
(2008) 02 OHC CK 0054
In the Orissa High Court

Sri Japani Samal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 105 CLT 404

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The Petitioner who was a land oustee had moved this Court under Article 226 of the Constitution of India for a direction to the Opposite Parties to afford rehabilitation assistance as available under the rehabilitation scheme formulated by the State Government. The Petitioner had accordingly prayed to direct the Opposite Parties to give him all financial benefits or service benefits and to issue a writ in the nature of mandamus in directing the Opposite Parties to make payment of Rs. 50,000/- to him within a period of two months as per the rehabilitation policy formulated by the Revenue & Excise Department, Government of Orissa. The original Petitioner having died during the pendency of this Writ Petition, he has been substituted by his son as the Petitioner.

2. The case of the present Petitioner is that his father had lost almost all cultivable lands which had been taken over/acquired by the State Government under the Land Acquisition Act for construction of Talcher Thermal Power Station (for short TTPS). It is contended by the Petitioner that in the year 1964 the State Government acquired the land of the Petitioner's father land measuring Ac.2.82 decimals for construction of TTPS and subsequently acquired further land measuring Ac.2.97 decimals for construction of Ash Pond for TTPS and in view of such acquisition, the Petitioner's father was rendered almost landless.

3. It is the further case of the Petitioner that as per the rehabilitation scheme

formulated by the State Government from time to time, his father, as the land owner was entitled to get some assistance in terms of the measures as stipulated in such rehabilitation policy. It is further stated that similarly situated other land oustees of the locality whose lands have been acquired for construction of TTPS having been granted with rehabilitation assistance, the Petitioner is entitled to get the same.

4. In the counter affidavit filed by Opposite Parties 2 and 3 it has been specifically stated that the land of the Petitioner's father was acquired by the State Government for construction of TTPS, Talcher in the year 1964 and therefore the claim of the Petitioner that he should be provided with rehabilitation assistance as the son of the original land oustee as per the rehabilitation policy of the Government of Orissa in the Revenue & Excise Department, dated 05.07.1994 cannot be made applicable to him. The Petitioner's father has already received necessary rehabilitation assistance under the policy of the State Government as was applicable in the year 1964, when his land was acquired for construction of TTPS in Talcher.

5. Opposite Party No. 5, Grid Corporation of Orissa Limited, which came into existence after commencement of Orissa Electricity Reforms Act, 1995 in place of erstwhile Orissa State Electricity Board (for short "OSEB"), have filed a separate counter affidavit stating therein that the Petitioner's father had title over 1.16V2 kadi of land in village Santhapur out of which Ac.0.530 decimals has been acquired by the State Government for construction of Ash Pond for TTPS. Since the father of the present Petitioner claimed to have lost 1/3rd of total land in his name, he was considered for rehabilitation assistance. But on subsequent verification, it was found that Smt. Bijuli Samal, who is the wife of the original Petitioner (mother of the present Petitioner), owned land measuring an area of Ac.5.660 decimals in village Khalua, which is a neighbouring village of Santhapada. As per the rehabilitation norms prescribed by the Revenue & Excise Department of the Government, the total land which stands recorded in the name of "family members" will be taken into account for computing if 1 /3rd of total land held by a family have been acquired and only in that case the family is eligible to receive rehabilitation assistance.

5.1 It is further contended by the Opposite Party No. 5 in its Counter affidavit that the total extent of land which stands recorded in the name of family members of the Petitioner's father in his village at Santhapada and neighbouring village at Khalua comes to Ac.6.825 decimals, out of which only Ac.0.530 decimals of land has been acquired by the State Government for construction of Ash Pond for TTPS. Therefore, the total land acquired from out of the property of family members of the Petitioner's father was not 1/3rd of the total land and therefore, the Petitioner's father was not eligible to get rehabilitation assistance.

6. For better appreciation, the relevant extract of the guideline for grant of rehabilitation assistance to land oustee framed by the Revenue & Excise Department of Government of Orissa is quoted herein below:

A family for the purpose of rehabilitation shall include husband and wife as the case may be and their unmarried children but does not include a major son who has been separated from the family on or before the date of notification u/s 4(1) of the Land Acquisition Act, 1895 in respect of area/village. He shall be treated as separate family.

And

The employment benefit or compensation of Rs. 50,000/- in lieu thereof may be provided to the persons whose total lands either in his name or in the name of his family members does not exceed three standard acres out of which atleast one-third has been acquired provided therein no person belonging the family already in employment on the date of notification u/s 4(1) of Land Acquisition Act.

7. From the counter affidavit of Opposite Party No. 5, it further reveals that the Petitioner's father had already been paid necessary compensation as per the award of the Land Acquisition Officer in respect of his land acquired by the State Government for construction of TTPS and the present claim of the Petitioner for compensation of Rs. 50,000/- is not maintainable in view of the specific provision of the rehabilitation assistance scheme of the State Government, as detailed above.

8. As the total extent of the Petitioner's land measuring Ac.0.530 decimals has been acquired for construction of Ash Pond for TTPS and the total land of the family has been found to be Ac.6.825 decimals which is more than three standard acres, the extent of land acquired being much less than 1/3rd of three standard acres as provided under the rehabilitation scheme, the Petitioner is not entitled to get either any employment benefit or compensation or Rs. 50,000/-, as claimed by him now.

9. In view of the facts narrated above, we are not inclined to interfere in the matter in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India, especially when the entire claim of the present Petitioner with regard to payment of compensation involves adjudication of disputed question of facts, which cannot be gone into by this Court.

Accordingly, we find no merit in the Writ Petition and the same is dismissed.

I.M. Quddusi, J.

I agree