

**(2021) 06 OHC CK 0045**

**In the Orissa High Court**

**Case No :** Writ Petition (Civil) Nos. 29283, 29284 Of 2011

Bhaskar Chandra Nath

APPELLANT

Vs

State Of Odisha & Other

RESPONDENT

**Date of Decision :** 11-06-2021

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2021) 06 OHC CK 0045

**Hon'ble Judges :** S. K. Mishra, J;Savitri Ratho, J

**Bench :** Division Bench

**Advocate :** Santosh Ku. Nanda A.Nanda, N. Maharana, D.Mahakud, A.K.Nanda, B.P.Panda, R.P.Pattnaik, S.Moharana.

**Final Decision :** Allowed

## Judgement

S.K.Mishra,J

1. In these two Writ Petitions, the Petitioner-Bhaskar Ch. Nath in W.P(C) No.29283/2011 and Petitioner-Sudhakar Nath in W.P.(C) No.29284/2011,

both are sons of Late Srinibas Nath, have prayed that they should be declared as displaced persons under Clause 2(d) of the Orissa Resettlement and

Rehabilitation Policy, 2006 (hereinafter referred to as the "RR Policy, 2006) dated 14th May, 2006 published in the Extraordinary Gazette on 15th

May, 2006; and to provide them Rehabilitation and Resettlement Assistance and it served in the aforesaid Policy they are not to evict them till the

Petitioners are admitted to Rehabilitation Assistance as envisaged.

2. The Petitioner-Bhaskar Ch. Nath has been recorded with Ac.0.07 dec. of land in Plot No.12/559 of Khata No.59/16 in Itap Mouza in the Odapada

Block of Dhenkanal District. Similarly, the Petitioner-Sudhakar Nath has been recorded with Ac.0.06 dec. of land in Plot No.12/560 of Khata

No.59/17 in Itap Mouza in Odapada Block in the district of Dhenkanal.

3. The relevant events in chronological are enumerated below:-

On 12.3.1996 both the Petitioners purchased pieces of lands from Sudarsan Nath and Surendra Nath by virtue of separate registered sale deeds. They took over possession thereof.

On 14th May, 2006, the State of Orissa adopted the RR Policy, 2006 known as Orissa Resettlement and Rehabilitation Policy, 2006 on 15th May, 2006.

The aforesaid Policy was published in the Extraordinary Gazette on 15th May, 2006. The Government of Orissa vide a Gazette Notification dated 20th

December, 2006 acquired the land for the purpose of Construction of Road and Bridge under the relevant provisions of the Land Acquisition Act,

1894. In the mean time, the Petitioners have constructed residential house with the complete accommodation thereon and have planted trees including fruit bearing trees.

On 13.7.2007, the Petitioners were given notice that that the lands measuring areas of Ac.0.07 and Ac.0.06 decs. are being acquired and that they may file their show cause.

On 17.7.2007 the lands were recorded in their name by carving out Khata Nos.59/16 and 59/17.

On 12.2.2008, the Petitioner-Bhaskar Ch. Nath was noticed that he was entitled to Rs.11,07,056/- towards his compensation for acquisition of his land.

Similarly, the Petitioner-Sudhakar Nath was noticed that he was entitled to Rs.11,36,378/- towards his compensation for acquisition of his land.

On 29.8.2011, the Executive Engineer, National Highway Division of Dhenkanal gave notice to both the Petitioners that they were in unauthorized

occupation of Highway comprising of an area of Ac.126.72 SQM situated at K.M. 87/550 and an area of Ac.201.23 SQM situated at K.M. 87/600 by

the side of N.H.42. They were asked to remove the same.

Though the Petitioners had submitted four representations i.e. on 07.9.2011, 8.9.2011, 29.10.2011 and 31.1.2012, it had no results. Hence, the

Petitioners have filed these two Writ Petitions.

4. A Division Bench of this Court presided by the then Chief Justice of this Court on 08.11.2011 issued notices in both the cases and further directed

that the Petitioners shall not be evicted from their residential building over the plot in question.

5. Opposite Party Nos.1 to 5 did not file any counter affidavit. However, Mr. A.K.Nanda, learned Addl. Government Advocate, argued that the

Petitioner in both the cases are not the residents of village Itap and that they are unauthorisedly occupying the lands of the National Highway and that

they have already received the compensation for that acquisition of lands and finally there are no materials on record that the entire lands owned by

them have been acquired. So they are not entitled to any Rehabilitation or Resettlement. He also argued that the case comes squarely under the

Resettlement and Rehabilitation Policy, 2005.

6. The Opposite Party No.6-TATA Steel BSL Ltd. has filed their counter affidavit. Since there is no averment against Opposite Party No.6. and the

Petitioners have not prayed any relief against it, it is not necessary to look to its pleadings. It may be noted here that originally Opposite Party No.6

was Bhushan Steel Ltd. and in a proceeding under the Insolvency and Bankruptcy Code, 2016, the TATA Steel Limited acquired the business and

management of Opposite Party No.6 w.e.f. 18th May, 2018. Subsequently, the name of Opposite Party No.6 was changed to TATA Steel BSL Ltd.,

an amendment was made and the TATA Steel BSL Ltd was made Opposite Party No.6 in place of Bhushan Steel Ltd.

7. Opposite Party No.7, the Executive Engineer, National Highway Division, Dhenkanal filed a counter affidavit in this case. The gist of the plea

raised by the Opposite Party No.7 is that actually the land has been acquired for construction of road over the Bridge on NH No.55. Requisition was

made by the IDCO. After acquisition of the land, a Deed of Transfer dated 3rd

November, 2009 was effected in favour of the Chief Engineer, National Highway, Odisha, Bhubaneswar and the land was purchased by Opposite

Party No.7. In reply, the Petitioners claimed that the proceedings were initiated during the year 2005 and filing of any objection against the

notifications was not within the knowledge of Opposite Party No.7. The Land Acquisition Officer, Dhenkanal being the competent authority finalized

the cases by determining the present market value of land and structures including well and trees and made payment of compensation thereon to the

Petitioners which have been received by them without any objection. (But no

document has been filed to show that it has been received without objection).

8. So the only issue that arises in this case is;

Whether the Petitioners are entitled to the benefits as enshrined/envisaged under Orissa Rehabilitation and Resettlement Assistance Policy, 2006 or the case of the Opposite Party No.7 has to be accepted and that the Petitioners are entitled to compensation as per the Land Acquisition Act, 1894 and the Rehabilitation

Scheme of 2005.

9. In the year 2006, the State of Orissa in order to ensure sustained development through a participatory and transparent process formulated a comprehensive resettlement and rehabilitation policy. The Basic objectives of the policy are:-

(i) to avoid displacement wherever possible and minimize it exercising available options otherwise;

(ii) to recognize voices of displaced communities emphasizing the needs of the indigenous communities and vulnerable sections;

(iii) to ensure environmental sustainability through a participatory and transparent process; and

(iv) to help guiding the process of developing institutional mechanism for implementation, monitoring, conflict resolution and grievance redressal.

10. The second objective of this Policy was to recognize the voices of the displaced communities emphasizing the need of indigenous communities

and vulnerable sections. In this case exactly the contrary has happened. Though notification of acquisition was published on 15th December, 2006 and

published in the Gazette on 20th December, 2006, this fact has not been disputed by any of the Opposite Parties by raising a plea traversing it (though

specifically raised in the Writ Petition). The State Government, especially, the Addl. Government Advocate, submitted that the Petitioners shall be

entitled to the benefit under the Orissa Rehabilitation and Resettlement Policy, 2005 and not under the Orissa Rehabilitation and Resettlement Policy,

2006.

11. We hereby comes to the conclusion that the Petitioners are entitled to the benefit under the Orissa RR Policy, 2006 and not under the Orissa RR

Policy, 2005. The difference between the two that in Orissa RR Policy, 2005,

there is no effective Rehabilitation Assistance Scheme to the effected family. In Orissa RR Policy, 2006 the Rehabilitation Assistance has been described at paragraph-8 internal page-7 of the document Annexure-1, page 17 of the Writ Petition. In that R.R.Policy in Clause-IV the Urban Projects and Linear Projects are provided. We consider it appropriate to quote the same:-

â??IV-Type D:Urban Projects and Linear Projects.

Each displaced family will get:

(a) Homestead land @ 1/10th of an acre in rural area and @ a/25th of an acre in urban area or cash equivalent of Rs.50,000/- preferably near growth centers like land

by the side of roads and important junctions, land by the side of railway stations etc., subject to availability. If required, project authority may acquire such suitable

land under the relevant Act for the purpose.

(b) House Building Assistance: Rs.1,50,000/- to each displaced family will be admissible whether settling in a Resettlement Habitat or elsewhere.

(c) If house/homestead land of any landholder is acquired for linear project of if there is total displacement due to acquisition for such project, the project authority

shall provide employment to one of the members of such displaced family in the project. Wherever RPDAC decides that provision of such employment is not

possible one time cashÂ assistanceÂ asÂ decidedÂ byÂ the Government will be paidÂ byÂ the project authority.

12. In this case, though admittedly the acquisition was made notified on 15th December, 2006, i.e. after seven months of coming into force of the RR

Policy, 2006, Paragraph-4 of the RR Policy has not been complied by Opposite Party Nos.1 to 5. There has been no survey and identification of

displaced family. No document has been filed by the Opposite Parties 1 to 5 that two months prior to the publication of the notice, a socio economic

survey was undertaken by the State Government. No document has been filed that the list of displaced families, were placed before and approved by

the respective Rehabilitation and Periphery Development Advisory Committee. In fact, there is no material on record that actually such a committee

was constituted by Opposite Party No.1 in this case. The Grama Sabha of

Panchayat at the appropriate level were not consulted in the scheduled area before initiation of the land acquisition proposal. No Identify Card was issued to each of the displaced family in a manner prescribed by the Government though as per Clause (c) of paragraph-2 the cut-off date for the purpose of compensation shall be the date on which the notification declaring the intention to acquire land under the relevant Act or under the provisions of Orissa RR Policy is published.

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13. In this case, the land of both the Petitioners were by the side of the National Highway No.55 and, therefore, they are entitled to the Type-D

Scheme for Urban Projects and Linear Projects. Both the Petitioners are entitled to homestead land @ 1/10th of an acre in rural area or 1/25th of an

acre in urban area or cash equivalent. Since this aspect has not been considered, we hereby hold that a compensation of Rs.50,000/- is not adequate in

this case. They are also entitled to house building assistance @ Rs.1,50,000/- from the date of Notification i.e. 15th December, 2006 and interest

thereon @ 8% per annum till they are given the actual plot or cash equivalent and house building assistance. One member of the land holder is entitled

to Rehabilitation employment as the entire house/homestead land is acquired by the Opposite Parties 1 to 5 and used by Opposite Party No.7.

While extending the Rehabilitation Assistance, the definition of displaced persons family as appearing in Sub-clauses â??dâ?? and â??fâ?? of

Paragraph-2 of the RR Policy, 2006 definitions shall be kept in mind.

14. In the result, both the Writ Petitions are allowed. The Opposite Party No.3-the Collector-cum-District Magistrate, Dhenkanal is hereby directed to

give the aforesaid benefits to the Petitioners within a period of three months from the date of communication of this order.

Communicate.

Requisites for communication of this order be filed within a week.

As the restrictions due to resurgence of COVID-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the

High Courtâ??s website, at par with certified copy, subject to attestation by Mr. Santosh Kumar Nanda, Advocate, of the learned Addl. Government

Advocate, in the manner prescribed vide Courtâ??s Notice No.4587 dated 25th March, 2020 as modified by Courtâ??s Notice No.4798 dated 15th

April, 2021.

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