

(2008) 12 OHC CK 0060

In the Orissa High Court

Rourkela Local Displaced Association and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 2(c)

Citation : (2009) 107 CLT 269

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—All the three Writ Petitions arise from same or similar sets of facts and involve a common question of law. Hence, they were taken up together and are being disposed of by this Judgment.

2 The brief facts of the case are that in the year 1954-55 and subsequent to that, the State Government acquired agricultural and homestead lands in the district of Sundargarh and urgency clause was made applicable for speedy acquisition under the provisions of Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (hereinafter referred to as "the Act") for the development of industries, namely, establishment of Rourkela Steel Plant and ancillary industries i.e. for the public purpose. In the meantime, the said act was repealed in the year 1994. However, Rourkela Steel Plant did not utilize all the lands acquired and surrendered about 4,000 acres of the unutilized pieces of land to the State Government in different areas. It is the case of the Petitioner that all the displaced persons were not given rehabilitation facilities and so some of them continued to occupy some of the surrendered land. But the State Government without restoring the surrendered land to those whose lands were acquired, have allotted substantial portion of the surrendered land to different departments/wings of corporations as well as to private individual for housing purpose illegally

and arbitrarily treating the original land owners as encroachers and trying to evict them under the provisions of the O.P.L.E.Act.

3. Counter affidavit has been filed by Opposite Parties 4 and 5 in W.P.(C) No. 15654 of 2005 in which it has been stated that a total area of Ac. 19,722.69 of land was acquired from 33 villages for the Rourkela Steel Plant and for other ancillary projects. Due to the land acquisition, the displaced persons were provided with houses as well as agricultural land in addition to compensation as was in force at that time. It is further stated in the counter affidavit that compensation has already been paid to the members of the Association. It has further been stated that the surplus lands have been dealt with and disposed of as per the provisions contained in Section 10 read with Rule 17 of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948. However a Writ Petition being O.J.C. No. 4278 of 1997 (Mansid Ekka " Oram and Ors. v. State of Orissa and Ors.) was filed in this Court, which was disposed of with a direction that in the event the lands of the Petitioners were acquired and no compensation for the same had been paid to them, then the Opposite Party-Steel Plant in that case shall take expeditious steps to pay compensation of the said acquired land and the Petitioners if in possession of the said land, shall not be evicted till the compensation is paid. It has been further stated in the counter affidavit that since the Government is the absolute owner of the lands acquired and as per Section 10 of the Act, 1948 read with Rule 17 of the Rules, 1948, the State Government having the power to deal with such land and the members of the Petitioner association having been paid compensation for the land acquired by the Government, the allegations made in the Writ Petition are not correct.

4. It was stated in the counter affidavit that some amount was not claimed by some persons which was deposited in Treasury in the shape of Civil Deposit. But in view of the Judgment and direction of this Court as mentioned above another drive was taken up to clear those dues and applications were invited from the legal heirs of those khatas who have not received their compensation at the time of acquisition. But not a single application has been received in that regard. The matter was further discussed with RAC/PDC, Sambalpur and it was decided that another drive will be taken by inviting applications from the various legal heirs of acquired Khatas. Accordingly notice vide letter dated 418 dated 18.2.2006 of the office of A.D.M., Rourkela was brought out and three months time was given for filing of claims. The same was published in the Oriya newspaper "Sambad" on 19.2.2006 for wide publicity. Within the specified time only 47 applications were received. On a scrutiny it was found that 42 persons have already received their compensation amount in lieu of land acquired and out of the rest 5 applications, no compensation was received by 4 applicants and with respect to one applicant, as there was some discrepancy in records which have been verified. The A.D.M., Rourkela has already requested the Principal Secretary to Government in Revenue Department, Orissa for necessary permission to operate the civil deposit for disbursement of rest compensation.

5. It is not disputed that Ac.4506.29 of land was surrendered to the State Government by the Rourkela Steel Plant. However, the State Government have stated in the counter affidavit that displaced persons have been provided rehabilitation in 15 reclamation camps as also provided house sites (measuring 60" x 40") each in Jharpani and Jalda resettlement colonies. The allegations made in the Writ Petition have been denied on the ground that steps were taken to rehabilitate the displaced persons.

6. Before proceeding further, it would be appropriate to mention here that owners of some of the acquired land in question filed Writ Petitions before the High Court challenging the validity of the acquisition. High Court dismissed the Writ Petitions. The matter was carried to the Supreme Court in appeals which were registered as Civil Appeals Nos. 1237 and 1238 of 1972 and 1730 of 1973 reported in Mangal Oram and Others Vs. State of Orissa and Another, . It was contended on behalf of the Appellant-land owners that the State Government was not competent to acquire the land in question under the Act for the establishment of a steel plant. It was further contended that the acquisition of the land for the establishment of a steel plant cannot be said to be for the purpose of the development of industry. The Apex Court considering the notification of the State Government dated February 20, 1954 pursuant to Clause (c) of Section 2 of the Act held that the establishment of the steel plant and ancillary industries at Rourkela should be held to answer to the definition of "development of industries". The further contention raised before the Apex Court was that part of the lands which were acquired for the purpose of steel plant and ancillary industries are being used as a civil township when the acquired land could only be used for the steel plant and ancillary industries and not for a civil township. The Court held the same as devoid of force and observed as under:

The establishment of a steel plant necessarily postulates the construction of residential quarters for the workmen to be employed in the plant. In addition to that, lands would be needed for shopping areas, for schools for the children of the employees, for play-grounds, for hospitals and for residential quarters of persons opening their shops catering to the needs of the employees of the steel plant. Lands would likewise be needed for post offices, banks, clubs, parks, cinemas, roads, police stations as also for cremation and burial of the dead. Land would also be needed for a variety of other purposes and civil amenities. A township is a necessary adjunct and concomitant of a big steel plant. The fact, therefore, that part of the land which was acquired has been used for civil township would not, in our opinion, affect the validity of the acquisition of the land.

In the said case, 31.06 acres of land was acquired for expansion of rail facilities to serve the steel plant at Rourkela. The said notification was challenged before the High Court. It was contended before the High Court as well as the Apex Court that fourteen years after the acquisition of the land the railway authorities for whom the land was acquired had transferred 3.21 acres of land to the Notified

Area Committee, Rourkela. In that case, the State filed affidavit stating that the land was sought to be transferred to the NAC because the NAC is the appropriate body to construct and maintain the link road, bus and taxi stands and shops surrounding the railway station. The Apex Court held that the averments in the affidavit go to show that 3.21 acres of land is not being used for a purpose extraneous from that for which the land was initially acquired. The Apex Court relying on its earlier decision in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, , held as under:

There is no principle of law by which a valid, compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the declaration.

In *Gulam Mustafa* (supra) the validity of the land acquisition proceedings whereby a .Municipality compulsorily purchased the Appellant's land for the stated public purpose of running a country fair or market was the subject matter of challenge in a Writ Petition which the High Court dismissed. The contention of the Appellant before the Apex Court was that there was no "public purpose" to support the acquisition which was allegedly ultra vires the Municipality's power. The Apex Court rejected the said contention holding that providing a village market is an obvious public purpose and a municipal facility. Lastly, the Learned Counsel for the Appellant complained that the Municipal Committee had sold away the excess land marking them out into separate plots for a housing colony. Repelling the said complaint, the Apex Court observed as under:

Apart from the fact that a housing colony is a public necessity, one the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 5(3) declaration.

7. Learned Counsel for the Petitioner strenuously contended that the owners of the land are entitled to restoration of the surrendered land. In this connection, he has relied upon the decision of the Apex Court in case *State of Haryana and Anr. v. Suraj and Ors.* (2004) 12 SCC 538 in which the Hon''ble Apex Court has held that the surplus land is liable to be disposed of as per the Standing Orders. Learned Counsel for the Petitioner has further contended that the surplus land has to be dealt with according to the procedure prescribed by the Land Acquisition Manual. He has referred to paragraph 155 of Chapter XV of the Land Acquisition Manual, 1976 which provides as under:

155. All lands, which have been permanently acquired for public purpose by Government in any department whether by private purchase or compulsory acquisition and are no longer required, shall be relinquished. Proposals for relinquishment of lands should be submitted to Government in the administrative department concerned, which will refer them to the revenue Department stating

that as far as they are concerned the land is no longer required. With the proposal should be sent a plan showing the land which it is proposed to relinquish on the same scales as the plan of the original acquisition of the land. The Revenue Department will ascertain the requirement of other departments and consult the Finance Department and the Board of Revenue. If it is decided to relinquish the land, the revenue Department will issue orders to the Board of Revenue for the resumption of the land and its disposal according to the rules. On receipt of these orders the Board will issue instructions to the Divisional Commissioner for communication to the Collector of the district concerned, in order to give effect to the orders of Government.

Lands acquired for a municipality district Board or any other local authority legally entitled to or entrusted by the Government with control or management of any municipal or local fund, do not come within the scope of this rule.

Postmasters General have been empowered by the Government of India in their orders No. 11931 -123 dated the 23rd October, 1914 to sanction with the approval of the local Government the sale of the sites of postal buildings which are no longer required, provided that the land was originally acquired for the post office or was transferred unconditionally to that department provided also the land is not required by the local Government for any other purpose. The Postmaster General in such cases will address the Collector of the district in which the land lies, who should take the orders of government through the Commissioner and the Board. In the event of Government having no objection to the sale of the site the sale should be conducted by the Collector, who is the recognized authority for conducting sale in the district on receipt of a formal requisition from the Postmaster General.

Relinquishment cases should be treated as distinct cases of the Land Acquisition Department.

8. In this regard, let us first know the law decided by the Apex Court on the point. In Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, , the Apex Court held that the acquired land remaining unutilized was not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of notification. Similarly in C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others, it was held by the Apex Court that the acquired land having vested in the State and the compensation having been paid to the claimant, he was not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for other purpose. In the case of State of Kerala and others Vs. M. Bhaskaran Pillai and another, , 1.94 acres of land was acquired for construction of national highway in 1952. After construction was over, Respondent applied for sale of the balance land which remained unused, the property was sought to be sold to him at the rate at which compensation was awarded u/s 11 on the basis of the executive instruction issued by the Government for permission for alienation of

the land. Some Writ Petitions were filed and the High Court declared the executive action as invalid in the light of the Kerala Government Land Assignment Act, 1960 and pointed out that the assignment was in contravention of the Act. In appeal to the Supreme Court, the question emerged was whether the Government can assign the land to the erstwhile owners? Answering the question, the Apex Court held as under:

It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilized for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the Similar question came up for decision before the Apex Court in *Northern India Glass Industries.v. Jaswant Singh and Ors.* (2003) 2 SCC 335. The Apex Court relying on its earlier decisions referred to above, came to hold that if the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the Respondents to ask for restitution of the land. In *Government of A.P. v. Syed Akbar* 2004 (8) Supreme 621, the Respondent whose land was acquired applied for reassignment of the land which remained unused. He prayed for the same basing his claim on the Standing Order No. 90 (32) of the A.P.Board of Revenue. As there was no response from the side of the District Collector, the Respondent filed Writ Petition before the High Court. Learned Single Judge of A.P.High Court disposed of the Writ Petition directing the District Collector to consider the request of the Respondent for reassigning of the unused land in the light of the order of the Board of Revenue. The District Collector rejected the request of the Petitioner holding that the said land was suitable for construction of Mandal Office which was challenged by the Respondent by filing another Writ Petition. The Learned Single Judge considering the contentions of the parties allowed the Writ Petition directing the authorities to hand over the unused portion of the land to the Respondent by collecting the amount of compensation already paid with interest at the rate of 12%. The State carried appeal to the Division Bench which also dismissed the writ appeal and so the matter was carried to the Supreme Court in appeal. The Supreme Court referring to the Standing Order in question and its earlier decisions on the question, set aside the order of the Division Bench of the High Court holding that the land acquired vests in the Government absolutely free from all encumbrances and the unused land cannot be re-assigned or reconveyed to the original owner merely on the basis of an executive order.

In *State of Haryana v. Suraj and Ors.* (supra) relied upon by the Learned Counsel

for the Petitioner, the land of the Respondents was acquired for installation of brick kiln for making Bhakra Canal. After the purpose of acquisition was complete, the Government passed order declaring the land as surplus and directed that it be disposed of as per Standing Order 28. The order stated that priority had to be given to the landowners. The Financial Commissioner instead of disposing of the land as per Standing Order 28, passed order transferring the land free of cost to the Forest Department. The order was challenged by the landowners in a suit which was decreed by the Trial Court and affirmed by the Addl. District Judge in appeal and by the High Court in second appeal against which the State approached the Supreme Court in appeal. The Supreme Court dismissed the appeal holding that paragraphs 493-95 of the Standing Order do not permit giving of such land free of cost to the Forest Department. Since the Government had declared the land in question as surplus and directed the Financial Commissioner to dispose of the same as per Standing Order 28 giving priority to the landowners, the Supreme Court held that there was no infirmity in the orders of the Courts below. Therefore, the said case is of little assistance to the Petitioners. This paragraph says that surplus land no longer required for public purposes to be relinquished. In the instant case, no proposal for relinquishment of the land has yet been submitted. Rather, the State Government proposes to use the same for public purpose.

9. Learned Counsel for the Petitioner has raised a specific contention that the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 under which the instant acquisitions were made was repealed by the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Repeal Act, 1994 without any saving clause and hence according to the interpretation of statute, it should be deemed that the said law was never existed or enacted. We are not in agreement with the contention raised by the Learned Counsel in view of the fact that no different intention appears from the Repealing Act as the Repealing Act only says that the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 is repealed and in such case the provisions of Section 5 of the Orissa General Clauses Act would be applicable, the relevant part of which is as under:

5. Effect of repeal-Where any Orissa Act repeals any enactment hitherto made, or hereafter to be made, then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred

under any enactment so repealed; or...

Therefore, the repeal does not affect the action taken under the Act so repealed when it was in existence. Hence, the contention raised by the Learned Counsel for the Petitioner is not sustainable in the eye of law.

10. These three Writ Petitions have been filed by the same Petitioner, i.e. Rourkela Local Displaced Association, 32 Villages represented by its Vice President Birsa Kerketa almost for the same relief. In W.P.(C) No. 2308 of 2007, the Petitioner has arrayed the Biju Pattnaik University of Technology as Opposite Party No. 6 alleging that construction work is being taken up by it on the surrendered land notwithstanding the status quo order passed on 20.12.2005 in W.P.(C) No. 15654 of 2005. In the counter affidavit filed by Opposite Party No. 6 BPUT it has been averred that 151.131 acres of land was allotted to it on 2.6.2004 at Unit Nos. 3 and 4 area at Chhend for construction of BPUT. The University placed fund with the IDCO for construction of boundary wall which started from 2004 and due to resistance of the residents of Bagbudi basti, some portion of it is yet to be completed. The allegation of the Petitioner that the land allotted to the BPUT belonged to their forefathers/ancestors has been denied. The local administration after analyzing the situation with regard to the legal ownership of the land allotted the same to the BPUT. Similarly some lands have been allotted to the NIT. Allotment of land for establishment of University and National Institute of Technology is definitely for the public purpose and if the surrendered land has been allotted for the said purpose, the Petitioner cannot have any grievance because as held by the Supreme Court after the public purpose for which the land was acquired was achieved, the rest of the land could be used for any other public purpose and the acquired land having vested in the State and compensation having been paid to the claimants, the Government is free to deal with the same in accordance with law. In the reply filed on behalf of Opposite Party Nos. 3 and 4 to the rejoinder filed by the Petitioner in W.P.(C) No. 2308 of 2007, the authority of Birsa Kerketa to represent the Petitioner has been challenged. It is stated that though there is a body in the name and style of the Petitioner, Birsa Kerketa is neither its Vice President nor its Member. It has been further stated that since the land had been acquired under a valid Act and rehabilitation benefits as due had been extended to the displaced person, the question of restoration of surplus land in their favour does not arise. In the counter affidavit reference has been made to the order passed by this Court for the self same relief. In O.J.C. No. 7433 of 1998, the Petitioners prayed for return of the lands surrendered by the Rourkela Steel Plant to them. This Court rejected the said prayer with the following observation:

Admittedly, the Petitioners' lands have been acquired by the State Government. The Petitioners have been paid compensation and if for some reasons or the other a portion of the land has not been utilized, the Petitioners cannot claim refund of the said land.

11. Similarly, the displaced person of Rourkela through their representative Biren

Senapati filed W.P.(C) No. 4462 of 2002 and one Prafulla Kansari a displaced person for and on behalf of displaced persons of Rourkela filed W.P.(C) No. 5609 of 2005 for the self-same relief which were later on dismissed as being withdrawn.

12. We, therefore, do not find any merit in these Writ Petitions which are accordingly dismissed. Consequently, the interim orders passed in these cases stand dissolved.