

(2007) 09 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 1385, 7277 and 14519 of 2001

Guria Sahoo

APPELLANT

Vs

State of Orissa and Others
 Dukhia Sahoo Vs National
Thermal Power Corporation Ltd. and Others
 National
Thermal Power Corporation Ltd. Vs State of Orissa and
Others

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Land Acquisition Act, 1894 — Section 18

Citation : (2007) CLT 268 Supp : (2007) 2 OLR 787 Supp : (2007) OLR 268 Supp

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Advocate : S.K. Ray, S.K. Rout, K.K. Jena and S.P. Swain, in OJC No. 14519/2001, S.P. Mishra, S.K. Mishra, S. Dutta and G.S. Samantaray, in OJC No. 7277/2001 and B.S. Tripathy I, J. Sahoo and P.S. Das, in OJC Nos. 1385, 1737, 2162 and 2163/2001, for the Appellant; Addl. Standing Counsel for O.Ps 1 to 4, B.S. Tripathy for O.Ps. 5 to 7 in OJC No. 14519/2001, A.S.C. for O.P. 3, B.S. Tripathy (I), J. Sahoo and P.S. Das for O.Ps. 1 and 2 in OJC No. 7277/2001, A.S.C. for O.Ps. 1 to 3 in OJC No. 1385/2001, A.S.C. for Opp. Parties 1 to 3, D.P. Dhalsamanta and G.S. Namotar for O.P. No. 4 in OJC No. 1737/2001 and Addl. Standing Counsel for O.Ps. 1, 2, 3, 4 and 6, S.K. Ray, S.K. Rout, K.K. Jena and S.P. Swain for O.P. 5 in OJC Nos. 2162 and 2163/2001, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.—O.J.C. Nos. 14519 and 7277 of 2001 have been filed by two Petitioners praying for issuance of a writ of mandamus to the opp. parties to acquire their lands by paying adequate compensation and for rehabilitation benefits. The Petitioners have further prayed to declare the mutation appeals filed against them as null and void and to direct the opp. parties, more particularly, the authorities of National Thermal Power Corporation Ltd. not to cause any kind of disturbance and hindrance in the peaceful possession of the

Petitioner over their respective lands in question.

2. In O.J.C. No. 1385 of 2001, the National Thermal Power Corporation Ltd. (for short, "the N.T.P.C.") has prayed for declaring the ex parte decree dated 10.5.2000 passed by the learned Civil Judge (Sr. Division), Talcher in T.S. No. 68 of 1997 in favour of opp. party No. 4 Guria Sahoo, who is the Petitioner in O.J.C. No. 14519 of 2001 as nullity and, as such, not binding against the N.T.P.C. It has also prayed for a direction to the said opp. party No. 4-Guria Sahoo, not to cause any kind of disturbance and hindrance to the construction activities carried on by the N.T.P.C. over the land in question.

In O.J.C. No. 1737 of 2001, the N.T.P.C. has prayed for declaring the Civil Courts decree dated 9.5.1994 passed in T.S. No. 8 of 1994 as a nullity and to restrain the opp. party No. 4-Butu Sahoo @ Balaram Sahoo, who is the decree holder, from causing any disturbance in the construction work undertaken by the Petitioner-N.T.P.C.

In O.J.C. No. 2162 of 2001, the N.T.P.C. has prayed for issuance of an order declaring the order dated 31.1.1999 passed in Settlement Revision Case No. 150 of 1995 passed in favour of the opp. party No. 5- Natabar Sahoo as nullity and for restraining the said opp. party No. 5 from causing any disturbance to the construction work undertaken by the N.T.P.C.

In O.J.C. No. 2163 of 2001, a similar prayer has been made by the N.T.P.C. to declare the order dated 31.1.1999 passed in Settlement Revision Case No. 151 of 1995 as a nullity and to restrain the opp. party No. 5 in the said writ petition, being Rabinarayan Sahu, from causing any disturbance to the construction undertaken by the Petitioner N.T.P.C.

3. As similar questions of facts and law arise in all the above writ petitions, they were heard together and are being disposed of by this common judgment.

4. The case of the Petitioner in O.J.C. No. 14519 of 2001 is that land measuring Ac. 1.00 situated under sabik khata No. 760, appertaining to sabik plot No. 9416 in village Derang corresponding to hal khata No. 746/123 and hal plot No. 9416/10511 was leased out to the Petitioner in Lease Case No. 1459 of 1975 after following due procedure of law, possession of the same was delivered to him. The Petitioner claims to be in peaceful and uninterrupted possession over the said land. The settlement patta granted by the Tahasildar, Talcher on 17.2.1976 has been annexed as Annexure-1 to the writ petition (O.J.C. No. 14519/01). Subsequent to grant of lease, the settlement operation was carried on in the area in which, the land was recorded in the name of the Government for which the Petitioner filed Title Suit No. 68 of 1997 before the learned Civil Judge (Sr. Division), Talcher for declaration of his right, title and interest over the said land. The suit was decreed by judgment dated 10.5.2000 in favour of the Petitioner. Relying upon the said decree, the Petitioner filed Mutation Case No. 1043 of 2000 before the Tahasildar, Talcher for mutating the land in his name. The said case was allowed and the R.O.R. was accordingly corrected, recording

the name of the Petitioner. The khata and plot numbers are renumbered as Khata No. 746/123 and plot No. 9416/10511. The R.O.R. has been annexed as Annexure-4 to the writ petition. The Petitioner appears to have paid rent to the Government thereafter in the year 2000-2001 and 2001-2002. The Petitioner has alleged that ignoring the Civil Court decree as well as the mutation in his favour, the N.T.P.C. is forcibly trying to construct the Ash Pond over the land of the Petitioner for which the Petitioner on 19.12.2000 made a representation to the General Manager of N.T.P.C. It is further stated by the Petitioner that in spite of repeated approaches, the concerned authority did not consider the genuine grievance of the Petitioner though he was assured that the same will be considered. Subsequently, though the matter was informed to the concerned police station, but there was no enquiry conducted on the same. Failing in his attempt, the Petitioner sent a lawyer's notice on 24.1.2001 to the General Manager, N.T.P.C. When the matter was pending for consideration, it has been alleged that the N.T.P.C. authority filed a Mutation Appeal No. 1 of 2001 challenging the mutation order passed in favour of the Petitioner and the Sub-Collector without considering the effect of the Civil Court decree as well as long delay in filing the appeal has initiated the said appeal.

Similarly, in O.J.C. No. 7277 of 2001, the Petitioner has claimed right over the lands mentioned in paragraph-3 of the said petition on the ground that he (Petitioner) being in cultivating possession of the said lands, an Encroachment Case was initiated by the Addl. Tahasildar, Talcher in the year 1989 under the provisions of the Orissa Prevention of Land Encroachment Act, against him, being Encroachment Case No. 88 of 1989. Ultimately, in the said case, on consideration of the fact that the Petitioner is a landless person, the said lands were settled in his favour as recorded in the R.O.R. under Annexure-1 to the said writ petition. It is further alleged by the Petitioner that while he was in uninterrupted possession of the lands in question, the N.T.P.C. authorities forcibly entered into the said lands and started construction of the Ash Pond. On a query being made to the said authorities by the Petitioner, they disclosed that the lands in question have been transferred to the N.T.P.C. by the Government on 23.2.1998. The Petitioner made a representation in this regard on 6.4.2001 claiming compensation immediately. It is the opp. party No. 2, being the Deputy General Manager, (P and A) in O.J.C. No. 7277 of 2001, who in his letter dated 28.4.2001 intimated the Petitioner that the question of payment of compensation does not arise and the Petitioner was asked to produce the original documents, if any, in support of his claim. It was further communicated in the said letter that the premium for the said lands has already been paid by the N.T.P.C. to the Government and the lease deed has been executed by the Government in their favour on 23.2.1998. The Petitioner claims that since the land was settled in his favour prior to grant of lease in favour of the N.T.P.C. by the State, the Petitioner cannot be deprived of the said lands without due process of law and without acquiring the same under the provisions of the Land Acquisition Act, 1894, which has not been done in the present case and the Petitioner has been deprived of the compensation to which

he is entitled to.

5. In the writ applications filed by the N.T.P.C., it has been averred that the lands in question in the said writ petitions, i.e. (O.J.C. Nos. 14519 and 7277 of 2001) along with the other Government lands totalling to an area of Ac. 384.29 hectares were released by the Government of India in its Ministry of Environment and Forests (Department of Environment, Forests and Wildlife) on 25.2.1988 u/s 2 of the Forest (Conservation) Act, 1980 for setting up Talcher Super Thermal Power Project of the Corporation with certain conditions. After completion of due and requisite formalities, the Government land has been handed over to the corporation in phased manner through alienation proceeding by the Tahasildar, Talcher in alienation case record No. 38 of 1988 on 13.8.1992 after sanction of the proposal for alienation by the Government of Orissa. Subsequently, permanent lease deed was executed between the State Government and the Corporation. In paragraph 3(c) of the writ petition being O.J.C. No. 2162 of 2001, the N.T.P.C. has averred that the Government land was transferred to it through 57 alienation cases. It has been further stated in the writ applications that as Land Settlement Revision cases were filed without impleading the N.T.P.C. as parties, they were unaware of the result of the said cases and the N.T.P.C. has found fault with the authorities of the State in not contesting the said Revision Cases when the same were allowed in favour of the private opp. parties.

6. In the counter affidavit filed by the N.T.P.C. in O.J.C. No. 14519 of 2001 in addition to the statements as made by it in O.J.C. Nos. 1385, 1727, 2162 and 2163 of 2001, it (N.T.P.C.) has further pleaded that the Tahasildar, Talcher, while filing counter affidavit in O.J.C. No. 1737 of 2001, has admitted about handing over of possession of the total Government forest and non-forest land measuring Ac. 219.03 in village Derang in favour of N.T.P.C. through appropriate alienation proceeding. In the said case, the Tahasildar, Talcher has further admitted about handing over of the physical possession of the land in village Darang including the present land in question in favour of N.T.P.C. with effect from 13.2.1992. On the basis of the said admission of the Tahasildar, Talcher, this Court disposed of the writ petition filed by one Rathia Nayak against the State Government and N.T.P.C. raising identical question. In that case, this Court has held that since the land having been handed over to N.T.P.C., they are free to deal with those lands specially when land premium/compensation has been paid by the N.T.P.C. for acquiring those lands from the State Government.

7. With regard to the decree passed by the learned Civil Court, it has been mentioned in the counter affidavit that the N.T.P.C. being not a party to the said suit, it is not bound by the said decree. It is further specifically averred in the counter affidavit that the Petitioner, Guria Sahoo, has filed the writ petition being O.J.C. No. 14519 of 2001 to get compensation and rehabilitation benefit as against the land in question and the N.T.P.C. has nothing to say about the same. It has also no objection if the Petitioner is entitled to any benefit under law from the State Government and the Petitioner cannot have any grievance against the

N.T.P.C.

8. A similar counter affidavit has been filed by the N.T.P.C. in O.J.C. No. 7277 of 2001.

9. Conspicuously, the State has not filed any counter affidavit in O.J.C. Nos. 14519 and 7277 of 2001.

10. In O.J.C. Nos. 14519 and 7277 of 2001, we have found that either the title of the Petitioner was declared by the competent Civil Court or the land has been settled with the Petitioner in an encroachment case as per provisions of the O.P.L.E. Act. The ex parte decree passed by the competent Civil Court is still in force and the State Government is bound by the same. It is also clear from the documents annexed that the land in question in O.J.C. No. 7277 of 2001 was settled with the Petitioner of the said writ petition. The averments made in the writ petition having not been denied or traversed by the State of Orissa as no counter affidavit has been filed by it (State of Orissa), we are constrained to hold that though possession of the said lands has been handed over to the N.T.P.C., but admittedly, no proceeding under the Land Acquisition Act has been initiated for acquiring the said lands belonging to the Petitioners in O.J.C. Nos. 14519 and 7277 of 2001. It is naive to state that even for compulsory acquisition of land, due process of law is required to be followed in accordance with the Land Acquisition Act. Admittedly, no proceeding under the Land Acquisition Act having been initiated by the State, the State could not have handed over the said properties to the N.T.P.C. But, however, since possession of the lands has already been delivered to the N.T.P.C. no fault can be found with the N.T.P.C. in constructing the Ash Pond over the said lands.

11. We, therefore, dispose of the writ petitions, i.e., O.J.C. Nos. 14519 and 7277 of 2001 with the direction that the State shall initiate proceeding under the appropriate provisions of the L.A. Act for having acquired the lands of the Petitioners and pass necessary awards under the L.A. Act by quantifying the compensation payable to the Petitioners in the said O.J.C. Nos. 14519 and 7277 of 2001. On such awards being passed, the amount of compensation shall be paid to the Petitioners in O.J.C. No. 14519 and 7277 of 2001. The entire exercise shall be completed within a period of three months from the date of communication of this order to the Secretary, Revenue and Excise Department being opp. party No. 3 in O.J.C. No. 7277 of 2001 and O.P. No. 1 in O.J.C. No. 14519 of 2001. It is further directed that in the event, any rehabilitation scheme was formulated by the State for the persons whose lands have been acquired, the State shall examine the entitlement of the Petitioners to any benefit under such scheme.

If, however, as stated by the learned Counsel for the N.T.P.C., the amount towards compensation has already been deposited by the N.T.P.C., such deposit, as has been made towards the lands of the Petitioners in O.J.C. Nos. 14519 and 7277 of 2001, shall be paid to them with other amounts as payable under the

Land Acquisition Act towards solatium and interest. It is needless to mention that on payment of such compensation to the Petitioners in O.J.C. Nos. 14519 and 7277 of 2001 within the aforesaid stipulated period, it would be open to the said Petitioners to raise any objection with regard to the adequacy of such compensation u/s 18 of the Land Acquisition Act within the prescribed period and, in the event, such objections are filed, the same shall be dealt with in accordance with law.

12. With regard to O.J.C. Nos. 1385, 1737, 2162 and 2163 of 2001, it is directed that the private opp. parties therein shall not cause any disturbance in the construction work carried out by the N.T.P.C. over the properties in question. However, the said private opp. parties, whose lands have been acquired and handed over to the N.T.P.C., shall be similarly dealt with as has been directed above in O.J.C. Nos. 14519 and 7277 of 2001.

All the writ petitions are disposed of accordingly.

B.P. Das, J.

13. I agree.