
(2008) 09 OHC CK 0103
In the Orissa High Court

Miss. Dalimba Kumari Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2009) 1 OLR 163

Hon'ble Judges : L. Mohapatra, J;I. Mahanty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Mahanty, J.—In this writ application the petitioner namely, Miss Dalimba Panda has sought for quashing of the impugned order dated 2.8.2003 under Annexure-6 by which the Director, Rehabilitation & Resettlement of the Government of Orissa Water Resources Department rejected the petitioner's application for grant of rehabilitation assistance as a displaced person and consequentially prayed for a direction to the opposite parties to pay compensation/rehabilitation and resettlement benefit.

2. The case of the petitioner is that she is an unmarried, old, sick and infirm lady and was residing in a house constructed by her late father Radhakrushna Panda over Plot No. 223, Khata No. 40 at village Landiguda, District-Koraput. The petitioner asserted that in the year 1984 Landiguda was submerged due to construction of the Upper Kolab Reservoir Project and notification u/s 4(1) of the Land Acquisition Act was published. It is further asserted that although various representations were made by the petitioner from time to time for release of compensation/rehabilitation and resettlement benefit, there was complete inaction on the part of the opposite parties and it was only on 2.10.2002 in pursuance of the order of the Land Acquisition & Resettlement Officer of Upper Kolab Hydro Electric Project that an enquiry was conducted by the Revenue Inspector and the report was submitted, to the effect that the petitioner was a resident of village Landiguda and she was eligible to receive rehabilitation and

resettlement benefit. It appears that although the Land Acquisition & Resettlement Officer forwarded the application of the petitioner along with his recommendation to the Director, R & R of the Water Resources Department, the same came to be rejected on 2.8.2003 by the impugned order under Annexure-6 to the writ application.

3. Mr. Mishra, learned Counsel appearing for the petitioner submitted that petitioner's name finds place in the electoral roll of the village Landiguda under Annexure-7 and the report of the Revenue Inspector who carried out an enquiry pursuant to the direction of the Land Acquisition & Resettlement Officer dated 2.10.2003 under Annexure-3 supports the case of the petitioner in so far as her claim for compensation/rehabilitation and resettlement benefits is concerned.

Mr. Mishra further submitted that the petitioner is an unmarried old woman and was living in her father's house and at the time of initiation of land acquisition proceeding on 19.3.1984 her father Radhakrushna Panda expired and she has neither been paid any compensation nor any rehabilitation and resettlement benefit has been extended to her in terms of the Rehabilitation Policy for Major and Medium Irrigation Projects of the State annexed as Annexure-10 to the additional affidavit filed by the petitioner. Mr. Mishra also submitted that the petitioner fulfils the criteria to be declared as to "displaced person" in terms of the Government Policy under Annexure-10 and consequently she is entitled to get the rehabilitation and resettlement benefits as declared by the Government in the aforesaid Policy.

4. Mr. Mohapatra, learned A.G.A. appearing on behalf of the State placed reliance upon the counter affidavit filed on behalf of opposite party No. 3, i.e., the Land Acquisition & Resettlement Officer and submitted that in accordance with the policy of the Government, since the brother of the petitioner namely, Harekrushna Panda had been given the rehabilitation assistance, therefore the petitioner being an unmarried sister, payment to Harekrushna Panda as a displaced person, would include the petitioner being a member of his displaced family. Learned Counsel further submitted that the representation of the petitioner dated 29.5.1990 was enquired into and the same was verified with the records and it was found that neither the petitioner had received compensation for submergence of her house nor her name finds place in the displaced families enumeration list prepared on 25.5.1984. He further asserted that the petitioner never filed any objection petition claiming rehabilitation assistance in response to the preparation of a list of displaced families in the village Landiguda, even though objection had been invited. In this regard learned Counsel for the State submitted that the term "displaced family" as defined in the aforesaid Policy includes such displaced person and his or her spouse, minor son(s), unmarried daughter(s), minor brother(s) of sister(s), father and mother and other members residing with him and depending on him for their livelihood. Learned State counsel submitted that since the father of the petitioner late Radhakrushna Panda is no more, her brother Harekrushna Panda has been paid rehabilitation

assistance for and on behalf of his displaced family, which includes his sister, the present petitioner. Accordingly the learned Counsel for the State submitted that the writ petition merits no further consideration.

5. Relying on the definition of "displaced family" Mr. Mishra, learned Counsel for the petitioner on the other hand submitted that at the time of acquisition, petitioner's brother Harekrushna Panda being more than 18 years of age was to be treated as a "separate family" for the limited purpose of rehabilitation assistance and therefore, payment of rehabilitation assistance to her brother namely, Harekrushna Panda was in his capacity as a separate family and it could not have included the entitlement of the petitioner, who was an unmarried major sister.

6. Considering the submissions made at the bar as noted hereinabove, we may note here the relevant provision of the Rehabilitation Policy for Major and Medium Irrigation Projects of the State, which is follows:

1. (ii) "Displaced family": Family in relation to displaced person means such person and his or her spouse, minor son(s), unmarried daughter(s), minor brother(s) or sister(s), father and mother and other members residing with him and dependant on him for their livelihood.

(I & P Department Resolution No. 13169 dated 20.4.77)

Notwithstanding the facts stated above following categories of persons will also be treated as separate families for the limited purpose of rehabilitation.

1. (i) A son who is more than 18 years of age irrespective of his marital status.

(Department of Irrigation Resolution No. 31888 dated 21.8.90)

7. On a reading of the aforesaid provision of the policy if we test the submissions of the learned Counsel for the State, we find that the term "displaced family" has to be considered in relation to a displaced person. In the present case since the petitioner's parents had expired prior to the acquisition in 1984, they cannot be considered as displaced person and obviously the petitioner could not be included therein as an unmarried daughter. But if the term "displaced person" is made applicable to Harekrushna Panda, i.e., brother of the petitioner, then his family in terms of the definition would include his spouse, minor son(s), unmarried daughter(s) and minor brother or sister. Admittedly, the petitioner was not a minor sister of Harekrushna Panda at the time of acquisition but she was a major unmarried sister and therefore the petitioner cannot be treated as a member of her brother's displaced family. Another reason to support this conclusion would be that the selfsame policy declares a son who is more than 18 years age irrespective of his marital status as a separate family for the limited purpose of rehabilitation assistance. Therefore, in the absence of the petitioner's parents and in view of the policy declaring the petitioner's brother Harekrushna Panda as a "separate family", we are of the considered view that the intent of the Rehabilitation Policy could not be interpreted in a manner so that an adult

unmarried sister would be denied her claim for rehabilitation assistance. We are conscious that in the peculiar circumstances of the present case the petitioner having lost her parents prior to the acquisition could not be left helpless especially when the State had acquired her house which was her only place of living and thereafter denies her the benefit of rehabilitation assistance to her brother. We are also of the considered view that the petitioner cannot form a part of the family of his brother in terms of the provision of the resettlement and rehabilitation policy as noted hereinabove. Further we find that no sufficient reason has been stated in the counter affidavit nor any documentary evidence has been appended thereto as to why the enquiry report submitted by the Revenue Inspector pursuant to the direction of the Land Acquisition & Resettlement Officer under Annexure-3 declaring petitioner's entitlement to rehabilitation and resettlement benefit ought not to be accepted.

8. Consequently, we allow the writ application and quash Annexure-6 and declare that the petitioner shall be entitled to resettlement and rehabilitation benefit since the house of her late father Radhakrushna Panda located over Plot No. 223 Khata No. 40 at village Landiguda, Dist. Koraput has been acquired by the State which has been submerged due to construction of Upper Kolab Reservoir Project.

9. We further direct that the benefits of resettlement and rehabilitation policy shall be released in favour of the petitioner within a period of six weeks from the date of receipt or the certified copy of this judgment along with 8% simple interest per annum to be calculated from 1984 till the date of actual payment.

L. Mohapatra, J.

I agree.