

Permission To File Lengthy List Of ... vs Union Of India & Ors on 29 September, 2021

Author: Jyoti Singh

Bench: Chief Justice, Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 11071/2021 & CM APPLs. 34135/2021 (stay), 34136 (exemption), 34137/2021 (exemption) & 34138/2021 (seeking permission to file lengthy list of dates)

ADANI POWER (MUNDRA) LIMITED & ANR. Petitioners
Through: Mr. Parag P. Tripathi, Senior
Advocate with Mr. Rishi Agrawala, Ms. Aaru
Tiku and Mr. Pratham Vir Agarwal, Advocate

versus

UNION OF INDIA & ORS. R
Through: Mr. Chetan Sharma, Additional
Solicitor General with Mr. Kirtiman Singh
Government Standing Counsel, Mr. Amit Gup
Mr. Vinay Yadav, Mr. Akshay Gadeock and
Mr. Sahaj Garg, Advocates for Respondents
and 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 29.09.2021 CM APPLs. 34136/2021 (exemption), 34137/2021 (exemption) & 34138/2021 (seeking permission to file lengthy list of dates) Allowed, subject to all just exceptions.

Applications are disposed of.

W.P.(C) 11071/2021 & CM APPL. 34135/2021 (stay) Issue notice.

Mr. Kirtiman Singh, learned Central Government Standing Counsel accepts notice on behalf of Respondents No.1 and 2 and seeks time to file counter affidavit.

Time as prayed for is granted.

Let counter affidavit be filed before the next date of hearing. Notice be issued to Respondents No.3 and 4, through ordinary process, returnable on 25.10.2021.

Pursuant to a tender issued by Respondents No.1 and 2 on 07.01.2015, in respect of Jitpur Coal Block, Petitioner No.1 assessing the financial viability of the Coal Mine as also the practicality of the time-lines provided in the tender document, submitted its bid. Petitioner No.1 was declared as a successful bidder and on 16.03.2015, a Coal Mine Development and Production Agreement was executed between Petitioner No.1 and Respondent No.2. In terms of clause 3.2 of the Agreement, Petitioner No.1 made an upfront payment of Rs.13,60,41,205/- and furnished a Bank Guarantee of Rs.92.90 Crores in favour of Respondent No.2 to secure its performance obligations. On 22.05.2015, Respondent No.2 issued a Vesting Order under Section 8 of the Coal Act, vesting the Jitpur Coal Mine in Petitioner No.1.

According to the Petitioners, as per the particulars of the Jitpur Coal Mine, which has been specified in Annexure-I to the Vesting Order, the description of the land was as follows :-

Type of Land: Leasehold Land for Mining as per Mining Lease Nature Area (Hectares) Government Land 17.01 Private Land 137.14 Forest Land 141.18 The grievance of the Petitioners is that for the first time Respondent No.3 informed the Petitioners on 11.02.2017 and 01.03.2017 that 17.9 hectare of land mentioned as Government land in the Mine Dossier and in the Vesting Order was deemed Forest Land as per Notification dated 25.02.1946 under the Forests Act, 1927. Therefore, this land cannot be used for mining purposes, per se. In so far as the private land is concerned i.e. 137.14 hectares, the State Government informed vide letters dated 04.09.2019 and 22.02.2020 that the land acquisition for the private land had lapsed and fresh proceedings would have to be undertaken. Therefore, this land also cannot be used for mining purposes. It is also averred that forest clearance of land has not yet been obtained on account of the inaction of the State Government. Till date the land has not been offered by the State Government for Compensatory Afforestation for diversion of Forest Land.

Therefore, third land also cannot be used for mining purposes. There is no availability of Compensatory Afforestation Land.

Mr. Parag P. Tripathi, learned Senior Counsel appearing for the Petitioners submits that an Award has been passed for acquiring 137.4 hectares of private land in November, 2015 and Petitioner No. 1 has already deposited compensation of approximately Rs. 57.48 Crores, as directed. Land acquisition proceedings according to him have lapsed on account of default of the State of Jharkhand. He further submits that the extent of Forest Land of 141.1 hectares have been revised to 158.11 hectares making the previous steps taken by the prior Allottee to get the forest clearance, otiose. Government land of 17.01 hectares has been revealed to be Forest Land for which fresh clearance is required and besides that an additional land of 19.5 hectares needed for mine infrastructure is also notified to be Forest Land.

Therefore, forest clearance is required for additional 36.96 hectares of Forest Land, in complete deviation of the Vesting Order. It is also argued that since the land suggested by Respondent No. 4 was found to be Forest Land and not fit for use as Compensatory Afforestation Land, there is actually no availability of Compensatory Afforestation Land. The argument is that in view of the two factors; (i) proceedings for land acquisition for the private land to be started afresh and (ii) Forest clearance to be obtained for the newly notified Forest Land, it is impossible to develop the mine in a timely manner and this is a result of inaction of the Respondents and/or lapse in notifying the true and accurate particulars in the Vesting Order and mine Dossier. Owing to the aforesaid gross discrepancies between the terms of the auction and ground facts and the additional financial burden on the Petitioners, for no fault of theirs, Petitioner No. 1 had requested Respondent No. 2 to cancel the Vesting Order, vide letter dated 31.10.2020 and release the performance security as well as refund the amounts of Rs. 67.26 Crores paid to Respondent No. 3 as well as refund the upfront amount of Rs. 36.50 Crores and Rs. 29.89 Crores towards other expenses. However, instead of doing the needful, Respondent No. 2 in an arbitrary and irrational manner, terminated the Agreement and directed the State Bank of India to remit the amounts under the Performance Bank Guarantee.

Having heard the learned Senior Counsel for the Petitioners, it prima facie emerges that there were three categories of land involved under the Vesting Order and following is the status with respect to the said lands :-

- (a) Government land-17.01 hectares is later found to be Forest land, in complete deviation of the description in the Vesting Order.
- (b) Private land-137.14 hectares for which, land acquisition proceedings have lapsed due to the fault of the State Authorities.
- (c) Forest land-141.8 hectares with respect to which the Compensatory Afforestation Land has not been made available to the Petitioners contrary to the Vesting Order. Petitioners have taken several mitigating measures and deposited the amounts demanded, as mentioned in the writ petition.
- (d) Petitioner No. 1, on demand by the Deputy Commissioner deposited a sum of Rs. 57 Crores for disbursal of compensation for acquisition of private land; paid a sum of Rs. 1.09 Crores as demanded for Compensatory Afforestation Scheme and also paid a sum of Rs. 3.66 Crores as against demand for transfer of Government land. Additionally, Petitioners have furnished a Performance Bank Guarantee for a sum of Rs. 92.9 Crores in favour of Respondent No. 2.

Prima facie, it also appears that Respondents have sought to vest and transfer lands to Petitioner No. 1, being the highest bidder, being aware of the discrepancies in the titles and status of the lands, on paper vis-a-vis the actual ground realities, inasmuch as either the land acquisition proceedings have lapsed or the land has emerged to be a Forest Land instead of Government land or the Compensatory Afforestation Land is unavailable. Prima facie this has made it impossible for the

Petitioners to complete the mine project and is also a deviation from the Vesting Order. To add to the troubles of the Petitioners, the Respondents have sought to encash the Performance Bank Guarantee vide the impugned letter dated 17.09.2021.

Having heard the learned Senior Counsel for the Petitioners and the learned Additional Solicitor General for the Respondents, we are of the view that the Petitioners have made out a prima facie case for grant of interim relief and the balance of convenience also lies in their favour. In case the interim relief is not granted, irreparable injury shall be caused to the Petitioners.

We, therefore, stay the operation and effect of the impugned letter dated 17.09.2021 issued by the Respondents and consequently restrain the Respondents from taking any coercive steps against Petitioner No.1 in furtherance of the impugned letter dated 17.09.2021, including, but, not limited to invoking and/or encashing the Bank Guarantee No.1731319BG0000457 dated 19.03.2019 in the sum of Rs.92.9 Crores, issued by the State Bank of India, till the next date of hearing.

CHIEF JUSTICE JYOTI SINGH, J SEPTEMBER 29, 2021 kks