A STATE OF MADHYA PRADESH

v.

NARMADA BACHAO ANDOLAN & ANR.

I.A. NOS. 256-270 & 271-285 OF 2011

IN

B CIVIL APPEAL NOS. 2083-2097 of 2011

SEPTEMBER 29, 2011

[J.M. PANCHAL, DEEPAK VERMA AND DR. B.S. CHAUHAN, JJ.]

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Adverse remarks: Expunction of – In a land acquisition case, the State Authorities took a decision to abandon the land acquisition proceedings – Before High Court, applicant-respondent pleaded that order of the Authorities to abandon D *the proceedings was void ab initio as possession of the land in dispute had already been taken – High Court held that as the possession of land had already been taken, it was not permissible for the Authorities to resort to withdrawal of the proceedings – Before Supreme Court, applicant took stand* E *that the tenure holders of the land had already been dispossessed and, therefore, the question of abandoning the land acquisition proceedings could not arise – Authorities pleaded that actual physical possession was still with the tenure holders and the stand taken by applicant was not* F *factually correct – The Supreme Court directed appointment of Local Commissioner to find out who was in possession – Local Commissioner recorded the statements of tenure holders in the presence of representative of the applicant and filed the report that the tenure holders were in actual physical* G *possession of the said land – The applicant was given opportunity to file objections – Thereafter, the Court held that since the finding of the Local Commissioner was recorded in the presence of representative of applicant, the same was worth acceptance and in view thereof the claim made by*

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applicant regarding the physical possession of land was not factually correct and passed certain adverse remarks in the judgment – Application seeking expunction of remarks on the ground that the word 'possession' denoted different meaning so far as 1894 Act and Resettlement and Rehabilitation Policy were concerned and, therefore, adverse marks were made under total misconception – Held: In the instant case, the Court had not to decide the issue of justification of the tenure-holders for retaining the possession of the land rather the question was, as to who was in actual physical possession of the land – Had it been the case of justification of retaining the possession of the land by the tenure-holders without being rehabilitated, the question of appointing the Commissioner would not have arisen – The applicant cannot be permitted to make out a new case to justify expunging of adverse remarks – More so, while making certain observation against the applicant, the guidelines laid down by the Supreme Court in ***Mohd. Naim*** *had strictly been observed – Remarks were made as it was necessary to do so while deciding the controversy involved therein – However, submission made by the applicant that it has rendered great service for down trodden and poor farmers and thus applicant should not be deprived of the opportunity to represent poor peasants – In view thereof, para 145 of the earlier judgment modified to the extent that although the applicant had not acted with a sense of responsibility and not taken appropriate pleadings as required in law, however, in a PIL, the court has to strike a balance between the interests of the parties and thus it is desirable that in future the court must view presentation of any matter by the applicant with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein – Land Acquisition Act, 1894.*

Administration of Justice: Adverse remarks – Held: Court may not be justified in making adverse remarks/strictures

A *against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that were made – Adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice* B *to the other party.*

State of U.P. v. Mohammed Naim **AIR 1964 SC 703: 1964 SCR 636;** *Jage Ram, Inspector of Police and Anr. v. Hans Raj Midha* **AIR 1972 SC 1140: 1972 2 SCR 409;** *R.K. Lakshmanan v. A.K. Srinivasan & Anr.* **AIR 1975 SC 1741:** C **1976 (1) SCR 204;** *Niranjan Patnaik v. Sashibhusan Kar & Anr.* **AIR 1986 SC 819: 1986 (2) SCR 470;** *Major General I.P.S. Dewan v. Union of India & Ors.* **(1995) 3 SCC 383: 1995 (2) SCR 532;** *Dr. Dilip Kumar Deka & Anr. v. State of Assam and Anr.* **(1996) 6 SCC 234: 1996 (5) Suppl. SCR** D **763;** *State of Maharashtra v. Public Concern for Governance Trust and Ors.* **AIR 2007 SC 777: 2007 (1) SCR 87 – relied on.**

Case Law Reference:

E	**1964 SCR 636**	**relied on**	**Para 10, 15**
	1972 2 SCR 409	**relied on**	**Para 11**
	1976 (1) SCR 204	**relied on**	**Para 11**
F	**1986 (2) SCR 470**	**relied on**	**Para 11**
	1995 (2) SCR 532	**relied on**	**Para 11**
	1996 (5) Suppl. SCR 763	**relied on**	**Para 11**
	2007 (1) SCR 87	**relied on**	**Para 11**

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CIVIL APPELLATE JURISDICTION : I.A. Nos. 256-270 & 271-285 of 2011 in Civil Appeal No. 2083-2097 of 2011.

From the Judgment & Order dated 23.9.2009 of the High H Court of Madhya Pradesh at Jabalpur in IA Nos. 4679/09, 4804/

09, 10476/08, 10973/08, 7009/09, 8103/09, 8890/09, 8955/09, 7010/09, 8078 of 2007, 8079/09, 8211/08, 5249/09, 7599/09 and 6407/09 in W.P. No. 4457 of 2007. A

WITH

I.A. NOS. 31-45 & 46-60 of 2011 B

Civil Appeal Nos. 2098-2112 of 2011

C.D. Singh, Ram Swarup Sharma for the Appellant.

Nikhil Nayyar for the Respondents. C

The Order of the Court was delivered by

ORDER

J.M. PANCHAL, J. 1. The respondent Narmada Bachao Andolan (hereinafter called as NBA) has filed the aforesaid applications for expunging certain adverse remarks made in paragraphs 129-132 and 145 of the judgment and order in the aforesaid civil appeals dated 11.5.2011. D

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2. These applications have been filed on the grounds that adverse remarks made against the applicants are unwarranted and uncalled nor based on any material/evidence on record. More so, they were not necessary to adjudicate upon the controversy involved in the appeals. Thus, the same may be expunged. F

In the said appeals, a large number of factual and legal issues had arisen. However, this court was concerned with acquisition of land to the extent of 284.03 hectares falling in 5 villages named therein for the reason that the State authorities had taken a decision to abandon the land acquisition proceedings and not to conclude the same. Before the High Court the applicants had pleaded that order of the Authorities to abandon the proceedings was void ab-initio as possession of the land in dispute had already been taken. The High Court G H

A came to the conclusion that as the possession of the land in dispute had already been taken it was not permissible for the appellants herein to resort to the provisions of Section 48 of the Land Acquisition Act, 1894 (hereinafter called 1894 Act).

B 3. When the matter came in appeal before this Court, the factual controversy arose as to who was in actual physical possession of the land. The NBA had taken a stand that as the tenure holders of the said land had already been dispossessed the question of abandoning the land acquisition proceedings could not arise. The State authorities submitted that actual C physical possession is still with the tenure holders and the stand taken by the NBA was not factually correct. It was in view thereof that this court on 24.2.2011 passed the following order:

> "The learned counsel appearing for the parties would be D at liberty to submit their written submissions within 10 days from today in SLP(C) Nos. 31047-31061/2009 & SLP(C) Nos. 34195-34209/2009. However, during the course of hearing it has been seriously contended by the State of M. P. that actual physical possession of the land ad- E measuring 284.03 hect. falling in five villages viz. Dharadi, Kothmir, Narsinghpura, Nayapura and Guwadi has not been taken by the State, in spite of resorting to acquisition proceedings to a certain extent. This fact has been seriously refuted by respondent No.1 i.e. Narmada Bachao F Andolan and it has been contented that actual physical possession has been taken, which is projected in various documents including the affidavits sworn by the oustees/ cultivators of the said land. They have also placed reliance on the entries in the revenue records which reflected the position that the Executive Engineer of the Company was G in possession of the said land measuring 284.03 hect. also. In the light of serious contentions raised by both the parties it is in fact not possible for us to come to a definite conclusion as to who is in actual possession of the land today. In view of this, we deem it fit and proper to request H

the learned District Judge, Indore to make a spot inspection and submit his report with regard to the land admeasuring 284.03 hect. situated in the aforesaid five villages. Before going to the spot, he will inform the parties concerned so that they may, if so desire, remain present at the time of inspection and render proper assistance in identifying the land in question. We clarify that we are not concerned with the total land of those villages, rather the controversy is limited to 284.03 hect., which the State does not want to acquire. It may also be mentioned in the report as to whether there is any crop standing on the said land or part of it and if it is so, who had sown the crop. If the crop has recently been removed or land has been tilled, who has done so. Let the report be submitted by the District Judge within a period of 15 days from the date of communication of this order."

4. Such an order was necessary for the reason that the affidavit filed on behalf of 'NBA' dated 1.7.2010 clearly provided that the order passed by the authorities dated 2.4.2009, not to acquire the land of the 5 villages was a nullity and void ab-initio because the possession of the land had already been taken in December 2007.

5. In pursuance of the said order, the District Judge, Indore videographed the entire land in dispute and recorded the statements of the tenure-holders in the presence of the representative of 'NBA' and came to the conclusion that the tenure-holders were in actual physical possession of the said land.

6. The copy of the report along with CDs were supplied to the parties. They were given opportunity and they availed the same by filing objections thereto and advanced their arguments. It was after considering the same, the matter was decided, wherein finding has been recorded that as the report was prepared in presence of the representative of 'NBA', the

A same was worth acceptance and it was in view thereof, further a finding was recorded that the claim made by the `NBA' regarding the physical possession of the land was not factually correct. The `NBA' had been afforded full opportunity to make out the case. Their past conduct was also pointed out and dealt
B with in paragraph 133 of the judgment dated 11.5.2011.

7. In fact the application filed by the State under Section 340 of the Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) was at a later stage, i.e. on 31.3.2011 and this court has not decided the same. Therefore, the contents of that
C application or issuance of notice on the same did not have any bearing so far as the main judgment is concerned.

8. It is in this background the submissions have been advanced by Shri Rajinder Sachar, Shri Rajiv Dhavan, learned
D senior counsel and Shri Sanjay Parikh that there was no occasion for the court to pass the adverse remarks in the aforesaid paragraphs of the judgment as it amounts to black listing the NBA. The NBA had taken a consistent stand throughout the proceedings that the word 'possession' denotes
E different meanings so far as the 1894 Act and R & R Policy are concerned. In law it may be permissible under the 1894 Act that a person may be dispossessed but he may continue in possession because of the R & R Policy. Therefore, adverse remarks have been made by this court under total
F misconception and the same be expunged.

9. On the contrary, Shri P.S. Patwalia, learned senior counsel has vehemently opposed the applications contending that NBA cannot be permitted to make a totally new case. The only issue involved had been as who was in actual physical
G possession of the land and had it been the case of NBA that the tenure holders were not in possession of the land, question of appointing the Commissioner i.e. District Judge, Indore would not have arisen. Accepting the submissions made by the applicants would render the order dated 24.2.2011 insignificant/
H meaningless as a futile exercise. Thus, the applications are

liable to be rejected.

10. In *State of U.P. v. Mohammad Naim,* AIR 1964 SC 703, this Court was asked by the State of U.P. – the appellant, to quash the adverse remarks made by the High Court of Allahabad against the police department as a whole e.g.- "That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force."

This Court held that the court in its inherent jurisdiction can expunge the adverse remarks suo moto or even on application of a party. However, there must be a ground for expunging as such remarks were not justified, or were without foundation, or were wholly wrong or improper and expunging thereof is necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice. However, the court must bear in mind that such jurisdiction being of exceptional nature must be exercised only in exceptional cases. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as

A an integral part thereof, to animadvert on that conduct.

11. This view has been persistently approved and followed by this Court as is evident from the judgments in *Jage Ram, Inspector of Police & Anr. v. Hans Raj Midha,* AIR 1972 SC 1140; *R.K. Lakshmanan v. A.K. Srinivasan & Anr.,* AIR 1975 B SC 1741; *Niranjan Patnaik v. Sashibhusan Kar & Anr.,* AIR 1986 SC 819; *Major General I.P.S. Dewan v. Union of India & Ors.,* (1995) 3 SCC 383; *Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr.,* (1996) 6 SCC 234; and *State of Maharashtra v. Public Concern for Governance Trust & Ors.,* C AIR 2007 SC 777.

12. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/ passing strictures against a person unless it is necessary for D the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

E 13. In the case, at hand, the Court had not to decide the issue of justification of the tenure-holders for retaining the possession of the land rather the question was, as who is in actual physical possession of the land. Had it been the case of justification of retaining the possession of the land by the F tenure-holders without being rehabilitated, the question of appointing the Commissioner i.e. District Judge, Indore, would not have arisen.

14. Observations/remarks made in the judgment dated G 11.5.2011 are based on the pleadings taken into consideration as has been taken note of in paras 114 and 115 which mainly read as under:

"114. The High Court while dealing with the said applications did not deal with the issue specifically as to

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whether the possession of the land has actually been taken or even symbolic possession has been taken by the State; as to whether the persons interested have been evicted from the said land; or they have voluntarily abandoned their possession; or they are still in physical possession of the land; or as to whether after being evicted they had illegally encroached upon the land in dispute. A direction has been issued observing as under:

> "The lands in these 5 villages of the oustees were acquired by notifications issued under the Land Acquisition Act, and the NVDA has now passed an order on 2.4.2009 saying that the land/property of these 5 villages shall not be acquired and the action taken till now be dropped as per the provisions of law.....The respondents, therefore, will have to provide all the rehabilitation benefits to the villagers of the 5 villages and for the purpose of rehabilitation, the order dated 2.4.2009 of the NVDA is of no consequence. The two IAs stand disposed of."

115. The appellants herein have raised an objection that the tenure holders of the said land are still in actual physical possession and they had never been evicted. However, on behalf of the respondent i.e. Narmada Bachao Andolan, Shri Alok Agrawal, Chief Activist of the organisation, has filed the counter affidavit dated 1.2.2010 before this Court, wherein it has specifically been mentioned as under:

(a) .....

(b) The order dated 2.4.2009 as not to acquire the land of the five villages is a nullity and void ab initio because the possession of the lands has already been taken. The land has already vested in the State. This may be seen from the judicial orders of Reference Courts Devas; the land record of the revenue authorities of the State Government,

A the order of the Land Acquisition Officer and the affidavits of the concerned oustees which were placed on record before the said authorities.

(c) .....

B (d) .....

(e) .....

(f) .....

C (g) .....

(h) The oustees of the five villages had filed a large number of affidavits before the authorities/courts concerned stating that possession of their lands/properties acquired had
D been taken in December 2007.

(Emphasis added)

15. Thus, in view of the above, the arguments advanced on behalf of the applicants are not justified. The applicants
E cannot be permitted to make out a new case to justify expunging of adverse remarks. More so, while making certain observation against the 'NBA' the guidelines laid down by this Court in *Mohd. Naim* (Supra) had strictly been observed. Remarks have been made as it was necessary to do so while
F deciding the controversy involved therein. The submissions so made are not worth acceptance.

However, learned counsel appearing for the applicants have submitted that the NBA has rendered great service for a
G long number of years to the down trodden and poor farmers and thus NBA should not be deprived of the opportunity to represent poor peasants. Mr. Sanjay Parikh learned counsel has expressed remorse on behalf of the applicants that the applicants ought to have acted with more responsibility.

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16. In view of the above, para 145 of the judgment stands modified to the extent as under:

> "In view of the above, we reach the inescapable conclusion that the NBA has not acted with a sense of responsibility and not taken appropriate pleadings as required in law. However, in a PIL, the court has to strike a balance between the interests of the parties. The court has to take into consideration the pitiable condition of oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the court must view presentation of any matter by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein."

17. With these observations, the applications stand disposed of.

D.G. Applications disposed of.