commenced and any interference of this court at this stage may **result** in wastage of substantial public finances already spent and invested by the State.

The learned Additional Advocate General, however, very fairly stated that an opportunity may be given to the respondents to comply with the requirement, so as to enable them to proceed further in the matter and complete the scheme of construction of reservoir.

Having regard to the totality of the facts and circumstances of the case, this writ petition is disposed of directing the respondents herein to forthwith-

- (a) Place the proposals of the, land acquisition for construction of the reservoir in question before each of the Gram Sabhas for its consent, receive the objections, if any, and suitably deal with the same in accordance with the instructions on the **Subject** referred to hereinabove. However, the consent or otherwise of the Gram Sabha shall be in the form of resolution;
- (b) Place the proposals before the Mandal Parishad as is required under Section 242-F of PR Act"
- (c) The scheme of resettlement and rehabilitation of the persons effected shall be coordinated at the State level;
- (d) Necessary steps shall be taken to have rehabilitation cell which will work under the direct supervision of ITDA. The task of identification of the persons who are to be, treated as dispossessed persons shall be entrusted to the cell to be so created. The progress of rehabilitation of dispossessed and displaced families will be monitored by the ITDA concerned and the Tribal Welfare Department
- (e) The, rehabilitation plan shall be executed under the direct supervision of ITDA concerned. Necessary logistic support to the ITDA for implementation of the rehabilitation plan shall be provided before the actual dispossession and displacement of tribals
- (f) The rehabilitation measures shall be completed on or before 30th, June, 2002 as undertaken by the respondents in their counter affidavit. No tribal shall be displaced from his house, till he is provided with an alternative house in the rehabilitation colony

The respondents shall submit detailed periodical reports about the resettlement and rehabilitation measures taken by them to this Court, at every two months.

With the directions as above, the writ petition shall stand disposed of, without any order as to costs. Consequently, the interim orders earlier granted by this Court shall accordingly stand modified and merged into the final orders

Sd/-T-R-Ratnakumar,
Asst. Registrar

/true copy/

Section Officer

One Fair copy the Hon'ble Mr. Justice B. Sudershan Reddy, (For his lordships kind perusal).

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5. The Mandal Revenue Officer, Gangavaram Mandal E.G. Dist.
6. The Superintendent Engineer, Irrigation Circle, Davaleswaram
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