

EASTERN COALFIELDS LIMITED

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v.

ANADINATH BANERJEE (D) AND OTHERS

(Civil Appeal Nos. 2887-2889 of 2021)

JULY 23, 2021

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**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Land Acquisition – Employment in lieu of the acquisition of lands – After acquisition of the lands, a tripartite agreement was arrived at, under which a person whose lands were acquired would be entitled to employment by a company if the acquired land-holding was at least 2 acres – Respondent claimed employment – The certificate issued by the Land Acquisition Collector, inter alia, specified that the land held by the respondent in his own name was comprised in two plots, admeasuring 0.095 acres and admeasuring 0.205 acres, totalling 0.300 acres in his name – However, Collector's certificate contained a reference to the names of certain other persons, including relatives of the respondent, who had executed affidavits in favour of the respondent – After taking those affidavits into consideration, the holding of the respondent was computed at 2.01 acres – The claim of respondent was rejected by the Personnel Manager – Respondent filed writ petition, which was allowed by the Single Judge of the High Court and affirmed by the Division Bench of the High Court – On appeal, held: There was no documentary evidence to indicate that the respondent had title to land in excess of two acres – No documentary material was produced, not even revenue records – The holding of relatives and others cannot be included in the holding of the respondent merely on the basis of self-serving affidavits which would not amount to a conveyance of title – Such affidavits create no interest in the land particularly when the persons who executed them do not fall within the ambit of the phrase 'family' – An affidavit in favour of the respondent does not transfer rights in the property – In this view of the matter, both the learned Single Judge and the Division Bench were in error in directing the appellant to grant employment to the respondent – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

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A **Allowing the appeals, the Court**

- HELD:** 1. There is merit in the submission which has been urged on behalf of the appellant that there was no documentary evidence to indicate that the respondent had title to land in excess of two acres. No documentary material was produced, not even revenue records. The holding of relatives and others cannot be included in the holding of the respondent merely on the basis of self-serving affidavits which would not amount to a conveyance of title. [Para 9][514-G-H]
2. The principle which can be deduced is that relatives who are not dependent on the claimant will constitute a separate family unit for the purposes of compensation and rehabilitation. The self-serving affidavits executed by the father, brother and nephews of the respondent cannot be taken as the basis of determining whether the holding of the respondent was in excess of the threshold of two acres. Such affidavits create no interest in the land particularly when the persons who executed them do not fall within the ambit of the phrase ‘family’. [Para 12] [515-G-H; 516-A-B]
3. The Single judge and the Division bench of the High Court have proceeded on the basis that 2.01 acres of land was acquired from the respondent relying on the certificate of the Land Acquisition Collector and the view of the Personnel Manager. However, as stated above, an affidavit in favour of the respondent does not transfer rights in the property. The view of the Personnel Manager is *ex facie* contrary to the tripartite agreement, and the High Court ought not to have relied on it. [Para 13][516-B-C]
- CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2887-2889 of 2021
- From the Judgment and Order dated 09.09.2013 of the High Court of Calcutta in APOT No.410 of 2013 arising out of W.P. No.1650 of 2008.
- Kaustubh Shukla, Adv. for the Appellant.
Pratik R. Bombarde, Adv. for the Respondents.
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The Judgment of the Court was delivered by

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DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. These appeals arise from a judgment of a Division Bench of the High Court of Calcutta dated 9 September 2013, by which it affirmed the judgment of a Single Judge in a Letters Patent Appeal.

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3. The issue is whether the respondent is entitled to employment by the appellant in lieu of the acquisition of lands. Eastern Coalfields Limited is a subsidiary of Coal India Limited and is a government company within the meaning of Section 617 of the erstwhile Companies Act 1956. An expansion scheme was proposed for the Sonepur Bazari Open Cast Project which is located in Raniganj Coalfield in West Bengal. A meeting took place between the representatives of the Company, persons whose lands were acquired, and the state government. In pursuance of the discussions, a tripartite agreement appears to have been arrived at, under which a person whose lands had been acquired would be entitled to employment by Eastern Coalfields if the acquired land-holding was at least 2 acres. Though the Tripartite agreement has not been placed on the record, the pleadings and submissions before the High Court and this court have proceeded on this position being undisputed. The authorities on 8 November 1991, prepared a rehabilitation list of thirty-seven eligible candidates from whom more than 2 acres of land was acquired in pursuance of what is described as a “one time package deal/tripartite decision”. The name of the respondent was not included in this list.

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4. The respondent founded his claim for employment on a certificate issued by the Land Acquisition Collector on 14 January 1993 specifying the extent of land of the respondent. The certificate, *inter alia*, specified that the land held by the respondent No. 1 in his own name was comprised in two plots, namely, plot No 1945 (admeasuring 0.095 acres) and plot No 1948 (admeasuring 0.205 acres). Thus the landholding of the respondent in his own name was 0.300 acres. However, Collector’s certificate contained a reference to the names of certain other persons, including relatives of the respondent, who had executed affidavits in favour of the respondent. After taking those affidavits into consideration, the holding of the respondent was computed at 2.01 acres.

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- A However, as stated earlier, it is evident from the Collector's certificate that the actual holding of the respondent in his own name was in respect of plot Nos 1945 and 1948 admeasuring 0.300 acres.
5. The Respondent's writ petition seeking employment in view of the rehabilitation employment scheme was disposed on 14 October 1996
- B by directing the appellant to consider the claim of the respondent. The Personnel Manager of the Sonepur Bazari Area rejected the claim of the Respondent on the ground that he only held 2.01 acres of land, which was lesser than the 2.04 acres of minimum holding of acquired land required under the rehabilitation employment scheme. This led to the
- C institution of a writ petition before the High Court. An affidavit in opposition was filed to the writ petition on behalf of the appellant. In the affidavit, it was categorically stated that:

- D "The land of the petitioner no.1 was in possession of 0.205 acres as per the Land Acquisition Certificate issued by the Land Acquisition Collector, Burdwan on 14th January, 1993. The eligibility criteria for consideration of employment is that each of the land holder must have 2 acres of land but in the instant case admittedly writ petitioner possessed 0.205 acres of land which is far less than the eligibility criteria. It will be evident from the annexure 'P-5' to the writ petition that the name of the petitioner appeared at SI. No. 40 in the rehabilitation list and such list was not meant for providing employment as per eligibility criteria. The petitioner cannot claim any benefit and/or advantage for employment on the basis of the list being annexure 'P-5' to the writ petition. In this connection a copy of the certificate so issued by the Land Acquisition Collector is annexed hereto and marked with the letter "R-1".
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- G Moreover, it was also submitted that the lands in question had been acquired in 1990 and the petition before the High Court had been instituted after a lapse of over fifteen years. Once again in paragraph 12 of the affidavit, it was stated that:

- H "With regard to paragraph 9 of the said Petition, it will be evident from the Land Acquisition Certificate R-1 issued by the Acquisition Collector, Burdwan on 14th January, 1993 that the quantum of land possessed by the petitioner was 0.205 acres only which is

far less than the eligible criteria. It will be evident from the annexure 'P-5' to the writ petition that the name of the petitioner appeared at SI. No. 40 in the rehabilitation package which was not means for providing employment as per eligible criteria. In this connection, I say that in spite of repeated opportunities given to the petitioners to produce the records pertaining to the claim but the petitioners 'have failed and neglected to submit the same. In this connection, I repeat and reiterate the statements made in the preceding paragraphs.'

The counter affidavit also set out that several opportunities were granted to the respondent to appear before the authorities and substantiate his claim, in spite of which no documents were produced by him.

6. The learned Single Judge allowed the claim of the respondent by a judgment dated 30 April 2013. The learned Single Judge proceeded on the basis that it was an admitted case that the land belonging to the respondent admeasuring about 2 acres was acquired for the purposes of the project. In this regard, the Single Judge placed reliance on the order passed by the Personnel Manager. On this basis, the Single Judge came to the conclusion that the respondent was in possession of land in excess of the minimum required (2 acres) and was, therefore, entitled to employment. On appeal, the order of the Single Judge has been affirmed by the Division Bench by a judgment dated 9 September 2013

7. We have heard Mr Kaustubh Shukla, learned counsel appearing on behalf of the appellant and Mr Pratik R Bombarde, learned counsel appearing on behalf of the respondent-claimant.

8. Before this Court, it is not in dispute that under the tripartite agreement, a claimant would be eligible for the grant of employment if the land acquired for the purposes of the project is atleast 2.0 acres. In the present case, the only material on the record on which reliance has been placed by the claimant is the report of the Land Acquisition Collector. *Ex facie*, the report indicates that the total holding of 2.01 acres which has been computed for the respondent includes lands of several relatives and others, who are alleged to have executed affidavits in his favour. For convenience of reference, the certificate of the Land Acquisition Collector, Burdwan dated 14 January 1993, is extracted below:

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A		“Anadi Nath Banerjee S/o Madan Mohan of Jamsole			
Vide	1	From:-	Jamsol	2029	1.50
Affidavit		Madan Banerjee			
B		S/o Abinash			
Vide	2	Asit Kr. Banerjee		1945	0.095
Affidavit		S/o Madan Mohan		1948	0.11
C	3	Biswanath Bhattacharyay		1972	0.05
Affidavit		S/o Bamapada			
Vide	4	Tapan Bhattacharyay		1972	0.05
Affidavit		S/o Bishnu			
D	5	Self No Name		1945	0.095
				1948	0.205
				TOTAL	2.01
E		Verified			
		Total area come to			2.01 acres

Sd-

F	14.01.93
	L.A. Collector,
	Burdwan”

G 9. There is merit in the submission which has been urged on behalf of the appellant that there was no documentary evidence to indicate that the respondent had title to land in excess of two acres. No documentary material was produced, not even revenue records. The holding of relatives and others cannot be included in the holding of the respondent merely on the basis of self-serving affidavits which would not amount to a conveyance of title.

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10. There is no doubt that in compensation schemes, the ‘family’ is considered as the unit. Though the tripartite agreement and the rehabilitation employment scheme circular have not been placed on the record, it is evident from the minutes of the meeting on 14 November 1990 that the ‘family’ is considered as a unit under the Rehabilitation employment scheme as well. It was recorded:

“With a view to finalizing the list of **land loser families who would be entitled to jobs/subsistence allowance** envisaged in G.C. No. 49019 of the Department of Co2.I, Government of India, dated 31 st May 1990 (a copy enclosed), it was felt that the list of land losers prepared above by L.A. Officials would be placed before a Screening Committee.”

(emphasis supplied)

11. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, compensation and rehabilitation is provided to family units. For example, the Act refers to ‘affected families’ for the preparation of the rehabilitation and resettlement scheme (section 16 and second schedule of the Act), The definition of the phrase ‘family’ in Section 3(m) is as follows:

(m) “family includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him:

Provided that widows, divorcees and women deserted by families shall be considered separate families.

Explanation.—An adult of either gender with or without spouse or children or dependents shall be considered as a separate family for the purposes of this Act;

Many other social welfare provisions under legislative enactments and schemes such as the Employees’ Provident Fund Scheme, 1952¹, Payment of Gratuity Act, 1972² define ‘family’ to include wife, children, and dependent families.

12. The principle which can be deduced is that relatives who are not dependent on the claimant will constitute a separate family unit for the purposes of compensation and rehabilitation. The self-serving

¹ Section 2(g) of the Employees’ Provident Fund Scheme, 1952.

² Section 2(f) of the Payment of Gratuity Act, 1972.

- A affidavits executed by the father, brother and nephews of the respondent cannot be taken as the basis of determining whether the holding of the respondent was in excess of the threshold of two acres. Such affidavits create no interest in the land particularly when the persons who executed them do not fall within the ambit of the phrase ‘family’.
- B 13. The Single judge and the Division bench of the High Court have proceeded on the basis that 2.01 acres of land was acquired from the respondent relying on the certificate of the Land Acquisition Collector and the view of the Personnel Manager. However, as stated above, an affidavit in favour of the respondent does not transfer rights in the property. The view of the Personnel Manager is *ex facie* contrary to the tripartite agreement, and the High Court ought not to have relied on it.
- C 14. In this view of the matter, both the learned Single Judge and the Division Bench were in error in directing the appellant to grant employment to the respondent. The respondent was given sufficient opportunities to establish that his holding was in excess of 2 acres. Having failed to establish that his holding was in excess of 2 acres, the respondent was not entitled to employment.
- D 15. We accordingly allow the appeals and set aside the judgment and order of the High Court of Calcutta dated 9 September 2013. In consequence, the Writ Petition filed by the respondent shall stand dismissed.
- E 16. Pending applications, if any, stand disposed of.

Ankit Gyan

Appeals allowed.