
(2021) 05 J&K CK 0029

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 1407 Of 2016, IA No. 01 Of 2018

Saleema Sultan And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 18-05-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2021) 05 J&K CK 0029

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : Afroza Hassan, B. A. Dar

Final Decision : Disposed Of

Judgement

1. Petitioner No. 4 present in person.

2. The petitioners in the instant petition pray for the following reliefs:

i) A writ, order or direction in the nature of mandamus directing the respondents to correct omission and include (enlist) the petitioners as

one family unit qua Chula (household) in the list of affected families under the rehabilitation and settlement plan (schemes) of Kishen

Ganga Hydro Electric Project Gurez and process their cases for compensation and all other amenities and benefits, in particular RR plan

out of 39 available household (Chula) vacancies.

ii) A writ, order or direction in the nature of certiorari, for quashment of communication No. SDMG/2021/399 dated 29.12.2012 of Sub

Divisional Magistrate, Gurez, whereby names of petitioners have been incorporated with another family, which has already received most

of benefits under rehabilitation at cost of petitioners.

3. The background facts as stated in the petition under the shade and cover of which the petitioners pray for the reliefs are that upon commissioning of a mega hydro power house (Kishen Ganga Hydroelectric Project), Gurez, a large section of population including the petitioners got displaced by the land acquisition proceedings undertaken by the respondents for the purpose of construction of the power project in question. It is stated that the respondents framed a resettlement and rehabilitation scheme which provided special amenities like employment package to one family member of the displaced family, allotment of a plot, cost of construction, assistance for loss of homestead, etc. It is being stated that for the aforesaid purpose of resettlement and rehabilitation, the respondents prepared a statement of affected families (households) wherein the petitioners's family was dropped for unknown reasons.

4. It is being stated that petitioner No. 2 during his lifetime solemnized two marriages and from his first wife namely Farzani he has two sons and two daughters, all married and settled, and from the second wife i.e. petitioner No. 1, with whom petitioner No. 2 is living since decades, he has a son and a daughter being petitioners 3 and 4 respectively.

5. It is being stated that the family of first wife (Farzani) of petitioner No. 2 did figure in the statement prepared by the respondents, but the present petitioners were excluded for the purpose of grant of compensation and other benefits.

6. It is being stated that the petitioners made representations seeking their inclusion in the list of affected households (Chulas) prepared by the respondents and non-consideration of the said representations compelled the petitioners to file a writ petition before this court being OWP No.

427/2012, which came to be disposed of in terms of order dated 12.4.2012 with a direction to the respondents to accord consideration to the

petitioners's representation and take a decision in the matter within four weeks from the date copy of the order is served upon/made available to

the respondents. The petitioners had been also directed to provide copy of the writ petition along with copies of its annexures to the respondents so as

to facilitate early decision in the matter.

7. It is being stated that Sub Divisional Magistrate Gurez in terms of communication dated 29.12.2012, impugned in the instant petition, without

showing a separate household (Chula) of the petitionersâ?? family included the petitioners with the family of the first wife of the petitioner No. 2

family Mst. Farzani, resulting into confusion and deprivation of the right of the petitioners. It is stated that since the family of Farzani has been living

separately for the last two and a half decades, the petitionersâ?? family constitutes a separate household (Chula) entitling it to compensation and

rehabilitation. It is being stated that the family of Mst. Farzani received all the benefits of rehabilitation and resettlement whereas the petitioners were

deprived of all the benefits by the respondents.

8. It is being stated that the petitioners submitted a legal notice for redressal of their grievance regarding their non-inclusion as a separate household

(Chula) and depriving them of the benefits of rehabilitation scheme/plan, which notice did not receive any response from the respondents even under

revised resettlement and rehabilitation plan despite 39 household vacancies being still available wherein the petitioners could be adjusted. The

respondents, therefore, in the process are stated to have violated the fundamental rights of the petitioners enshrined under Articles 14 and 21 of the

constitution.

9. Per contra, respondent No. 2 has filed objections resisting and controverting the claims raised and lodged by the petitioners in the petition. While

admitting that on account of Kishen Ganga Hydroelectric Project, a large section of local population got displaced, it is submitted that funds were kept

at the disposal of the state government for disbursement among the people who got displaced due to the construction of the power project. Besides

compensation for land, house(s), trees, etc., it is stated that a scheme was also launched for providing plot, cost of construction of new house,

employment package to the displaced families and for the said purpose identification, verification and door-to-door survey was assigned to a

committee of officers who prepared a list thereof after spot/ground verification of the displaced and affected persons/families. The list is stated to

have been prepared and framed by a competent group of officers/officials after examining and scrutinizing each and every case and documents

inasmuch as after assuming subjective satisfaction thereof.

10. It is being stated name of Mst. Farzani wife of Mohammad Sultan Lone, who was found to have been residing in the house along with her four

children was registered at serial No. 7, while as petitioner No. 1 Mst. Saleema Sultan, second wife of petitioner No. 2, Mohammad Sultan Lone, was

found to have never resided in the village Badwan and consequently not listed in the list and thus not qualifying for any rehabilitation or other benefits

under the scheme. It is being admitted that the petitioners' representations to higher authorities including the Revenue Minister seeking inclusion of

her name in the list, as also directions passed in the writ petitions filed by the petitioners, were considered and examined on merits and the claim of the

petitioners was found to be without any merit as the petitioners were found to have never resided in Badwan, Gurez so much so not possessing any

documents to prove their entitlement or eligibility in this regard. The petitioners, it is stated, could not as such be treated to have a separate household

(Chula) of the village. On the other hand, Mst. Farzani was found to have resided in the village having got displaced on account of construction of the

power project and found entitled to the benefits in this regard.

11. It is being further stated that the compensation of structures and other incentives have been already released upon the recommendations of the

committee constituted for the purpose. However, the compensation of land has been stopped on account of inheritance dispute involved therein. It is

being admitted in the objections that the petitioners approached the office of Sub Divisional Magistrate, Gurez, with the legal notice whereupon

petitioner No. 1 was advised to produce legal documents and other relevant necessary papers before the empowered committee headed by Deputy

Commissioner Bandipora being Commissioner for RR Plan. It is being stated that the petitioners cannot seek inclusion as separate household (Chula)

without appearing before the DC Bandipora along with relevant papers.

12. The violation of fundamental rights alleged in the petition by the petitioners is being denied on the premise that the petitioners are not similarly

situated with those who have furnished requisite relevant documents and received incentives/compensation.

13. Heard and perused the record.

14. The respondents in para 10 of their objections have taken the following stand:

â?? . . some 76 applicants have staked claim for inclusion of their name in RR plan and all of them have been provided an opportunity to

plead their case and prove their eligibility/entitlement for inclusion in the RR plan

before the committee. That the petitioner Saleema Sultan

can also produce documents and plead her case before the committee headed by Deputy Commissioner Bandipora where case to case

disposal of applications is made on merit. . .â??

15. Having regard to the nature of controversy raised in the petition, as also to the stand taken by respondents in their response/objections particularly

in para 10, this petition can be disposed of in the following manner:

â??The petitioners are free and at liberty to appear before the Deputy Commissioner, Bandipora, being Commissioner for RR Plan and

submit the requisite documents/papers in support of their claim for treating their family as a separate household (Chula) for grant of

incentives/compensation, within four weeks from the date of passing of this order. In the event the petitioners do so, the respondent Deputy

Commissioner, Bandipora shall accord consideration to the case of the petitioners in accordance with law, rules and regulations,

uninfluenced by any observation made by this court in this order, within a period of four weeks thereafter. Needless to mention that

decision to be taken by the DC Bandipora shall be communicated to the petitioners. It is made clear that this court did not express any

opinion qua the entitlement or otherwise of the petitioners regarding their claims lodged in the petition.

16. Disposed of.