
(2016) 02 OHC CK 0064
In the Orissa High Court
Case No : O.J.C. No. 6190 of 2000

Chintamani Mallik and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Citation : (2016) AIRCC 1122

Hon'ble Judges : P. Mohanty and S.K. Sahoo, JJ.

Bench : Division Bench

Advocate : B. Dash, for the Appellant; Bidesh Ranjan Behera, Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.K. Sahoo, J.—1. The petitioners in this writ application have prayed for issuance of writ in the nature of mandamus or any other suitable writ for directing the opposite parties to forthwith provide to the petitioners the extent of lands as per resolution dated 20.04.1977 issued by the Secretary to Government of Orissa, Irrigation and Power Department under Annexure-1 or in the alternative, in the event of non-availability of such lands, to pay money to the petitioners equivalent to the cost of such lands as exchange price for the same at the prevailing market price along with interest with effect from 1978.

2. The narration of facts which are essential for adjudication of this writ petition are as follows:--

"The petitioners were the inhabitants of village Salachua situated by the side of river Sunei and villages Mahalpankha and Talapokhori in the district of Mayurbhanj and they were cultivators by occupation and they had their homestead and agricultural lands which were the only means of their livelihood and most of them belonged to Scheduled Tribe. In the year 1969, the Government decided for construction of a dam over river Sunei for facilitating irrigation in the Kaptipada Sub-Division of Mayurbhanj district and Nilagiri Sub-Division of Balasore district.

After making preliminary survey, the foundation for the dam was laid in the year 1975. For construction of the dam, it was decided to acquire the lands and displace the inhabitants who were required to give all their landed properties including their houses and fruit bearing trees."

The Government of Orissa, Irrigation and Power Department for rehabilitating the displaced persons like the petitioners vide resolution No. 13169 dated 20.04.1977 framed a rehabilitation policy for all Major and Medium irrigation projects which is under Annexure-1. As per the resolution, it was decided that each of the displaced family in the fully submerged villages would be given the house site upto an extent of Ac.0.30 dec. free of cost depending upon the availability including development cost of house site and layout and the approach road which would be borne by the Government. As regards the agricultural land, it was decided that the displaced families would be allotted either Ac.3.00 dec. of reclaimed irrigated land or Ac. 6.00 dec. of reclaimed unirrigated land or both proportionately, depending upon availability.

It is the case of the petitioners that due to such assurance by the Government, they vacated their respective houses and lands during 1978 to 1980 which were completely submerged thereafter either in the reservoir or in the course of main irrigation canal. The petitioners after vacating their own lands and houses became completely landless and they were compelled to take shelter in places like forests, river banks etc. The Government neither allotted Ac. 0.30 dec. of homestead land nor Ac. 6.00 dec. of unirrigated land or Ac.3.00 dec. of irrigated land since 1978 and the opposite parties also did not communicate anything to the petitioners till 1981 as regards the allotment of lands in their favour.

It is the further case of the petitioners that during the period from 1981 to 1983, some of the displaced evacuees who were similarly placed like the petitioners and who had left their houses and valuable lands for the greater public purpose of construction of the dam were issued with notices by the Tahasildar, Mayurbhanj in Form "K" offering them only part of the lands as promised under Annexure-1. The petitioners were not offered any amount in lieu of the lands offered originally even though each of the petitioners were entitled to reclaimed homestead land of Ac.0.30 dec. and cultivable irrigated land of Ac. 3.00 dec. or Ac. 6.00 dec. of unirrigated land. It is the case of the petitioners that in the event of non-availability of land, the petitioners should have been given money equivalent to the cost of the lands immediately for enabling them to purchase such lands from outside and settle down and earn their livelihood thereon.

It is the further case of the petitioners that in July 1991, notices were issued to them by the Special Land Acquisition and Rehabilitation Officer, Mayurbhanj (opposite party No. 3) and they were offered some amounts which were much less than their real entitlement as the exchange value of the land that was to be allotted to them under Annexure-1. As an exchange value of Ac. 0.30 dec. of homestead land and Ac. 3.00 dec. cultivable irrigated land, the petitioners were offered Rs. 13,608/- each only.

It is the further case of the petitioners that the opposite parties ought to have immediately paid the market price of the undelivered portion of the land to the petitioners so that they could have purchased land of equal area to live in and cultivate. According to the petitioners, the price rate of unirrigated agricultural/homestead land within the locality in question as prevailing in 1991 was at least Rs. 15000/- per acre and the amount which were offered to the petitioners under Annexure-3 Series were ridiculously low in view of the present market price.

It is the further case of the petitioners that they were entitled to at least the present market price of the same area of the land i.e. Ac. 6.00 of unirrigated land or Ac.3.00 of irrigated land and Ac.0.30 decimal of homestead land. The petitioners' case is that money was offered to them on the same day when the notices were served and the petitioners being mostly members of Scheduled Tribe could not know the correctness of the amount offered to them for which they could not protest against such offer at that time and subsequently when they came to know about the drastic difference between the market price of the lands and the amount that were being offered to them, they protested against such inadequate exchange value of the lands promised to them but their protest were without any effect.

It is the further case the petitioners that after vacating from their dwelling places, the petitioners had to languish for long period in unhealthy atmosphere beside the rivers and streams in the forest area and they were not offered the lands as promised to them by the Government under resolution Annexure-1.

It is the further case of the petitioners that similarly situated persons approached this Hon''ble Court in O.J.C. No. 7614 of 1994 claiming payment of money equivalent to the undelivered land which was decided on 24.02.1997 and reported in Vol.83 (1997) Cuttack Law Times 760 (Krupasindhu Parida and others v. State of Orissa and Others). The writ application was disposed of with a direction to the Special Land Acquisition and Rehabilitation Officer to give a further opportunity of hearing to the petitioners and take effective steps to offer the land as per the policy and if the lands were not available, to make proper valuation as on the date of offer to be made together with all recurring interest in the manner as provided in Land Acquisition Act and to settle the dispute within a period of three months from the date of communication of the order. The judgment of this Court passed in Krupasindhu Parida's case was challenged before the Hon''ble Supreme Court in SLP (Civil) No. CC-4280 of 1998 which was dismissed vide order dated 15.05.1998.

It is the further case of the petitioners that even though they have made representations on number of occasions before the authorities but the authorities have paid deaf ear to the grievances of the petitioners. Accordingly, it was prayed either to provide the extent of lands as promised under resolution under Annexure-1 or in the alternative, in the event of non-availability of such lands, to pay money to the petitioners equivalent to the cost of such lands as the exchange price at the prevailing market rate along with interest with effect from

1978.

3. Counter affidavit was filed by the opposite party No. 3, Special Land Acquisition Officer and Rehabilitation Officer, Mayurbhanj wherein it is stated that some of the claimants also earlier filed Writ Petitions bearing O.J.C. Nos. 6684/1994, 2349/1999, 3214/2000, 5888/2000 and 6032 to 6055/2000 claiming higher compensation which were disposed of relying upon the ratio decided in Krupasindhu Parida's case and direction was given that the eligible persons should be paid amount as per the determination already made pursuant to the direction in the said case. It is further stated in the counter affidavit that displaced families were paid a sum of Rs. 13,608/- each @ Rs. 2160/- per acre in lieu of Ac.0.30 dec. of homestead land and Ac.6.00 dec. of reclaimed unirrigated land. The further stand of the opposite parties in the counter affidavit is that due to nonavailability of free leasable government land in the vicinity, it was decided in the Rehabilitation Advisory Committee meeting held on 09.05.1989 under the chairmanship of Collector and District Magistrate, Mayurbhanj to provide cash grant assistance in lieu of balance land. At that time, the rehabilitees of Sunei Irrigation Project had given their consent in writing that they were willing to receive the cash grant assistance in lieu of their balance land according to law and resolution of Government of Orissa and they would not protest in future. It is further stated in the counter affidavit that as per the Rehabilitation Resolution dated 3.1.1989, Government of Odisha, Irrigation and Power Department, it was decided for payment of cash in lieu of land by adopting Rs. 2160/- per acre of unirrigated land. The cost of Ac. 6.30 decimal of land was calculated @ Rs. 2160/- per acre of unirrigated cultivable land and for that purpose Rehabilitation Misc. Case No. 05/91 was initiated in the year 1991. It is further stated in the counter affidavit that though the petitioners have stated in the writ petition that the prevailing price of homestead land in the locality in the year 1991 was at least Rs. 15,000/- per acre but since the government had fixed Rs. 2160/- per acre to adopt for calculation of land value, the adoption of market value in higher rate as claimed by the petitioners is baseless. It is further stated in the counter affidavit that in Rehabilitation Misc. Case No. 5/91 (village Salachua), notices were issued to the petitioners for payment on 20.06.1991 fixing the date to 03.07.1991. All the displaced persons of village Salachua have received rehabilitation cash grant assistance in lieu of land and submitted an undertaking that they would not raise any objection if payment was made as per the rate fixed by the Government.

Though in the counter affidavit, stand was taken that the petitioners are not entitled to any higher compensation in view of the undertaking furnished by them at the time of receipt of rehabilitation cash grant assistance but during course of hearing the writ application, the learned Addl. Standing Counsel fairly submitted that the case of the petitioners is identical to the case of Krupasindhu Parida and others which was decided by this Court in O.J.C. No. 7614 of 1994 and therefore the writ application be disposed of in terms of the direction given in the said case.

4. Adverting to the pleadings and contentions raised by the respective parties at the Bar, it is very clear that in the year 1969, the Government decided for construction of a dam over river Sunei in the district of Mayurbhanj and in the year 1975, the foundation stone of the dam was laid and Government decided to acquire the lands in the locality for the purpose of construction of Sunei dam which is a Medium irrigation project. It is also clear that vide Resolution No. 13169 dated 20.04.1977 under Annexure-1, the Government in the Irrigation and Power Department framed a rehabilitation policy for rehabilitation of the affected persons required to be evacuated for all Major and Medium irrigation projects and under such rehabilitation policy, it was assured that each displaced family would be provided with Ac.0.30 dec. of homestead land and Ac.3.00 dec. of reclaimed irrigated agricultural land or Ac.6.00 dec. of unirrigated agricultural land. In between 1978 to 1980, after assurance given by the Government under Annexure-1, the local inhabitants including the petitioners who were the original inhabitants of village Salachua, Mahalpankha and Talapokhari vacated their respective houses, homestead lands and agricultural lands which were subsequently completely submerged either in the reservoir or in the course of main irrigation canal and the petitioners were rendered completely homeless and landless for which they are to take shelter in places like forest, river banks etc. The petitioners were neither offered any lands as per the resolution dated 20.04.1977 nor any money in lieu of such lands till July 1991 when they were given cash grant assistance in lieu of such land. It is also clear that even though the rehabilitation cash grant assistance was made available to the petitioners in the year 1991 in pursuance of the institution of Rehabilitation Misc. Case No. 5 of 1991 but they were not paid at the market rate prevailing in the 1991 but it was granted as per some old rates. In the counter affidavit, it has been categorically stated that the rate fixed per acre by the Government has got no relation with the market value offered for acquisition of land as provided in the Land Acquisition Act.

When the petitioners were displaced from their homestead lands and agricultural lands in between 1978 to 1980 and by acquisition of such lands by Government, the petitioners were rendered homeless and landless and they had no other patch of land elsewhere, they should have been granted the benefits of rehabilitation policy as framed by the Government in Irrigation and Power Department under resolution dated 20.04.1977 immediately. There was inordinate delay for more than ten years at the level of the Government to decide the quantum of money to be paid per acre to the displaced persons as no free leasable Government land in the vicinity was available and accordingly in the year 1991, Rehabilitation Misc. Case No. 5 of 1991 was instituted for payment of rehabilitation cash grant assistance to the displaced persons and notices were issued to those persons including the petitioners. When there was laches on the part of Government in not paying the rehabilitation cash grant assistance immediately, the petitioners cannot be deprived of their legitimate expectation of receiving cash grant at the prevailing market rate of the lands when the offer

was made. If the petitioners or the displaced persons like the petitioners would have got the rehabilitation cash grant sooner immediately after their displacement, it would have been better for them for making proper investment inasmuch as money not only has a monetary value but it has also got a time value.

5. In view of the submissions raised at the Bar and the statement of the learned Addl. Standing Counsel that the case of the petitioners is identical to Krupasindhu Parida's case, we allow the writ petition directing the opposite party No. 3 to give a further opportunity of hearing to the petitioners and take effective steps to offer the land as per the rehabilitation policy under Annexure-1 and if the lands are not available, to make proper valuation as on the date of offer to be made together with all recurring interest in the manner as provided in the Land Acquisition Act and settle the dispute within a period of three months from the date of communication of the order.

The parties are directed to bear their own costs.

P. Mohanty, J.

I agree.