A MAHANADI COAL FIELDS LTD. & ANR.

v.

MATHIAS ORAM & ORS.

(Miscellaneous Application No. 231 of 2019)

B NOVEMBER 03, 2022

[UDAY UMESH LALIT, CJI, S. RAVINDRA BHAT AND BELA M. TRIVEDI, JJ.]

Right To Fair Compensation And Transparency In Land C *Acquisition, Rehabilitation and Resettlement Act, 2013 – Applicability of – Coal Bearing Areas (Acquisition and Development) Act, 1957–Held: The R&R Act cannot apply prior to the date it was brought into force i.e., before 01.01.2014 – In the present case, it applies from the date the Central Government issued a notification bringing into force the proceedings of the First, Second and Third* D *Schedules to the enactment specified in the Fourth Schedule, which in this case was the CBA Act – The date therefore, on which the R&R Act, 2013 is applicable from, is 28.08.2015 – Additionally, the report which was finalised before that date cannot be interfered with – The land owners and displaced families residing in the villages* E *for which reports were prepared earlier than 28.08.2015, would not therefore be entitled to the benefits of the R&R Act, 2013 – Hence, the benefits of the R&R Act apply to displaced families and land owners of Kiripsira, Ratansara, Jhupuranga and Tumulia – Further directions issued – Land Acquisition Act, 1894 –* F *Constitution of India – Article 142.*

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Determination of compensation – Cut-off date– Held: Cut-off date for determining compensation for land acquired is to be based upon G *the cut-off date approved by Supreme court in relation to village Gopalpur, i.e., September 2010 – Since, common cut-off date has been accepted, all benefits flowing from it, including statutory interest upon compensation and solatium, is determinable on the basis of that cut-off date for the entire acquisition – Coal Bearing Areas (Acquisition and Development) Act, 1957.*

H

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 – ss.41, 42 – Odisha Resettlement and Rehabilitation Policy, 2006 – Held: As far as s.41 goes, given that the acquisition notification was issued in 1988 and finalised in 1990 and even the judgment of Supreme Court indicating the methodology for compensation determination was delivered in 2010, the question of giving extra consideration in terms of s.41 does not arise – However, since the resettlement of the displaced families and their rehabilitation have been mandated by both provision of the R&R Act, 2013 which has application to the ongoing acquisition, as well as the R&R Policy 2006, the obligation to ensure that the benefits of the displaced persons are not put to grave and irreparable prejudice by denying them their status as SC/ST, has to be ensured – This is mandated by s.42 of the R&R Act, 2013 which directs that whenever lands of SCs/STs are acquired necessitating their displacement, either in terms of territories or the areas they reside in, leading to their movement to other areas- where their tribe or caste may not necessarily be recognised as SCs/ST- the status which they enjoy but for the displacement has to be preserved and protected – This statutory mandate and obligation cannot be denied by the State or agency, as a matter of law – Direction issued.

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 –Obligations cast upon the State– Land Acquisition Act, 1894 – Held: Provisions of the R&R Act, 2013 which replaced the old 1894 Act, have for the first time cast obligations upon the State to ensure that resettlement and rehabilitation is provided in addition to compensation – These rehabilitation and resettlement provisions relate not only to a right to employment for at least one member of the displaced family but also other monetary and tangible benefits, such as land for construction of houses, cash assistance for construction; transportation cost; provision for temporary displacement; annuity and/or cash payment in lieu of employment benefits, etc. – Furthermore, by provisions of the Third Schedule, elaborate provisions for the kind of public amenities which have to be provided, such as public health benefits, schools, community centres, roads and other basic necessities, have been obligated – All these are in

A *furtherance of the displaced and the larger social justice obligations cast upon the State.*

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s.108 – Odisha Resettlement and Rehabilitation Policy, 2006 – Held: R&R Act, 2013 by s.108 also clearly envisions that the benefits provided by the new law are not to be applied blindly – Wherever there are existing provisions that are more beneficial or provide better benefits to displaced persons, such families and individuals have the choice or option to prefer either such policy or local law or the provisions of the R&R Act –Going by the principle underlying s.108, clearly the benefits spelt out under the R&R Policy 2006, appear to be better, and more elaborate.

Odisha Resettlement and Rehabilitation Policy, 2006 – Employment benefits –Family unit – Held: The R&R Policy 2006 as amended by the 2013 policy applies for the purpose of employment benefits – A family unit would comprise of head of family or father, a major son, and an unmarried daughter having regard to the definition and the note appended thereof – In case, for some reason, the major son cannot be given employment, and there exists a major grandson, he would then be eligible for consideration – In other words, two members (father and son or father and grandson) would be eligible for employment and not three, in addition to the unmarried daughter who is also to be treated as separate unit –Further, Commission could not reopen determinations based upon change of policies of the State given that the benefits adjudicated by it based on factual determinations has crystallised – In many cases, Mahanadi Coalfields Ltd.(MCL) has actually provided employment to several individuals – Thus, all cases that have been adjudicated and were approved by Supreme court cannot be reopened.

Mahanadi Coal Fields Ltd. & Anr v. Mathias Oram & Ors. **(2010) 11 SCC 269;** *Indore Development Authority v. Manohar Lal & Ors.* **(2020) 8 SCC 129 : 2020 (3) SCR 1;** *State of M.P. v. Narmada Bachao Andolan* **(2011) 7 SCC 639 : 2011 (6) SCR 443 – referred to.**

Case Law Reference

2020 (3) SCR 1	**referred to**	**Para 9**
2011 (6) SCR 443	**referred to**	**Para 12**

CIVIL APPELLATE/ INHERENT JURISDICTION: Miscellaneous Application No. 231 of 2019 in Special Leave Petition (C) No. 6933 of 2007.

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

With

Conmt.pet.(C) Nos. 540, 541, 542, 543, 544, 545, 546, 547, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 685, 686, 687, 548, 549, 550, 551, 552 of 2019, slp (c) nos.15877-15878 of 2020.

Jayant Sud, ASG, Atmaram N.S. Nadkarni, Sr. Adv., Anish Kumar Gupta, Ms. Archana Preeti Gupta, Avdhesh Kumar Singh, Nisarg chaudhary, Kartikeya Vajpai, Puneet Sheoran, Ms. Deepshikha Bharati, Ms. Rita Gupta, Venugopal Abhay, Salvada Santosh Rebello, Ms. Arzu Paul, Ms. Deepti Arya, Adiraj Bali, Vaibhav Verma, Ms. Priyanka Das, Randeep Sachdeva, Manish Nadda, Abhishek Atrey, Gurmeet Singh Makker, Prashant Bhushan, Ms. Neha Rathi, Ashok Panigrahi, Nabab Singh, Ms. Geetanjali, Amiya Kumar Behera, Mudit Sharma, Rahul Shyam Bhandari, Ms. G. Priyadharshni, Ms. Simran Gill, Rajeev Yadav, Pradeep Varma, S.K. Srivastava, Gurdeep Singh, Rahat Ali Chaudhary, Syed Imtiyaz Ali, Ali Safeer Farooqui, Rajat S. Roy, Nripendra Nath Bain, Hira singh, Aftab Ali Khan, Ms. Kawalpreet Kaur, Shiyas KR, Satya Mitra, Soumen Talukdar, Tejaswi Kumar Pradhan, Shibashish Misra, Ms. Nandini Gidwaney, Ms. Rohini Musa, Arvind Kumar Sharma, A. Venayagam Balan, R. Chandrachud, Vishal Arun, Shankar Divate, Ravi Prakash Mehrotra, B. Ramana Murthy, Ms. Meenakshi Chauhan, Advs. for the appearing parties.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. The oft repeated aphorism, "*Justice delayed is justice denied*" cannot apply with more force than in these proceedings. The applicant writ petitioners (hereinafter, "landowners / displaced persons") have waited for roughly half the number of years that this republic has existed.

A They predominantly belong to tribal communities, and their lands were first notified and acquired in 1988 for the purposes of coal mining. Yet, they have not been paid compensation. The tangled and torturous journey of their tribulations has been elaborately documented in a previous judgment of this court.[1]

B **A. *Background***

2. Mahanadi Coalfields Ltd. (hereinafter, "MCL") is a subsidiary of Coal India Ltd. (hereinafter, "CIL") the biggest coal producer in the country. MCL was aggrieved by an order[2] of the Orissa High Court, wherein the High Court directed the Central Government and MCL to C immediately proceed under provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter, "CBA Act") to determine and disburse compensation payable to landowners as expeditiously as possible, preferably within six months.

3. The Central Government issued the preliminary notification D under Section 4(1) of the CBA Act on 11.02.1987, conveying its intention to prospect for coal in village Gopalpur and others, district Sundergarh, Orissa. This was followed by another notification under Section 7(1) of the CBA Act on 27.07.1987 for acquisition of the notified lands. Finally, by notification dated 10.07.1989, the declaration of acquisition of the land under Section 9 of the CBA Act was made, which led to the lands E being vested absolutely in the Central Government. On 20.03.1993, the Central Government issued notification under Section 11 of the CBA Act, vesting the acquired land and all rights therein in MCL, retrospectively with effect from 17.11.1991. The writ petitioners before the High Court were landowners who were not paid any compensation for their lands. F After unavailingly seeking the same, the landowners approached the High Court seeking direction for compensation. Before the High Court, the landowners' claims were mired in a dispute between Coal India Ltd. (hereinafter, "CIL") and the Central Government. CIL urged that it no longer required the lands, whereas the Central Government rejected CIL's proposal for denotification by order dated 12.09.2006. The High G Court held that a land oustee under Section 9 of the CBA Act was to be paid compensation after taking into consideration the factors enumerated under Section 13(5) of the CBA Act. MCL preferred a special leave petition before this court. The court sought the assistance of the then

[1] *Mahanadi Coal Fields Ltd. & Anr v. Mathias Oram & Ors*., (2010) 11 SCC 269.

H [2] W.P. (Civil) No.11463/2003 (Orissa High Court), dated 13.11.2006.

Solicitor General for India, Mr Gopal Subramanium, who proposed a scheme which was accepted by this court, in its judgment reported as *Mahanadi Coal Fields Ltd.* (supra).

4. The relevant extract of the operative portion of the judgment is reproduced as follows:

> *"22. The scheme proposed by Mr. Subramanium and agreed upon by the Central Government and the Coal 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.*
>
> *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 reascertained, 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 the 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 abovesaid 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.

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 by the petitioner. It would be open to the Claims Commission to recommend denotification/release of the said land from acquisition.

7. In view of the special facts obtaining above, the Central Government may be permitted to denotify the said 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 denotified land, suitable compensation, in appropriate cases, may have to be paid 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 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 be carried out for the following villages as well:

(i) Sardega

(ii) Jhupurunga

(iii) Ratansara

(iv) Tikilipara

(v) Siarmal

(vi) Tumulia

(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."

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

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

A *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 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 Ltd.*

C *25. 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 denotification/release of any portion* D *of the lands earlier acquired, it would also determine the rate or the amount of compensation/mesne profit payable to the landholder. The Commission shall submit its report not to the Central Government but to this Court for approval and further directions. Any denotification/release of the land would be only subject to further orders passed by this Court in light of* E *the Commission's report. The Commission may proceed with the survey in relation to the acquired lands in other villages, as suggested in Para 9 of the scheme only after submitting its report in respect of Village Gopalpur and subject to further orders by this Court. The officers of the State Government* F *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."*

5. The Claims Commission appointed by this court proceeded to issue notices and call for claims to determine all those eligible for G compensation and rehabilitation, and its extent. Based on the report in relation to village Gopalpur, the court passed an order on 19.04.2012, approving the recommendations contained in it. The relevant extracts of the court's order are as follows:

"The Amicus pointed out three broad features of the way in H *which the Commission has fixed the amounts of compensation*

for the lands of the villagers acquired by Mahanadi Coal Fields Ltd., the petitioner Company.

First, the acquisition notifications were made way back in the year 1984 but no compensation was paid to the villagers/ landholders for the past 28 years. The Commission, therefore, took the view that fixing the market value of the lands with reference to the date of the acquisition notifications would be wholly unfair, unjust and unreasonable and has taken the date of notice of survey given by the Commission in September, 2010, as being relevant for fixing the market value of the lands under acquisition. The Amicus supported the view taken by the Commission and, in the facts of the case, we also fully endorse the Commission's decision in regard to the date with reference to which the market value of the lands under acquisition is to be determined.

Secondly, in regard to fixing the rate of compensation, the Amicus submitted that the Commission had followed a very scientific approach which was fit to be approved by this Court. We accept the method adopted by the Commission for fixing the rate of compensation and the actual mounts of compensation determined for payment to the individual landholders.

Thirdly, in regard to the. rehabilitation policy, the Commission has applied the rehabilitation policy of the year 2006 as it is more liberal and beneficial for the landholders in comparison to the earlier rehabilitation policy of the year 1998. On this score also, we entirely agree with the view taken by the Commission.

In short, we accept the Commission's report in all respects and make, it an order of this Court. At this stage, we would like to draw the attention of the Commission to some other aspects of the matter as suggested by the Amicus. The Amicus rightly submitted that setting up of schools and health centres in the villages where lands have been acquired in large areas should also be made an obligation of the petitioner-Company for whose benefit the acquisitions are made.

We are not aware whether in the 2006 rehabilitation policy there are provisions for setting up schools and health centres in the villages affected by land acquisition. In case, the rehabilitation policy does not have such provisions, the Commission may consider directing Mahanadi Coal Fields Ltd. to provide for good, functional schools with sufficient number of teachers and well-equipped health centres in all the villages affected by land acquisition.

We would also like to remind the Commission that the good work done by it so far will only be complete as and when the individual villagers whose lands are acquired actually receive the amount of compensation and other benefits under the compensation and rehabilitation package. We are sure that the Commission would be conscious of this aspect of the matter. But, we would still like to tell it that all the good work done by it may be dissipated unless the villagers get their lawful dues in full and no part of compensation amount or any element of the compensation/rehabilitation package is allowed to be wasted or taken away from the concerned landholder by deception or fraudulent means. It will be, therefore, open to the Commission also to frame proper. policies for payment of the compensation money and to ensure that the compensation/rehabilitation benefits are actually received by the landholders. In this regard, the Commission may consider directing staggered payment of the amount of compensation so that the compensation money is not altogether wasted.

Mr. Ashok Panigrahi submitted that some of the landholders whose lands were also taken in acquisition were unable to submit their claims before the Commission as they had gone to Jharkhand for earning their livelihood. If that be so, it will be open to them to make their representations before the Commission which shall consider those representations and pass appropriate and reasonable orders. We deeply appreciate the painstaking work done by the Commission and request it to carry on its good work in respect of the rest of the villages where the lands were similarly acquired following the model framed by it in respect of Gopalpur village.

We repeat our direction that the Governmnent of Orissa, Mahanadi Coal Fields Ltd. and the local administration shall render full help, -assistance and cooperation in the work of the Commission and in implementation of the Commission's directions in regard to payment of compensation and the rehabilitation package admissible to the concerned landholders.

Let copies of the Part-II Report of the Commission be given to the Amicus, Gp. Captain Karan Singh Bhati and Mr. Ashok Panigrahi, counsel for the parties, and after that it may be kept in a sealed cover."

6. Following the Gopalpur model, the Commission submitted reports for villages Balinga, Bankibahal, Sardega and Tiklipara. By its order dated 08.08.2012, this court approved those reports and observed that the Commission may follow (as far as practicable) the same basis in other villages for which compensation was yet to be fixed. The relevant part of that order is extracted as follows:

"A further report is received from the Claims Commission, Bhubaneshwar, under the title Recommended Composite Compensation Package for Village Balinga, Bankibahal, Sardega and Tikilipara. We accept and approve all the recommendations made by the Commission and request it to proceed further on the basis of its recommendations and in light of the previous orders passed by this Court.

We further observe that the Commission may follow as far as practicable the same basis in other villages for the lands of which compensation ls yet to be fixed by it. Let the report received from the Commission be kept in a sealed cover.

Put up on receipt of further report from the Claims Commission, Bhubaneshwar."

7. By its order dated 10.04.2013, this court accepted and approved the Commission's reports with respect to villages Kulda and Garjan Bahal. By another order dated 15.07.2013, this court accepted the Commission's report for village Karlikachhar. In that order, the court further observed that lands in two villages namely Kirpsira and Ratansara were transferred by the Central Government to some other companies. The court therefore requested the Commission to proceed in respect of the two villages and

A directed that at the initial stage, payment of compensation would be MCL's liability – it could later recover the sums from the successor companies. By its order dated 25.10.2013, this court observed that infrastructure for resettlement was to be in terms of Odisha Resettlement and Rehabilitation Policy, 2006 (hereinafter, "R&R Policy 2006") and the Third Schedule to the (then) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013.

8. On 10.07.2017, this court disposed of the appeal, with the following observations and directions:

"In pursuance of the orders of this Court, a report was submitted by Justice Parichha which was accepted by this Court but the implementation thereof still remained incomplete.

Learned Amicus has submitted a report dated 4 July 2017 in respect of outstanding issues and has made recommendations as follows:-

"(i) As far as any compensation amount which is lying in fixed deposits is concerned, the same must be accounted for at periodic intervals jointly by the Collector as well as by a senior officer of MCL. The said amounts must be safeguarded suitably by the Commission and the Commission would be at liberty to seek appropriate direction from this Court as and when its work is completed.

(ii) Issue directions to the Collector, Sundargarh as well as the Chairman and Managing Director of MCL to ensure disbursement of compensation to all the beneficiaries of the 8 villages (namely Balinga, Bankibahal, Garjan Bahal, Gopalpur, Karlikachar, Kunda, Sardega and Tiklipada) on or before 31st July 2017, and to ensure disbursement of compensation to all the beneficiaries of the 2 villages, (namely Siarmal and Bangurkela) on or before 31st November, 2017.

(iii) The Divisional Commissioner, Sambalpur, to make adequate efforts to trace the persons who have not turned up to receive compensation. The Collectors concerned will contact their counterparts in States where awardees are known to migrate, and adopt suitable methodologies to identify the concerned person.

(iv) Issue directions to the authorities of MCL to furnish a list, jointly verified by the Collector and the Assistant Revenue Officer indicating the names of the all awardees of compensation, the dates when they were entitled to payment, the actual dates when payment was made and whether that payment included interest, to the Claims Commission as well as the Learned Counsel appearing on behalf of the Respondent parties.

(v) It may be clarified that even with respect two villages (namely Siarmal and Bangurkela) , when the payment of compensation is made, interest, as payable, will be determined to be paid in accordance with Orders of the Hon'ble Supreme Court. Payment of interest in respect of delayed payment will be undertaken if interest was not paid in accordance with the Orders of the Court.

(vi) where genuine cases of fraud and impersonation are alleged by MCL, the Claims Commission be empowered to examine such cases and forward recommendations to the Learned Amicus.

(vii) Direct the authorities of MCL to complete the process of granting employment, payment of monetary compensation in lieu of employment, including annuities on or before 31st July 201 7 with respect to 8 villages (namely Balinga, Bankibahal, Garjan Bahal, Gopalpur, Karlikachar, Kunda, Sardega and Tiklipada) and on or before 31st November, 2017 with respect to 2 villages (namely Siarmal and Bangurkela) .

(viii) Issue directions to the Chairman and Managing Director of MCL to immediately stop any illegal mining being undertaken by MCL on agricultural lands in any of the villages.

(ix) Issue directions to MCL authorities to complete the development of resettlement colonies in the two sites (namely Barapalli II and Chatanpalli) on or before 30th September, 2017.

(x) Once even one of the rehabilitation sites is ready and the site has been certified as suitable for shifting by the Claims Commission, the Hon'ble Claims Commission may pay pass

appropriate orders enabling the shifting of those persons who are entitled to R&R Benefits in the said site.

In view of the above, it is submitted that the following general directions are also necessary -

(xi) That the Managing Director of MCL either himself or by a designated officer will be personally responsible for the implementation of the directions of the Supreme Court and the orders by the Commission.

(xii) Suitable steps will be taken by the MCL to complete the process of disbursement of compensation.

(xiii) Compensation will be disbursed to the satisfaction of the Commission.

(xiv) Employment must be offered to all those left out (Categories I & II in any employment must be offered and completed to the satisfaction of the Commission.

(xv) Rehabilitation steps must be completed within a period of nine months from today.

(xvi) Only upon the rehabilitation being certified by the Commission and experts that a notice can be issued by the Commission asking the oustees to shift to alternate sites.

(xvii) Fresh notices be issued by the Commission in respect of awardees who have not received monies

(xviii) In respect of awardees who have not been paid money in time, interest is payable and such interest be awarded at a rate not exceeding 15% by the Commission calculating the same with reference to the orders of this Hon'ble Court.

(xix) It awardees disbursed and MCL, is also necessary that including the names a list of all the and the amounts by the Collector to the Claims to them, jointly signed must be made available Commission as well as counsel for the oustees forthwith,

(xx) In so far as acquisition of additional land for resettlement and rehabilitation is concerned, suitable assistance will be offered by the State authorities including the Divisional Commissioner Sambalpur."

We are broadly in agreement with the recommendations made by the learned Amicus. We, however, leave it open to the appellants or any other affected parties to put forward their objections before the High Court/Commission since we are inclined to leave such matters to be dealt with by the High Court/Commission.

With regard to recommendation XIV, learned counsel for the appellants has an objection on the ground that the issue is covered by the Orissa Rehabilitation and Resettlement Policy 2006.

Learned Amicus states that the recommendation is consistent with the report of Parichha Commission which has already been accepted by this Court. This aspect of the matter may be gone into by the High Court, if necessary.

One of the issues which is surviving is as regards constructed housing on the land allocated for rehabilitation and resettlement by the affected persons. Mr. Dhankar, learned senior counsel appearing for the appellants states that it is not clear whether all such persons want constructed housing or not. A notice will therefore be put in the Office of the District Collector seeking objection to such construction. Those who do not expressly indicate their option to go for housing other than the constructed housing offered by the appellant, such option to be indicated within one week of the notice, they will be presumed to be willing to opt for the allotment of such housing constructed by appellant.

We do accept that necessary basic health amenities as already directed by this Court will be duly provided at the site.

Subject to the above, it will be open for the High Court/ Commission, keeping in mind the report of the Parichha Commission which has already been accepted, to consider issuing any further directions…"

9. By order dated 13.10.2020, this court had directed MCL to share all the status reports and relevant documents available with it, digitally, with all parties. Apart from that, the court recorded that as observed by the previous order dated 02.09.2020, a sum of ₹566,31,46,942.78 was deposited with the concerned authority. Mr

A Atmaram Nadkarni, learned Additional Solicitor General of India, submitted that MCL was willing to offer employment in admitted cases to the persons mentioned in the reports for the relevant villages. Details were furnished to the court. In addition, Mr Prashant Bhushan, learned counsel for landowners had urged that for villages Tumulia, Jhupuranga, Ratansara, and Kirpsara, no award was declared before 01.01.2014, i.e., the date on which the Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, "R&R Act, 2013") came into force. Reliance was also placed upon Section 24 of that Act as well as this court's decision passed by the Constitution Bench in *Indore Development Authority v. Manohar Lal & Ors.,*[3] to urge that provisions of the 2013 Act relating to determination of compensation must therefore apply. It was also urged that a tabular chart furnished by the District Collector, Sundargarh, indicated that at least in respect of six sites in different villages, no certificate of completion had been issued by the competent authority, and with respect to two other sites, resettlement and rehabilitation work was still at a primary stage.

10. Several applications were moved: some by MCL, and many more by the landowners, seeking a range of directions. In addition, some contempt proceedings were also initiated, submitting that the directions of this court were not complied with altogether, or not implemented appropriately. All these applications were heard by this court. This judgment will thus dispose of all those applications and contempt petitions.

11. During the course of the hearings, counsels for the parties addressed submissions on the following issues:

i. Point no. 1: The date or dates on which compensation became reckonable (also referred to as the 'cut-off date');

ii. Point no. 2: Applicability of the R&R Act, 2013;

iii. Point no. 3, 4 and 5: Whether the R&R Policy 2006 applied, or the subsequent policy of 2013; If the latter policy (of 2013) applied, then for the purpose of employment benefits, whether the family unit was deemed to be represented by a singular member, or several of them; and whether the Commission could re-open determinations based on change

[3] *Indore Development Authority (LAPSE-5 J.) v. Manoharlal,* (2020) 8 SCC 129.

of policies of the State, after its report was accepted by this court;

iv. Point no. 6: Entitlement to housing plots; and

v. Point no. 7: Creation of facilities and amenities, such as schools, community centres, medical facilities, etc.

B. *Analysis*

12. Prior to delving into a point-by-point analysis, it is instrumental to allude to the case of *State of M.P. v. Narmada Bachao Andolan,*[4] which highlighted the essence of rehabilitation through the lens of Article 21 of the Constitution:

"Land acquisition and rehabilitation : Article 21

26. It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.

27. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands.

> *"10. ... A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the*

[4] *State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639.

A *Constitution hardly ever reach the most marginalised citizens." (Mahanadi Coalfields Ltd. case [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] , SCC p. 273, para 10)*

B *For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide State of U.P. v. Pista Devi [(1986) 4 SCC 251 : AIR 1986 SC 2025], Narpat Singh v. Jaipur Development Authority [(2002) 4 SCC 666 : AIR 2002 SC 2036] , Land Acquisition Officer*

C *v. Mahaboob [(2009) 14 SCC 54 : (2009) 5 SCC (Civ) 297] , Mahanadi Coalfields Ltd. v. Mathias Oram [Mahanadi Coalfields Ltd. v. Mathias Oram, (2010) 11 SCC 269 : (2010) 4 SCC (Civ) 450 : JT (2010) 7 SC 352] and Brij Mohan v. HUDA [(2011) 2 SCC 29 : (2011) 1 SCC*

D *(Civ) 336] .) The fundamental right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and*

E *the person's status in [the] social system".*

28. However, in case of land acquisition, "the plea of deprivation of right to livelihood under Article 21 is unsustainable". (Vide Chameli Singh v. State of U.P. [(1996) 2 SCC 549 : AIR 1996 SC 1051] and Samatha v. State of

F *A.P. [(1997) 8 SCC 191 : AIR 1997 SC 3297]) This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide Lachhman Dass v. Jagat Ram [(2007) 10 SCC 448] and Amarjit Singh v. State of Punjab [(2010) 10 SCC 43 : (2010) 4 SCC (Cri) 29] .) However, in Jilubhai Nanbhai Khachar v. State*

G *of Gujarat [1995 Supp (1) SCC 596 : AIR 1995 SC 142] this Court held : (SCC pp. 620 & 632, paras 30 & 58)*

"30. Thus it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right. ...

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58. ... The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles."

29. This Court in Narmada Bachao Andolan (1) [(2000) 10 SCC 664] held as under: (SCC pp. 702-03, para 62)

"62. The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress." (emphasis supplied)

30. In State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46] , this Court held as under : (SCC p. 95, paras 102-03)

"*102*. Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question?

103. If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired vis-à-vis a prohibition imposed upon the State from doing so at all."

(emphasis supplied)

31. Thus, from the above referred judgments, it is evident that acquisition of land does not violate any constitutional/ fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned."

With this context, an analysis of each of the aforementioned points is elaborated in the following sections.

A **I. Cut-off date**

13. Mr. Prashant Bhushan, learned counsel appearing for some landowners and groups representing them, argued that the Commission's report for Gopalpur was accepted by this court, whereby the effective date for the computation of compensation was held to be the date of notice of survey. It was submitted that given that compensation and rehabilitation determination had been unduly prolonged, this court ought to clarify that the date of survey of the concerned village should be the effective date, rather than the date of survey in the case of village Gopalpur, which was in September 2010. It was argued, that adopting this would be consistent, in principle, as anything else would mean that the Commission, and this court, would be applying different standards.

14. Mr. Atmaram Nadkarni, learned senior counsel appearing for MCL, urged that the Gopalpur approach was universally adopted as the correct one by the Commission, based on which reports for other villages were prepared, and consequently compensation amounts determined. As a consequence, the landowners also stood to benefit, because the date of September 2010 was a uniform one, on the basis of which compensation and all other amounts were determinable. It was further submitted that so far as the question of delay or prejudice was concerned, there could be no cause for complaint, because there was sufficient safeguard in law, by way of award of interest, for delayed payment. It was submitted that if this court were to revisit the issue, settled matters that had attained finality, would be opened and the process of compensation determination thrown into uncertainty, which would not be to the benefit of anyone, including the land owners.

15. The Parichha Commission, in its report relating to village Gopalpur, explained the reasons why the date for determination of compensation and benefits should be calculated from September 2010:

> *"15. In a tribal area like Sundargarh most of the people depend on agriculture for their sustenance and generally have no other avocation. Such people once uprooted from their land find themselves nowhere having no savings to draw and nothing to fall back upon. Such persons, if not properly rehabilitated and properly compensated may even face starvation. During the process of objection hearing, we found that being deprived of their legal rights over the lands because of acquisition notification, some tenants could not arrange*

funds for undertaking treatment to ailing family members, who were suffering from serious illness as a result some of such patients died without getting proper treatment. Some land holders complained that their children's marriage and education were stalled because they had no legal right to deal with their lands. If the compensation would have been paid within one or two years of publication· of 4(1) notification, then the land holders could have purchased equivalent amount of land for their sustenance as admittedly the value of lands then was much less than the present rate. It isto be noted that delay in payment of compensation was not at all due to the fault of the land holders but was entirely due to slackness on the part of the Government of India and the beneficiary company, MCL. We, therefore feel that the proper compensation for· the lands to the land holders cannot be given unlessthe cut-of date is brought to the· date of notice published by the Claims Commission for survey of the1ands as per the direction of the apex Court. We, accordingly, recommend the cut-off date to be September, 2010 *and for assessment of the compensation of the lands of Gopalpur as per the market rate prevalent in 2010-11."*

16. The approach adopted in relation to village Gopalpur for determining compensation amounts and fixing the cut-off date as September 2010, was applied in relation to other villages such as Sardega, Balinga, Bankinahal, Tiklipara, Garjanbahal, and Kulda by this court's order dated 08.08.2012, and on 10.04.2013, the Commission's report was endorsed and accepted. By another order dated 15.07.2013, the court accepted the Commission's report for village Karlikachhar. Given these facts, this court is of the opinion that there is merit in the contention of MCL, that compensation amounts should be determined having regard to one single cut-off date, i.e., September 2010. Given the fact that this court was alive to the plight of the landowners who had not been paid any amount for over 22 years when the first judgment was delivered, which led to the setting up of the Commission and the evolution of the Gopalpur model, whereby survey was undertaken for the first time after September 2010, that date should be the reckonable one. If one keeps in mind the fact that had the compensation determination been based on the date of issuance of the preliminary notification, it would have plainly resulted in injustice to the landowners. Instead, the shifting of the date to

A September 2010, and the further recompense to the landowners based on that cut-off date, inures to their benefit. The shifting of dates again would spell uncertainty, and also lead to a real possibility of delay in the computation of compensation and other benefits to the landowners who were deprived of their rights. In these circumstances, the court is of the opinion that re-opening the issue would lead to considerable uncertainty, because settled cases would invariably have to be re-examined and computations made afresh. For these foregoing reasons, the submission with respect to application of the dates when the surveys were notified as the basis for computation of compensation in different villages, is rejected as unfeasible.

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17. The cut-off, based upon the Gopalpur report, of September 2010 merits acceptance in regard to all 14 villages for more than one reason. The first and foremost, is that the acquisition in the present case under the CBA Act was notified in 1988; the final notification or declaration was made in 1990. The nightmare faced by the land owners in respect of the internal dispute, ultimately led to their approaching the court. Finally, this court intervened and directed the mechanism for determination of compensation. By this method, irremediable prejudice that would have been caused to the land owners had the original date (1988-1990) been treated as the basis, was avoided. The net result is that the Gopalpur report which is based upon the cut-off being September 2010, has justly inured in favour of land owners by postponing the date for reckoning the compensation by 22 years. Secondly, and equally important, most of the compensation determination exercises were conducted between September 2010 and end of 2013. The land owners have not been able to demonstrate how the adoption of Gopalpur cut-off would prejudice them in any manner. No sale deed or market value or documents disclosing significant change in market value between 2010 and 2013-14 has been disclosed. Thirdly, all land owners regardless of whether the survey for compensation determination took place in 2011, 2012, or 2013 would in any case be entitled to interest, at statutory rates if the Gopalpur cut-off date is accepted. This would result in statutory interest accruing in favour of the land owners, upon the acceptance of the report, which would be over and above the compensation determined on the basis of the market value determined as well as the solatium. This would offset the prejudice, if any, caused due to basing the compensation determination on the Gopalpur cut-off dates. In terms of the State policy, a rehabilitation and resettlement development advisory committee

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(hereinafter, "RPDAC") is constituted by the State Government and tasked with implementation of rehabilitation measures. The rehabilitation and resettlement plan has to be prepared by the Collector after consultation with displaced families. The resettlement site is selected by the RPDAC, based upon the consent of the villagers, post which, an intimation is sent to the required body (in the present case, MCL). According to MCL, this site for resettlement has been finalised. The Collector, pursuant to an order of this court, had filed a report on 03.11.2020. The report covers a large number of rehabilitation and resettlement villages and also lists that in relation to 12 villages, 326 objections were received by the Collector. After verification exercises, the Collector has reported that the list with respect to rehabilitation and resettlement needed the approval by the Government; and the Collector had to prepare a report in consultation with the displaced families. The RPDAC had to select the site, gram sabhas had to be held, displacement certificates had to be issued to persons, in addition to which they had to be provided building assistance of minimum ₹2,40,000/-.

18. Consequently, the date fixed in the Gopalpur report, by the Commission (i.e., September, 2010) would be the basis for compensation determination. Apart from compensation, the claimants would also be entitled to statutory benefits (solatium, additional compensation, interest, etc.) in accordance with the Land Acquisition Act, 1894.

II. *Point No. 2: Applicability of the R&R Act, 2013*

19. The landowners argued that since the coming into force of the R&R Act 2013, the appropriate law for determination of compensation as well as other benefits, would be provisions of that enactment, and not the repealed Land Acquisition Act, 1894, or the CBA Act. It was urged that since in all the cases, where compensation had not been disbursed to the oustees on the date when possession of the land was taken over from them, the provisions of the R&R Act 2013 would be attracted.

20. It was urged that the Commission in its reports relating to villages Kiripsira, Jupurunga, Ratansara, and Tumulia, erroneously rejected the claim about applicability of the R&R Act, 2013. It was argued, in this regard, that the Commission's reports on this aspect could not be supported, and since the compensation determination had not been finalized, the applicable law would be the one in force when the final decision is arrived at.

21. On behalf of MCL, it was submitted that the Commission rightly declined to award the compensation under the R&R Act, 2013 as this court had categorically settled the position vide its order dated 25.10.2013. The order of this court had clarified that only the Third Schedule of the R&R Act 2013, would be applicable, with regard to infrastructure for resettlement, etc. So far as award of compensation was concerned, this court had already affirmed the Commission's approach while approving the Gopalpur report and the same would govern all the villages under the acquisition. In case any deviation was made with regard to award of compensation in any of the villages, it would open up a 'Pandora's box' and all the claims which were settled following the Gopalpur model would open up, resulting in a never-ending process. It was further submitted that MCL, despite having paid a huge amount of over ₹2,000 crores, had not yet received physical vacant possession of most of the land, for which compensation was already disbursed, and rehabilitation and resettlement benefits granted.

22. The Commission had dealt with and rejected the claim for payment of compensation under the R&R Act 2013, observing as follows:

> *"8.9 Many land oustees filed Claim Cases with a prayer to provide them compensation under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. This Commission vide order dated 19.6.2015 passed in Claim Case No.27 and vide order dated 30.10.2018 passed in Claim Case No. 130 and order dated 08.12.2018 passed in Claim Case No.10/1 & 27 others, after hearing the Counsel appearing in those cases and the petitioners in person, dismissed those cases. All other cases involving similar issue were also dismissed in terms of the above cases."*

23. Section 105 of the R&R Act 2013 reads as follows:

> ***105. Provisions of this Act not to apply in certain cases or to apply with certain modifications**.–(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.*
>
> *(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.*

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

Entry 11 to the Fourth Schedule of the said Act, read as follows:

"11. The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957)"

24. By virtue of Section 105, read with the Fourth Schedule, therefore, the R&R Act 2013, was not applicable to acquisitions made under the CBA Act. However, by Section 105(2), the Central Government had issued a notification:

"Direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply

with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be."

25. The Ministry of Coal, Central Government issued a clarification dated 04.08.2017 on the applicability of First, Second and Third Schedules of the R&R Act, 2013 in cases of acquisition of lands under the CBA Act. The clarification stated as under:

"1....That consequent upon the announcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013(hereinafter 'RFCTLARR Act') and Order SO No. 2368(E). notified on 28.08.2015 by Ministry of Rural Development, Coal India Limited and its subsidiaries have sought clarifications regarding payment of compensation for land acquired prior to 01.09.2015 under Coal Bearing Areas (Acquisition and Development Act. 1957(hereinafter the 'CBA Act')

2. As multiple stages are involved in the land acquisition process, including that of determination of compensation, this Ministry sought advice from Ministry of Law and Justice. Ministry of Law and Justice has given their advice that if the compensation has not been determined before 01.09.2015 under Section 13(5) of the CBA Act, then the provisions of First Schedule, Second Schedule and Third Schedule of the RFCTLARR Act will be applicable. In remaining cases where the compensation has already been determined under Section 13(5) of the CBA Act before 01.09.2015, then such cases will not be reopened.

4. In view of the above clarifications, previous order letter no. 430200/26/88-LSWdated 12.05.1989 issued by the. Ministry of Energy, Department of Coal shall stand modified. The above clarifications may be followed in determination of compensation for land acquired under CBA Act.

This is issued with the approval of the competent authority.

s/d

R.S. Saroj

Under Secretary to the Govt. of India".

26. The above relevant facts reveal that Section 105 excluded application of the R&R Act, 2013 to acquisitions made and eminent domain exercised, under the enactments specified in its Fourth Schedule, such as the CBA Act. It was under this enactment, that the acquisitions which are the subject matter of the present proceedings, were notified in favour of MCL.

27. When the R&R Act, 2013 was brought into force with effect from 01.01.2014, the acquisitions in favour of MCL continued to be under the CBA Act. By Section 105(3) of the R& R Act, 2013, the Central Government was obliged to issue the notification within one year from the date of commencement of that Act to ensure that its provisions relating to the determination of compensation, were in accordance with the provisions in the First Schedule and rehabilitation and resettlement in accordance with the Second and Third Schedules of that Act. It was pursuant to this mandate, that on 28.08.2015 the Central Government issued a notification in terms of Section 105(3). However, the Central Government chose to exercise its power to remove difficulties, under Section 103. This seems to be because the notification was issued on 28.08.2015– beyond the period prescribed in Section 105(3). Nevertheless, the spirit of the statutory injunction to make the beneficial provisions of the R&R Act, 2013 applicable to compensation determination and resettlement or rehabilitation measures, was complied with in effect and substance.

28. MCL relied upon the order of this court dated 25.10.2013 and urged that only the benefits of the Third Schedule could be availed by the landowners. Those provisions relate to the obligation to provide amenities. At the same time, this court has to be conscious of the fact that when that order was made, the R&R Act, 2013, as we know of today, was not even law – it was sought to be introduced in Parliament through a Bill. The order of 25.10.2013 only expressly alludes to the Bill. In other words, the court could not foresee the sequence in which the provisions of the R&R Act, 2013 would be applicable. The order of this Court nowhere indicated that whether the R&R Act - which was to be enacted, and come into force later - was applicable to all land acquisition proceedings including those pending consideration at various levels and before various courts, and whether the body of the new enactment sought to exclude from its purview acquisitions made under enactments other than the erstwhile Land Acquisition Act, 1894,

as the R&R Act, 2013 eventually did, through Section 105 and the Fourth Schedule.

29. There can be no doubt that for the period between 01.01.2014 and 28.08.2015, ongoing acquisitions processes under enactments specified in the Fourth Schedule - such as the CBA Act - were out of purview of the R&R Act, 2013. However, with the publication of the notification under Section 113 read with Section 105(3) on 28.08.2015, the legal position underwent a transformation. Acquisition processes, especially compensation determination as well as calculation and disbursement of resettlement entitlements and rehabilitation measures had to be in terms of the First, Second and Third Schedules to the Act.

30. It is immediately noticeable from the provisions of the First Schedule to the R&R Act, 2013 that compensation determination is radically different from the pre-existing method of determination. This is because market value determination, by virtue of Sl. No. 2 of the First Schedule, requires in the first instance, decision on which factor is to be applied for acquisition of land in rural areas; Sl. No. 4 outlines the method for determining value of assets; and Sl. No. 5 states that the solatium would be equal to 100% of the market value of the land mentioned in Sl. No. 1 in respect of rural areas multiplied by the factors provided in Serial No. 2. Serial Nos. 6, 7, and 8 outline the method for determining the final award.

31. As far as rehabilitation and resettlement entitlements are concerned, provisions of the Second Schedule apply. By Serial No. 1, if the property displaced includes a house, the specific provision is that in case the house is "lost" due to acquisition in rural areas, the resettlement benefit would be "a constructed house" provided as per the *Indira Awas Yojana* specifications. In addition, resettlement benefits by way of employment, or in lieu of it, a one-time payment of ₹5 lakh and annuity policies which were to yield not less than ₹2000/- per family per month for 20 years, plus subsistence grant for displaced families for one year, and one time resettlement allowance of ₹50,000/-, among others, is assured. The Third Schedule to the R&R Act, 2013 outlines the infrastructural amenities which the State has to ensure, in the case of families and people displaced to large scale acquisition proceedings.

32. Having regard to the provisions of the R&R Act, 2013 especially the First, Second and Third Schedules thereof, the position taken by MCL in this Courts' opinion cannot be countenanced. Undoubtedly the Gopalpur model of determining compensation applied in respect of the villages for which reports were prepared and approved by the Courts (Gopalpur, Sardega, Balinga, Bankibahal, Tikilipara, Garjanbahal, Kulda, Karlikachhar, Siarmal, and Bangurkela). However, in regard to four villages i.e., Tumulia, Jhupuranga, Ratansara, and Kirpsara, no award has yet been approved. The report for Tumulia village was prepared on 04.04.2020 and thereafter filed in court, awaiting its approval. The report in respect of the village Jhupuranga has been placed on record; the same is pending approval of this court.

33. This court is of the opinion that with the issuance of the notification on 28.10.2015 and the clarification by the Central Government to MCL on 04.08.2017, the question of paying or depositing compensation in terms of the CBA Act cannot arise after 28.10.2015. This is because the requirement of compensation determination under the CBA Act ceased by virtue of Section 105(3). The statutory regime under the CBA Act was superseded and substituted with the provisions of the First Schedule to the R&R Act, 2013.

34. In the light of the above discussion, it is held that the First Schedule of the R&R Act, 2013 is applicable to the acquisition in question, made by the Central Government in favour of MCL, in respect of the villages, the reports of which were not approved prior to 28.10.2015. Accordingly, the compensation based upon the market value for the four villages i.e., Tumulia, Jhupuranga, Ratansara, and Kirpsara have to be re-determined in accordance with the provisions of the First Schedule to the R&R Act, 2013. Since the extent to land involved, identification of land owners, and the basic market value along with solatium and interest payments, have been determined, the only additional exercise which the Commission has to carry out is the differential payable after the re-determination in respect of all the elements i.e., the market value, solatium, and further interest. It is also further clarified that the villages in respect of which this court has already approved reports of the Commission, and entitlements have been determined, even availed of, or pending implementation, i.e., the other ten villages, the issues shall stand finalized - there can be no re-determination on the basis of the present judgment.

A **III.** ***Point Nos. 3 (whether the Orissa Rehabilitation Policy of 2006, or the subsequent Policy of 2013 applies), 4 (whether for the purpose of employment benefits under the 2013 Policy, the family unit is deemed to be one, or several) and 5 (whether the Commission could re-open determinations based on change in policies of the State, after its report was accepted by this court)***

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35. Learned counsel for the landowners had urged that by virtue of Section 108 of the R&R Act, 2013 the affected individuals or families have the choice or option to avail benefits of rehabilitation and resettlement either in terms of the State law or policy or the provisions of the Act. It C was submitted that for the purposes of deciding such package and resettlement benefits, the cut-off date should be the date on which the survey was first conducted in relation to the concerned village. The learned counsel therefore submitted that the approach of the Commission in confining itself to the R&R Policy 2006 and denying the later beneficial D provisions through the amendment of 2013 is untenable.

36. On behalf of MCL, it was argued that the Commission's approach in calculating the rehabilitation and resettlement benefits in the R&R Policy 2006 is sound. It is submitted that the arguments on behalf of the land owners assumes that the acquisition in the present case was E made under the R&R Act, 2013. In fact, the old Land Acquisition Act was inapplicable; what applied was the CBA Act. Therefore, the policy which inured in favour of the land owners was embodied in the R&R Policy 2006. That was also in force when the judgment of this court was delivered pursuant to which Gopalpur report was approved. Besides, the subsequent reports have also gone by the 2006 policy. In these F circumstances, there is no question to say that the 2013 policy would apply, with the reopening of past cases resulting in chaos and uncertainty. It would prolong the process of determining the rehabilitation and resettlement benefits and also ensuring that they are received by the beneficiaries. Furthermore, adopting the 2013 amendment would result G in applying two sets of norms for the purpose of one acquisition.

37. Section 108 of the R&R Act, 2013 reads as follows:

*"**108. Option to affected families to avail better compensation and rehabilitation and resettlement**.-(1) Where a State law or a policy framed by the Government of a State provides for a* H *higher compensation than calculated this Act for the*

acquisition of land, the affected persons or his family or member of his family may at their option opt to avail such higher compensation and rehabilitation and resettlement under such State law or such policy of the State.

(2) Where a State law or a policy framed by the Government of a State offers more beneficial rehabilitation and resettlement provisions under that Act or policy than under this Act, the affected persons or his family or member of his family may at his option opt to avail such rehabilitation and resettlement provisions under such State law or such policy of the State instead of under this Act."

38. It is also pertinent to notice the relevant provisions of the R&R Policy 2006. By clause 2(b), the term *"compensation"* means the sum as in the erstwhile Land Acquisition Act, 1894. By Section 2(c), the cut-off date for the purpose of compensation is the date on which notification declaring the intention to acquire land under the relevant law or provision of the rehabilitation policy is published. A note to clause 2(c) states that the eligibility for resettlement and rehabilitation benefits would be through a list of displaced families, and that the list would be updated on the first January in the year in which the physical displacement is to take place. The term "family", which is crucial in the present case, has been defined by the 2006 policy as follows:

"(f) Family means the person and his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him or her and dependent on him or her for his/her livelihoods.

Note: Each of the following categories will be treated as a separate family for the purpose of extending rehabilitation benefits under this policy.

(i) A major son irrespective of his marital status.

(ii) Unmarried daughter/sister more than 30 years of age.

(iii) Physically and mentally challenged person irrespective of age and sex; (duly certified by the authorized Medical Board). For this purpose, the blind/the deaf/the orthopedically handicapped/mentally challenged person suffering from more than 40% permanent disability will only be considered as separate family.

A *(iv) Minor orphan, who has lost both his/her parents.*

(v) A widow or a woman divorcee."

39. By clause 4 of the policy, survey and identification of displaced persons are to take place. By clause 7(ii), physical displacement cannot be made before the completion of resettlement work; by clause 7(v), provisions relating to rehabilitation are to be given effect from the date of actual vacation of the land. Clause 8 outlines rehabilitation assistance. Where displacement is on account of Type B(II), i.e., mining project which results in displacement of land owners, the benefits of rehabilitation and resettlement are as follows:

C *"II. Type B: Mining Projects*

(a) Employment: Displaced and other affected families shall be eligible for employment, by the project causing displacement. For the purpose of employment, each family will nominate one member of the family.

D *The project proponent will give preference to the nominated members of the displaced and other affected families in the matter of employment. The order of preference will be as follows:*

E *(1) Displaced families losing all land including homestead land,*

(ii) Displaced families losing more than 2/3rd of agricultural land and homestead land,

(iii) Families losing all agricultural land but not homestead F *land,*

(iv) Displaced families losing more than 1/3rd of agricultural land and homestead land,

(v) Displaced families losing only homestead land but not agricultural land,

G *(vi) Families losing agricultural land in part but not homestead land.*

The Project authority will make special efforts to facilitate skill up-gradation of the nominated member of the displaced H *family to make him/her employable in their project.*

1. In case of nominees of displaced families eligible for employment otherwise; the upper age limit shall be relaxed by five years.

2. Project authorities should notify their employment capacity sufficiently in advance.

3. As far as practicable, the objective shall be to provide one member from each displaced/other family as mentioned above with employment in the project. However, where the same cannot be provided because of reason to be explained in writing, cash compensation as mentioned below shall be provided to such families. Families, who do not opt for employment/self-employment as mentioned in sub para (a) above and (b) below, shall be provided by the Project authority with one time cash assistance in lieu of employment at the scale indicated below:

Sl. No.	*Families under category as per sub-para (a) above*	*Amount of one time cash assistance (₹ in lakhs)*
(i)	*Displaced Families coming under category (i)*	*5.00*
(ii)	*Displaced Families coming under category (ii)*	*3.00*
(iii)	*Families coming under category (iii)*	*2.00*
(iv)	*Families coming under category (iv), (v) and (vi)*	*1.00*

(b) Training for Self-employment Project authority under the guidance of the Collector concerned will make adequate arrangement to provide vocational training to at least one member of each displaced/other family so as to equip him/her to start his/her own small enterprise and refine his/her skillstotake advantage of new job opportunities. For those engaged in traditional occupations/handicrafts/handlooms, suitable training shall be organized at the cost of project authority to upgrade their existing skills.

(c) Convertible Preference Share: At the option of the displaced family the project authority may issue convertible preference share upto a maximum of 50% out of the one-time cash assistance as mentioned in sub para (a) above.

(d) Provision for homestead land: Subject to availability, each displaced family will be given at least1/10th of an acre of

land free of cost in a resettlement habitat for homestead purpose.

(e) Assistance for Self-relocation: Each of the displaced family who opts for self-relocation elsewhere other than the Resettlement habitat shall be given a one time cash grant of Rs.50,000/- in lieu ofhomestead land.

(1) House Building Assistance: Besides, Project authority shall construct house for each displaced families in the resettlement habitat or provide house building assistance of Rs.1,50,000/- to each of the displaced family settling in the Resettlement habitat or opting for self relocation elsewhere.

(g) Shops and Service Units: Project authorities will also construct shops and service units at feasible locations at their own cost, which will be allotted in consultation with Collector to project displaced families opting for self-employment. While allotting such units, preference will be given to physically challenged persons and members of displaced SC & ST families."

40. On 05.08.2013, the State of Orissa, through a notification published in the Official Gazette, published the amendments to the R&R Policy 2006. The amendment essentially dealt with change in clause 2(f) with respect to the definition of "family". The amendments made are extracted below:

"AMENDMENTS

1. In the Orissa Resettlement and Rehabilitation Policy, 2006 (hereinafter referred to as the said policy), for the word "Orissa" appearing wherever in the said policy, the word "Odisha" shall be substituted and this substitution shall be deemed to have come into force on the 1st day of November, 2011.

2. In sub-clause (i) under clause (f) of Para 2, for the words "A major son irrespective of his marital status", the words "A major son/grandson irrespective of his marital status" shall be substituted.

3. In sub-clause (ii) under clause (f) of Para 2, for the words "Unmarried daughter/sister more than 30 years of age", the

words "Major unmarried daughter/Major unmarried granddaughter/Major unmarried sister" shall be substituted.

4. Amendment to Para 2(f)(i) is made to clarify and restate the provision of the said policy. Therefore, it shall take retrospective effect from the date of commencement of the said Policy, i.e. 15th May, 2006.

5. Amendment to Para 2(f)(ii) shall take effect from the date of issue of this Government Resolution."

41. The difference between the R&R Policy 2006 and the policy as amended in 2013, essentially, is with respect to definition of "family". The 2006 policy has remained unchanged with respect to other resettlement/rehabilitation benefits. The benefits may broadly be outlined in the following terms:

(i) Employment; cash in lieu of employment – employment to at least one member of displaced family or in lieu of this, cash in terms of clause 3;

(ii) Provision for homestead land (subject to availability) entitles each displaced family at least 1/10th of an acre of land in a resettlement habitat. One time cash grant of ₹50,000/- for those opting for self-location elsewhere in lieu of homestead land;

(iii) House building assistance of up to ₹1,50,000 to each displaced family, settling in the resettlement habitat or opting for relocation elsewhere. Shops and service units to be constructed by the project authorities which are to be allotted in consultation with the Collector to displaced family opting for self-employment. These were subject to preference to physically challenged persons and members of the displaced SC/ST families.

42. By the provisions of the Second Schedule to the R&R Act, 2013 all displaced families losing a house in a rural area are entitled to a constructed house in terms of the *Indira Awas Yojana* specifications. This benefit can also be enjoyed by those who do not have a house but were residing in the area for three years prior to acquisition. In case a family in an urban area opts not to take the house offered, it will be entitled to one time compensation for house construction which will not

be less than ₹1,50,000/-. At the same time, if any affected family in rural area so prefers, the equivalent cost of house may be offered in lieu of the constructed house. The second benefit is that if jobs are created through the project which benefits from acquisition, the concerned entity should provide suitable training and skill development in the required field and make provision for employment at a rate not lower than the minimum wages to *at least one member of the affected family* or arrange for a job in any other project. In lieu of this benefit, a one-time benefit of ₹5 lakhs per family is to be made or annuity policies which would be not less than ₹2,000/- per month per family for 20 years with appropriate indexation in consumer price index for agricultural labourers has to be made. Furthermore, subsistence allowance for displaced families for a comparative one-year equivalent of ₹3000/- per month is to be provided. Additional transportation cost for shifting and one time resettlement allowance of ₹50,000/- is payable.

43. The provisions of the R&R Act, 2013 which replaced the old Land Acquisition Act, 1894 have for the first time cast obligations upon the State to ensure that resettlement and rehabilitation is provided in addition to compensation. These rehabilitation and resettlement provisions relate not only to a right to employment for at least one member of the displaced family but also other monetary and tangible benefits, such as land for construction of houses, cash assistance for construction; transportation cost; provision for temporary displacement; annuity and/or cash payment in lieu of employment benefits, etc. Furthermore, by provisions of the Third Schedule, elaborate provisions for the kind of public amenities which have to be provided, such as public health benefits, schools, community centres, roads and other basic necessities, have been obligated. All these are in furtherance of the displaced and the larger social justice obligations cast upon the State.

44. The R&R Act, 2013 by Section 108 also clearly envisions that the benefits provided by the new law are not to be applied blindly. Wherever there are existing provisions that are more beneficial or provide better benefits to displaced persons, such families and individuals have the choice or option to prefer either such policy or local law or the provisions of the R&R Act. If one goes by the principle underlying Section 108, clearly the benefits spelt out under the R&R Policy 2006, appear to be better, and more elaborate.

45. As noticed earlier, the difference between the Orissa Resettlement and Rehabilitation Policy, 2006, and the amendment in 2013, is with respect to the definition of "family". The 2006 policy *inter alia,* defines family as the "*person and his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him or her and dependent on him or her for his/her livelihoods."* The note to clause 2 (f) states that, *"Each of the following categories will be treated as a separate family for the purpose of extending rehabilitation benefits under this policy."* It also enumerates a major son and an unmarried daughter/ sister of more than 30 years, as *"a separate family for the purpose of extending rehabilitation."*

46. The amendment to the policy, made on 05.08.2013, is that instead of a major son, the expression *"A major son/grandson irrespective of his marital status"* was substituted. Similarly, the term *"Unmarried daughter/sister more than 30 years of age",* was substituted with *"Major unmarried daughter/Major unmarried granddaughter/Major unmarried sister".*

47. The rival arguments in regard to these amendments were that on the one hand, the landowners urged that grandsons, apart from the original beneficiaries, were entitled to employment benefits, as were unmarried daughters, who were more than 30 years. On the other hand, MCL urged that the basic idea of rehabilitation being granting employment to one member of the displaced or affected family, the construction to be given to the policy should be in harmony with that intent, and not result in an employment bonanza, thus placing undue burdens on the MCL.

48. A proper and purposive interpretation of the policy – with respect to employment benefits and entitlements can be gathered, not only by taking note of the definition of "family" but also the operative portion, which confers benefits. The same is as follows:

> *"II. Type B: Mining Projects*
>
> *(a) Employment: Displaced and other affected families shall be eligible for employment, by the project causing displacement. For the purpose of employment, each family will nominate one member of the family."*

A 49. If one considers what the policy seeks to achieve, it is apparent, that *one member of a displaced family has to nominate the individual who can receive employment benefit.* In this context, it is crucial to notice that the benefit is to be given, in the first instance to the "person". The note extends the area of coverage by stating that a major son would be treated as belonging to a separate family. The reason for this apparently B is that the senior most member of the family might not always be in a position to take up employment: either on account of age, or infirmity, or the number of years of service left. Therefore, to ensure that employment benefits are not denied due to such limitations, the definition of family has been intentionally expanded, to include a major son, who would be C eligible to employment, and, in case his father or mother cannot be employed, or can be employed only for a short duration. The inclusion of a grandson, is to be seen in that context. The addition of the category of "grandson" along with a major son, to read "*A major son/grandson irrespective of his marital status"* leads one to the same conclusion. Thus, with the amendment of 2013, the basic entitlement of the person D affected, *and his major son*(who is to be treated as a separate family) cannot be denied. The inclusion of a grandson, *not as a separate category, but along with the major son,* is to ensure that if, for some reason, the son is un-employable, or in turn is aged, or infirm, then, the major grandson would be employed, in his stead. In other words, the E proper interpretation of this condition is that the father would be entitled to employment; in case a major son exists, then that major son would too. However, if there are more than one major sons, one among them would be entitled to the benefit, not all. Likewise, failing a major son, i.e., where *no major son exists,* in that eventuality one major grandson would be eligible for employment. This interpretation is fortified by the F fact that an unmarried daughter is treated as a separate unit; earlier, the basic eligibility was subject to attaining 30 years. Now, the age restriction has been done away with. Furthermore, to hold that the individual, one of his major sons, and one major son, would all be eligible, together, to claim employment is not the plain intendment. The structure of the G definition and the clause dealing with employment clearly shows that two members of the family: i.e., the father and the son are eligible. In addition, an unmarried daughter too, would be treated as a separate unit.

50. It is therefore held that R&R Policy 2006, as amended in 2013, being more beneficial, would be applicable, subject to the above H interpretation. At the same time, it is clarified that in cases where anyone

has accepted employment, the issue cannot be re-opened – it shall be treated as final and binding. It is also clarified that in the event anyone among the displaced families is not interested in employment, and states so expressly, the alternative of one-time monetary payment, in terms of clause 3 of the 2006 policy, would be provided.

51. Therefore, in the light of the above discussion, it is held that though the R&R Policy 2006 as amended in 2013 is applicable, the question of the father, the son and grandson, being eligible for employment benefit, concurrently, does not arise. Either one major son, or, in his absence, or unwillingness, a major grandson, would be eligible. This is apart from the entitlement of unmarried daughters: in their case, the aforementioned note to the definition had treated such daughters as a separate family; the amendment has only removed the age threshold.

52. As a result of the above reasoning, it is held, in relation to Point No. 3, 4 and 5 that the R&R Policy 2006, as amended in 2013 would apply. A displaced family has to be determined in the light of the definition, which includes the individual, and one major son, and an unmarried daughter. It is when, for some reason, the son cannot be offered or given employment, then one major grandson would be eligible for consideration. This court also holds that cases which have attained finality cannot be re-opened on the basis of this interpretation. The interpretation would inure in respect of cases where the reports have not been approved i.e., villages Tumulia, Jhupuranga, Ratansara, and Kirpsara.

53. During hearings, the learned ASG had submitted that MCL was willing to provide a one-time compensation amount in lieu of employment, of ₹16 lakhs, as an alternative to the 2006 policy. It is therefore directed that whichever option (R&R Policy 2006 or this one-time compensation offer from MCL) is better, is to be provided. The concerned Collector is to ensure the same.

IV. ***Point No. 6: Entitlement to housing plots***

54. MCL has provided details and particulars with respect to village-wise resettlement benefits in terms of resettlement plots. According to these particulars, of the 3034 total displaced families, resettlement benefits in plots were sanctioned in favour of 1420 families of which such benefits were provided to 1177 families. 1614 families are yet to be sanctioned these resettlement benefits/plots. The chart, which

A according to MCL reflects the picture as of October 2021, is extracted below:

VILLAGE WISE RESETTLEMENT BENEFITS (Up to October 2021)				
Village	**Total displaced families**	**Resettlement benefits/plot sanctioned**	**Resettlement benefits/plot provided**	**Balance to be sanctioned**
Tikilipara	406	212	181	194
Sardega	179	174	152	5
Balinga	280	249	240	31
Bankibahal	135	120	118	15
Gopalpur	1031	336	258	695
Garjanbahal	350	211	141	139
Kulda	86	61	56	25
Karlikachhar	153	12	6	141
Siarmal	188	36	22	152
Bangurkela	226	9	3	217
Total	**3034**	**1420**	**1177**	**1614**

55. The status of resettlement sites as of October 2021, according to MCL, is as follows:

Sl. No	Name of the resettlement site	Area (in Acres)	Approx plot developed	Plot allotted status of site	Villagers to be resettled	Remarks
1	Basundhara Nagar	73.62	256	256	Tikilipara-132, Sardega-124	Already resettled
2	Barpali-I	15.94	72	68	Bankibahal	Already resettled
3	Barpali-II	15.00	75	70	Garjanbahal	Almost all the activities have been completed, the water supply to the R&R site has already been arranged. The site is fully ready for shifting the villagers of Garjanbahal.
4	Chhatenpali	61.95	315	158	Kulda-12, Siarmal-146	Chhatenpalli R&R site where the infrastructure facility for pocket-A is fully ready except power supply, this is likely to be established shortly.
5	Badkhalia	55.44	275	0	Karlikachar, Bangurkela	Temporary road construction for approaching the site has been completed. Proposal for development various

						activities of the site for an amount of Rs.27.00 crores proposal approved and e-tender has been invited on Dt:31.07.2020. Tender opened on Dt:29.08.2020 and Work order has been issued on Dt:24.11.2020.
6	Sarangijharia	88.00	440	0	Gopalpur	22 nos. of proposal regarding development of R&R site Sarangijharia has been processed and sent MCL HQ for approval.

56. During the hearing, MCL argued that there was reluctance on part of the villagers regarding resettlement sites which has created problems for it. It was therefore, urged that the concerned collector should in a time bound manner finalise the sites after which MCL should also be given time-bound directions to develop them. In the alternative, it was urged that instead of long drawn out rehabilitation/resettlement process, which envisions involvement of multiple authorities, the court may consider it appropriate and award one-time lumpsum amount in lieu of plots – further wherever plots have been earmarked, allotted, and in the process of development and allotment, such classes should not be disturbed. It was urged in this regard that in the sites which are ready for relocation, and shifting, in terms of the order of the Claim Commission, House Building Advance has been enhanced from ₹2,24,000/- to ₹14,50,000/-.

57. On behalf of the land owners, it was urged that the R&R policy of the State envisions that ordinarily a plot has to be provided to those who were displaced. There is no doubt that the State authorities have delayed the process unduly. It was further submitted that given that most of the displaced families belong to the poorest sections of the society and are from the Scheduled Tribes communities, it would not be appropriate to award cash compensation, but instead the State authorities should ensure that resettlement plots are given.

58. The resettlement benefits in terms of the State's policies include development of plots and allotment to displaced families, which is "subject to availability". One time assistance for relocation @ ₹50,000/-; house

A building allowance of ₹1,50,000 has concededly been increased to ₹14,50,000. The figures shown by MCL as well as the materials placed on record in the form of objections by the land owners disclose that the progress of development of lands in the sites earmarked have been dismal, to put it mildly. MCL cannot escape the share of the blame in this regard.

B 59. Under the R&R Act, 2013 the State and MCL are under an obligation to ensure that rehabilitation and resettlement plans are prepared in consultation with the displaced owners. The State policy is also in accordance with the Act in that regard. In the present case, according to the materials, MCL asserts that resettlement plots have been provided to 1177 displaced families and that 1614 families remain to be given that
C benefit.

60. Having regard to the fact that the judgment of this court was delivered in 2010 after which compensation determination and reports of the committee were prepared and submitted to this court mostly between 2010 and 2013, and further having regard to the fact that two
D other reports are pending consideration of this court, it would, in the fitness of things, be appropriate that such of the resettlement plots which have been acquired, should be developed in consultation with the Collector. The Collector will hold hearings, after giving due publicity to the land owners, indicating the place and providing adequate time for all
E land owners and stakeholders to be present. Having considered the views of the land owners, the Collector will, with the involvement of three nodal officers to be specially assigned with the task of implementation of the resettlement policy, by co-ordinating with all State agencies, finalise and approve the plots. *This process should be completed within nine months of judgment of this court. The Court is also of the opinion*
F *that the development of such plots should not exceed 15 months in all.*

61. In case the number of plots is inadequate, the Collector concerned shall secure the options in the first instance from displaced families, whether they would like to be allotted a plot or take lumpsum
G compensation in lieu thereof. Having secured these options, in case the number of land owners exceeds the number of plots, the Collector shall ensure that the resettlement plots are allotted after a draw of lots is held. As far as the land owners who cannot secure a plot are concerned, this court is of the opinion that *lumpsum compensation to the extent of*
H *₹25 lakhs should be paid to them*.

62. This court is constrained to adopt the procedure indicated above, having regard to the fact that the process of compensation determination, identification of resettlement sites and development has taken inordinately long – during which the displaced families must have undergone multiple changes by births and death. It would therefore, be appropriate and in the interests of justice, that at some stage, the entire rehabilitation and resettlement process is brought to an end and the land owners are provided resettlement and rehabilitation by way of cash benefits, whenever it is not possible to provide plots.

V. *Point No.7: Creation of facilities and amenities such as schools, community centres, medical facilities etc*.

63. The Orissa Resettlement and Rehabilitation Policy does not indicate specific provisions with respect to facilities and amenities that are to be developed. Consequently, the provisions of the Third Schedule to the R&R Act, 2013 which outlines 25 heads and indicate amenities such as roads in the villages, appropriate drainage, provision for safe drinking water for each family, provision for drinking water for cattle, grazing land, reasonable number of fair price shops, community or panchayat ghars; village level post offices, seed-cum-fertilizer storage facilities, provision for basic irrigation facilities, transportation to the newly resided areas, burial or cremation grounds, facilities for sanitation, including individual toilet points, individual single electricity connections, *anganwadi*, providing child nutritional services, school, sub-health centres within two kilometre range, Primary Health Centres in terms of the Central Government norms, play grounds for children, one community centre for every 100 families, places of worship, separate land for traditional tribal institutions, etc. In addition, forest dweller families must be provided with their forest on non-timber produce close to the new places of resettlement. Furthermore, appropriate security arrangements are to be provided and service centre in accordance with the prescribed norms also has to be provided.

64. In the present case, the materials on record show that those resettlement sites have been earmarked and are at different stages of development. The mandate of the law – i.e., the Third Schedule to the R&R Act, 2013 is very clear in that all the amenities to the extent they conform to the population in each of the resettlement areas have to be provided. In these circumstances, there may be no escaping these obligations. The State Government, through its appropriate agencies

A should draw up a comprehensive plan for creation of such amenities and ensure that they are functional so as to complete rehabilitation and resettlement in a meaningful manner.

65. It was urged during the course of submissions on behalf of the villages Ratansara by Ms. Kamalpreet Kaur, learned advocate, that the B benefits existing for individuals from Scheduled Tribes have to be protected. It was submitted in this regard that Sundergarh, where the acquisition has taken place, is covered by Fifth Schedule to the Constitution of India. Sections 41 and 42 of the R&R Act, 2013 read as follows:

C *"**41. Special provisions for Scheduled Castes and Scheduled Tribes.** – (1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.*

(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.

D *(3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be* E *obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:*

Provided that the consent of the Panchayats or the F *Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.*

(4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement G *of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with* H *land acquisition.*

(5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and, non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.

(6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land.

(7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.

(9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.

(10) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.

(11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.

42. Reservation and other benefits. *– (1) All benefits, including the reservation benefits available to the Scheduled Tribes and*

A *the Scheduled Castes in the affected areas shall continue in the resettlement area.*

(2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth
B *Schedule to the Constitution are relocated outside those areas, than, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlement area is a Scheduled Area referred to in the said*
C *Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not.*

(3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the same shall be quantified in monetary amount
D *and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights."*

66. As is evident, the R&R Act, 2013 has nuanced application
E and makes special provisions to prevent hardships to members of the Scheduled Caste and Scheduled Tribe communities. Section 41 requires review exercises to ensure that the least possible harm befalls SC/ST members living in the areas sought to be acquired. It also mandates that formulation of a development plan and protective provisions invalidating alienation of tribal lands or lands belonging to the SC/ST in disregard of
F laws and regulations as null and void. Section 42, on the other hand ensures that all benefits, including reservation benefits available to SC/ ST in the affected area shall continue in the resettlement area. In this case, the land owners were displaced on account of the acquisition in favour of MCL, which is entirely involuntary. It is not in dispute that
G these displaced families/land owners are residents of the Fifth Schedule Areas.

67. As far as Section 41 goes, in the opinion of this court, given that the acquisition notification was issued in 1988 and finalised in 1990 and even the judgment of this court indicating the methodology for
H compensation determination was delivered in 2010, the question of giving

extra consideration in terms of Section 41 does not arise. However, since the resettlement of the displaced families and their rehabilitation have been mandated by both provision of the R&R Act, 2013 which has application to the ongoing acquisition, as well as the R&R Policy 2006 , the obligation to ensure that the benefits of the displaced persons are not put to grave and irreparable prejudice by denying them their status as SC/ST, has to be ensured. This is mandated by Section 42 of the R&R Act, 2013 which directs that whenever lands of SCs/STs are acquired necessitating their displacement, either in terms of territories or the areas they reside in, leading to their movement to other areas - where their tribe or caste may not necessarily be recognised as SCs/ST - *the status which they enjoy but for the displacement has to be preserved and protected*. In the opinion of this court, this statutory mandate and obligation cannot be denied by the State or agency, as a matter of law. As a result of the above discussion, it is held that:

i. The facilities and amenities set out in the Third Schedule to the R&R Act, 2013 have to be necessarily provided to the displaced families involved in this case in the resettlement areas where they are located and where they ultimately move to; and

ii. In this case, all members of SC/ST who are forced to move from their lands on account of the acquisition do so involuntarily. They are consequently entitled to the right to be treated as members of the SC/ST. The State authorities shall ensure that members of the families who are displaced and whose lists are maintained by the Commission as well as MCL shall be issued with fresh SC/ST certificates.

C. *Conclusions and Directions*

68. Having regard to the following discussion, it is held as follows:

i. Re point no.1 - compensation for the land acquired: cut-off date for determining compensation for land acquired is to be based upon the cut-off date approved by this court in relation to village Gopalpur, i.e., September 2010. At the same time, it is directed that since common cut-off date has been accepted, all benefits flowing from it, including statutory interest upon compensation and solatium, is determinable on the basis of that cut-off date for the entire acquisition.

ii. Re point no. 2 – on the applicability of the R&R Act, 2013: the R&R Act cannot apply prior to the date it was brought into force i.e., before 01.01.2014. In the present case, it applies from the date the Central Government issued a notification bringing into force the proceedings of the First, Second and Third Schedules to the enactment specified in the Fourth Schedule, which in this case was the CBA Act. The date therefore, on which the R&R Act, 2013 is applicable from, is 28.08.2015. Additionally, the report which was finalised before that date cannot be interfered with. The land owners and displaced families residing in the villages for which reports were prepared earlier than 28.08.2015, would not therefore be entitled to the benefits of the R&R Act, 2013. Hence, the benefits of the R&R Act apply to displaced families and land owners of Kiripsira, Ratansara, Jhupuranga and Tumulia.

iii. Re point no. 3, 4 and 5:

a. It is held that the R&R Policy 2006 as amended by the 2013 policy applies for the purpose of employment benefits.

b. A family unit would comprise of head of family or father, a major son, and an unmarried daughter having regard to the definition and the note appended thereof. In case, for some reason, the major son cannot be given employment, and there exists a major grandson, he would then be eligible for consideration. In other words, two members (father and son or father and grandson) would be eligible for employment and not three, in addition to the unmarried daughter who is also to be treated as separate unit.

c. This court is of the opinion that the Commission could not reopen determinations based upon change of policies of the State given that the benefits adjudicated by it based on factual determinations has crystallised. In many cases, MCL has actually provided employment to several individuals. Consequently, it is held that all cases that have been adjudicated and were approved by this court cannot be reopened.

iv. Re point no. 6:

a. On the point of housing plots, it is hereby declared and directed that the State and MCL are under an obligation to ensure that the land acquired by it in those areas which are to be developed, have to be developed. The State Government shall ensure that at least three nodal officers from the departments concerned are deployed for facilitating this task of coordinating with all agencies and ensuring that the development of the plots duly takes place to enable the Collector to make the necessary allotments within the time indicated. These nodal officials shall be duly empowered by the state, through appropriate notifications to issue all necessary consequential orders, for the implementation of resettlement and rehabilitation measures. The Chief Secretary of the Orissa State Government shall select the officers, and issue the necessary notifications. Furthermore, the State shall ensure that these officers are not posted out, for at least 3 years, or till the task of rehabilitation and resettlement is completed.

b. The Collector shall ensure that the plots earmarked are duly notified for the concerned villages and land owners by giving due publicity and adequate notice. The views of the landowners shall be ascertained and noted, for which purpose, adequate notice shall be given, specifying the venue, date and time of consultation.

c. In case any individual land owner(s) are not interested for allotment of the plots, it is open for them to state so. The Collector shall in such event record their disclaimer expressly in writing and issue a certificate. In that event the displaced family would be entitled to a one-time cash settlement of ₹25 lakhs.

d. After ascertaining the number of displaced families' entitlements, and having regard to the availability of plots, the Collector shall conduct a draw of lots, and if needed, more than one draw of lots, whereby plots

A are allotted to the concerned displaced families. In case, for any reason such plot or plots cannot be handed over within two years, or are not available, the leftover families so to say would be entitled to the one-time compensation of ₹25 lakhs with interest @ 7% per annum, for two years.

B

v. Re point no. 7:

a. The State shall ensure that all facilities and amenities are developed in accordance with the Third Schedule to the R&R Act, 2013 within three years in which C plots are handed over to the displaced families or in any event within three years from the date of this judgment. The necessary funding for this purpose shall be by MCL, in addition to the State's obligation to spend its resources.

D b. The members of the SC/ST communities shall be entitled to the preservation and protection of their status in view of Section 42 of the R&R Act, 2013. Consequently, the concerned Collectors shall ensure that appropriate caste certificates are issued in this regard, given that land owners have been moved E involuntarily and would have to migrate to other areas.

vi. This court further directs that compensation determination in any event shall be completed and payments made *within six months from today*. The Commission shall ensure that this task is taken up as far as possible and completed within F that time frame. Consequently, the Commission shall finalize the reports for villages Kiripsira and Ratansara. As regards the reports of Jhupuranga, and Tumulia, the Commission shall complete the task of redetermining compensation within three months. The State shall ensure that compensation in G respect of four villages is determined in accordance with the R&R Act, 2013. Wherever compensation has not actually been disbursed, the State shall do so within 6 months from pronouncement of this judgment.

vii. MCL is under an obligation to ensure that employment benefits are granted and extended and offers are made in H

accordance with the 2013 policy in all cases where the lists of those who opted for employment has not been finalised. It is clarified in this regard that wherever employment has been obtained, the same shall not be reopened. Likewise, the question of reopening entitlements for employment, based upon the interpretation of this court shall not be reopened in case of villages where reports have been accepted through previous orders.

viii. In the event any family undertakes that its members are not desirous or do not wish to opt for employment, the State shall, through the nodal officers, ensure that the disclaimer is voluntary, and that one-time compensation indicated in the 2006 policy or under the R&R Act, 2013 or the one-time offer of Rs 16 lakhs by MCL, as submitted by the learned ASG (whichever is more beneficial), is paid to the family concerned. The Collector must ensure the same is provided.

ix. The court hereby directs that the Commission should complete its task and that its report should be the basis for disbursement of compensation, one-time rehabilitation package of ₹25 lakhs per family as indicated above and employment offer *within one year from today*. In case of any vacancy in the Office of Chairman of the Commission, the Chief Justice of the Orissa High Court shall nominate a retired judge of that court. In the event of any other vacancy, the Government of Orissa shall nominate the concerned members. However, it is clarified that the government nominees should not be *ex-officio* or part time members, and should be of the rank and status of Additional Secretary, with experience in the Social Welfare or Revenue Departments at senior levels.

x. It is further directed that all concerned landowners who have continued to occupy the lands shall vacate it upon the deposit of compensation. MCL shall be immediately granted possession of such lands. The Collector or the concerned authority shall issue a certificate in this regard which shall entitle them to the one-time rehabilitation payment or payment in lieu of compensation or any other benefit under

A the Act, according to the choice exercised by them in the manner indicated above.

69. It is lastly directed that any fresh dispute, on account of calculation of compensation, disbursement of benefits etc., would be adjudicated by the High Court. This court will not entertain miscellaneous B application in individual cases in this regard.

70. It is hereby recorded that the directions made in this judgment, are in the exercise of its special powers to do justice to the parties, under Article 142 of the Constitution, since the approach adopted in the previous orders, was to ensure that the landowners are not put to further hardship C and agony, of prolonged wait. All matters are disposed of in terms of the above directions. There shall be no order as to costs.

Divya Pandey Matters disposed of.
(Assisted by : Adnan Khan, LCRA)