

(2014) 12 CHH CK 0002

In the Chhattisgarh High Court

Case No : Writ Appeal Nos. 421 and 422 of 2014

Sanjeev Kumar Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 10 12 4 8 9
Constitution of India, 1950 — Article 14

Citation : AIR 2015 Chh 139

Hon'ble Judges : Navin Sinha, Acting C.J.;Goutam Bhaduri, J

Bench : Division Bench

Advocate : V.K. Pandey, Advocate for the Appellant; N.K. Vyas, Assistant Solicitor General and Vinod Deshmukh, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Navin Sinha, Actg. C.J.

1. The present appeals arise from the order dated 28.10.2014 dismissing Writ Petition (S) No. 6701 of 2007. The learned single Judge held that under the rehabilitation policy in force on the date of acquisition of the lands, it was necessary that the Appellants should have been in continuous possession of the lands for 20 years. The Appellants did not fulfill the condition. The policy was not under challenge. If someone had wrongly been granted benefit under the policy, illegality could not be perpetuated to urge discrimination under Article 14 of the Constitution. Learned counsel for the Appellants submitted that under rehabilitation policy originally framed in 1991, the landowner became eligible for rehabilitation immediately after issuance of notification under Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short "the Act"). There is no condition under the policy that the right to be considered for rehabilitation would arise only after its publication in the gazette. The right to be considered for rehabilitation therefore originated on 26.06.1995 when the notification under Section 4 of the Act was issued and not on 13.01.1996 when

gazette publication came to be made. The amendment made in the policy on 21.12.1995 inserting the 20 year clause could not affect the rights already created under the notification dated 26.06.1995. The Appellants are purchasers of the lands prior to the publication of the gazette notification on 13.01.1996 and also the amendment so made on 21.12.1995 of the policy. Earlier in Writ Petition No. 131 of 2001, the Court has already given directions to consider the case of the Appellants for rehabilitation.

2. Learned counsel for the Respondents opposing the appeal submits that the Appellants have purchased the lands in question on different dates commencing from 04.01.1995 to 15.12.1995. They have thus not been owners of the lands in question for 20 years prior on the date of the notification for acquisition. The notification for acquisition takes effect only on the date that it is published in the gazette. The amendment in the policy was made before it on 21.12.1995. There was no challenge to the policy.

3. We have considered the submissions on behalf of the parties. The primary and statutory right of a person whose lands are acquired is to receive compensation. There is no right for rehabilitation per se enforceable in a Court of law. If there is a policy for rehabilitation, individual claimants shall have to be considered strictly in terms of the policy only.

4. The land acquisition proceedings commenced only after publication in the gazette up to which time the Respondents could have withdrawn from the acquisition itself. The amendment in the policy was carried out on 21.12.1995. It contained three conditions:

"(A) The person must have been born in the area,

(B) He must have acquired education within the area, and

(C) He must have been owner of the land for at least 20 years."

There is no challenge to the policy. There is no pleading on behalf of the Appellants that they fulfill the other two conditions.

5. The right to be considered was under the policy as it stood amended on 21.12.1995 before the gazette publication. We, therefore, find no infirmity in the order under appeal calling for interference.

6. The arguments of hostile discrimination has also been adequately considered by the Learned single Judge holding that if the benefit had wrongly been given to an ineligible person, Article 14 could not be invoked to perpetuate illegality.

7. Section 4 of the Act provides for publication of a preliminary notification. Objections are to be filed under Section 8 after which the final notification is issued under section 9 and possession may be taken under section 10 of the Act. It is not the case of the Appellants in their pleadings that the land was acquired under the emergency provisions of section 9A much less have they disclosed the date on which actual possession has been taken under Section 12. We, therefore,

find no reason to interfere with the order under appeal. The writ appeals are dismissed.