

(2017) 08 CAL CK 0026
In the Calcutta High Court
Case No : 22537 (W) of 2016

Smt. Chabi Rani Misra

APPELLANT

Vs

The Union of India & Others.

RESPONDENT

Date of Decision : 18-08-2017

Acts Referred:

Citation : (2017) 08 CAL CK 0026

Hon'ble Judges : Sambuddha Chakrabarti

Bench : SINGLE BENCH

Advocate : Gobinda Kar

Judgement

1. On January 20, 2017, the petitioner filed the affidavit of service and in spite of notice none appeared on behalf of the respondents to oppose the application. The respondent no. 4 was directed to file a report in the form of an affidavit in response to the allegations made in the writ petition, on the next date of hearing. The petitioner was directed to communicate the gist of the order to the respondent no. 4 and the respondent no. 4 was to act on such communication.

2. The matter was next taken up on May 4, 2017, when the petitioner filed an affidavit of service from which it appeared that the petitioner had communicated the order passed on January 20, 2017 to the respondent no. 4 by speed post on January 30, 2017. In spite of it none appeared on behalf of the respondent. Consequently, no report was forthcoming.

3. Therefore, the case was heard ex parte. The case of the petitioner, inter alia, is that her husband died long ago leaving behind the petitioner and his only daughter. The lands which the petitioner had inherited from her husband were acquired by the Eastern coalfields Ltd. i.e., the respondent no. 2, which was her sole source of sustenance. She alleges that the entire agricultural lands situated at Damra under the Sripur area was affected by the work of excavation and extraction of minerals by the respondent no. 2. As the petitioner and others raised an objection, the respondent no. 2 company decided to acquire all agricultural lands from the land owners for the purpose of mining operation at Bhanora West Block and Damra colliery under Sripur area.

4. It is the further case of the petitioner that from the end of the respondent no. 2 company a proposal was given to all the land owners to hand over the lands to them against which the Eastern Coalfields Ltd. would provide an employment against one acre of land to the owner or his nominee. Since the petitioner had no male issue the name of her son-in-law, Somnath Chatterjee had been recorded as the nominee of the petitioner. An agreement was made between the two which specifically provided for such employment. Since the petitioner's land was taken after the death of the husband of the petitioner, her name was recorded in the record of rights, and after making a search from the relevant department, the respondent company had entered into an agreement with the petitioner. The entire plots of land of the petitioner were acquired by the respondent no. 2 on January 13, 1996.

5. Annexure P3 is a communication by the agent of Kalipahari colliery on January 30, 1996, by which the employment file of the petitioner along with others was forwarded to the Personnel Manager (I.C), Sripur area for providing an employment to the

nominees of the owners of land, including the petitioner.

Subsequently, the file was forwarded to the higher authority also.

6. It has been the grievance of the petitioner that the correspondence were made by the authority concerned for employment under the Land Loser Scheme, but without any valid reason the authority stopped to provide an employment to the nominee of the petitioner although some of the land losers had got their employment. It has been the specific case of the petitioner that the land had been acquired by the respondent no. 2 company without any compensation and as per the agreement no employment had been provided to the nominee of the petitioner. As a result of that she has been suffering for more than 20 years.

7. The petitioner further alleges that she along with the other land losers had repeatedly presented themselves before the respondents authorities and they were assured that employment would be provided to all the land losers which did not materialize. In the process the respondents have violated the contract entered into between the petitioner and the respondent no. 2.

8. The nominee of the petitioner along with others repeatedly demanded justice but no response had been received from the respondents. Consequently, the petitioner had to approach this Court, inter alia, praying for a writ in the nature of mandamus directing the respondents, particularly, the Chief Managing Director, i.e., the respondent no. 3, to provide an employment to the nominee of the petitioner under the Land Loser Scheme giving effect from the date the possession of the plots of land were taken over by the respondent no. 3 and a writ in the nature of mandamus directing the respondents to compensate the petitioner for using her lands for more than 20 years as also to pay to her the present market value of the lands in question.

9. The writ petition does not represent a complete statement about the lands taken by the respondent no. 2 company from the petitioner. There is no schedule of land either mentioned in the pleadings of the writ petition or separately annexed to it. The petitioner has, however, a non-encumbrance certificate issued by a learned Advocate on August 14, 1995 as well as a legal opinion as regards the lands of the petitioner issued by another learned Advocate on August 25, 1995, to the agent of the Damra colliery. Both these documents contain a schedule of lands in several plot numbers and they tally with each other. In course of hearing, Mr. Kar, the learned Advocate for the petitioner, has produced in Court a copy of registered sale deed executed on September 27, 1995. The vendor is the petitioner and the purchaser is the respondent no. 2, represented by the agent, Damra colliery. Share of the petitioner in the plots of land as mentioned in the schedule to the said sale deed agrees with the lands mentioned in the two certificates annexed to the writ petition. The petitioner has also annexed a copy of the searching report in respect of the said plots of lands.

10. The allegation of the petitioner that the land had been acquired by the respondent no. 2 without any compensation is not correct. It appears from the said sale deed, as produced by Mr. Kar, that the petitioner had transferred her right, title and interest in respect of the plots of land mentioned in the schedule to the same for a consideration of Rs. 9,345/-. She has also admitted more than once in the said deed that the said amount had been received by her by way of an account payee cheque and upon acknowledging the same, she was executing the deed of sale.

11. Annexure P2 is a document of the respondent no. 2 itself about the recruitment of personnel for purchasing the land. It

appears that this was signed by several authorities of the respondent no. 2 company and the plots of land which have been purchased are the same as mentioned in various other documents. In those documents the petitioner figures as a land loser and her nominee was Somnath Chatterjee as mentioned in the writ petition. The deed number as mentioned in Annexure P2 is the same as mentioned in the deed produced in the Court.

12. It further appears from Annexure P3 that the agent of the concerned colliery had sent the employment file of the nominee of the petitioner along with two others under the Land Loser Scheme forwarding it to the appropriate authority.

13. It further appears from the correspondence made by one Nimai Chakraborty and the nominee of the petitioner to the Chief Managing Director of the respondent no. 2 that for the lands acquired of one Nimai Charan Misra and others, he had already been provided with an employment in 1997 but the others were not. The same communication was repeatedly made by the nominee of the petitioner along with others without evoking any positive response.

14. As mentioned above, the respondents did not context this case, far less by filing a report in the form of an affidavit in response to the allegation made in the writ petition. The Court, therefore, is not in a position to ascertain the version of the respondents. As such the statements and the allegations made by the petitioner go uncontroverted.

15. From several documents, it appears that the case made out by the petitioner for appointment of her nominee from the category of land loser is not a wild one or an absurd demand without any basis. If the respondents had not given the petitioner a specific assurance there would not have any occasion for them to sign the

proforma for recruitment of personnel for purchase of land in Sripur area or nor was there any requirement for forwarding the case of the petitioner by the agent of the concerned colliery to the Personnel Manager (I.C), Sripur area. From a later communication, it appeared that the employment file of three persons including that of the petitioner was forwarded to the addressee.

16. These clearly go to suggest that there must have been a case for providing employment to either to the land loser or her nominee otherwise the respondents would never have opened or maintained the file relating to the employment of the petitioner's nominee. Similarly, the proforma for recruitment of personnel from the land loser category would not have been also signed by various authorities of the respondent no. 2.

17. In such view of it, the respondents should have acted promptly and informed the petitioner about the employment of her nominee. Since the respondents are not coming forwarded the allegations made in the writ petition must have to be treated as unimpeached.

18. The writ petition is, therefore, allowed by directing the General Manager, i.e., the respondent no. 4 to positively consider the case of the petitioner regarding the employment of her nominee under the land loser category within a period of six weeks from the date of communication of the order. In case it appears to him that the respondent no. 2 company had held out any promise for recruitment of the nominee of the petitioner he shall ascertain why the same had not yet been implemented and, if there was any such promise by the company, he shall take all possible steps for providing an employment to the petitioner's nominee within a further period of eight weeks. In case, for any reason whatsoever, such employment cannot be given to the petitioner the

respondents must financially compensate her for the loss suffered by her. Considering the fact that all the lands of the petitioner were taken over in the year 1995 by the respondent no. 2 company. The whole exercise is to be completed within the period as mentioned above. In the event it is found that there was no promise held out by the respondent no. 2, the respondent no. 4 shall communicate the decision to the petitioner within a period of two weeks from the date of the communication of the order.

19. There shall be no order as to the costs.

20. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.