
(2021) 11 OHC CK 0102

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10698 Of 2012

Sujit Kumar Sahoo And Others

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Land Acquisition Act, 1984 — Section 4, 4(1), 6

Citation : (2021) 11 OHC CK 0102

Hon'ble Judges : Dr. S. Muralidhar, CJ;A.K. Mohapatra, J

Bench : Division Bench

Advocate : M. K. Mohapatra, Satyajit Mohanty, Suman Pattanayak

Final Decision : Dismissed

Judgement

1. The Petitioners claimed to be the joint recorded owners of homestead land in Mouza Derang, P.S. Kaniha in the District Angul.

2. Although they have received compensation for the land acquired under the Notifications dated 18th January and 30th April, 2008 of the Government of Odisha under the relevant provisions i.e. under Sections 4 and 6 of the Land Acquisition Act, 1984 (LA Act), the grievance of the Petitioners is that the benefits due to them under the Orissa Rehabilitation and Resettlement Policy, 2006 (R & R Policy) have not been extended to them. In particular, the Petitioners claimed to fall within the description of "displaced/affected families" in terms of the R & R Policy.

3. In response to the petition, a counter affidavit has been filed by Opposite Party No.4 ,for whose benefit the acquisition took place. In para 5 of the said counter affidavit, it is stated as under:

"5. The Petitioners by way of the present Writ petition are seeking direction for inclusion of their names in the 'Project Affected Families' List so that the benefits under the Orissa Resettlement and Rehabilitation Policy, 2006 (Orissa R&R Policy 2006) can be extended to them.

The Petitioners however cannot claim the said benefits as they are not eligible for the benefits under the Orissa R&R Policy 2006. The said Petitioners 1 to 4 are claiming to be major sons of Mr. Duryodhan Sahoo and Petitioner No.5 is claiming in his own right as recorded owner of land in Village Derang. Petitioner No.6 is claiming through her late husband Sri Dussasan Sahoo also recorded owner of land in Village Derang.

Shri Duryodhan Sahoo, the father of Petitioners 1 to 4, Shri Kishore Chandra Sahoo, Petitioner no.5 and Late Shri Dussasan Sahoo, husband of Petitioner No.6 were joint recorded owners of land in Village Derang. However, all the three aforesaid brothers (joint recorded owners) as aforesaid were not eligible under the Orissa R&R Policy 2006 as they were not residing in Village Derang.

The said R&R Policy has defined "Displaced Family" (Project Affected Persons) to mean a family ordinarily residing in the project area prior to the date of publication of Notification under the provisions of the relevant Act. The Revenue and Disaster Management Department of Government of Orissa has issued a clarification on "Displaced / Affected families" with reference to Orissa R&R Policy 2006 on 20.10.2010. "Displaced / Affected" families are those persons or families who are normally residing in or near the project area for a period of at least 3 years prior to the issuance of Section 4(1) Notification (under the Land Acquisition Act) and are considered to be ordinarily residing therein for the purpose of R&R benefits. A copy of the said Notification bearing No.R&REH-56/10/42388/R&RDM, dated 20.10.2010 along with copy of the Orissa R&R Policy 2006 are annexed hereto and marked as Annexure-A/4 (Collectively)."

Under the said R&R Policy and by virtue of the clarification, the father of the Petitioners Nos. 1 to 4 (namely, Mr. Duryodhan Sahoo), Petitioner No.5 and late husband of Petitioner No.6 Shri Dussasan Sahoo are not eligible for the benefits under the Orissa R&R Policy 2006.

The alleged claim of the Petitioners is through the Note to Clause 3(f) ("family") of the Orissa R&R Policy, 2006. "Family" is defined under Clause 3(f) is defined as follows:-

""Family" means the person and his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him or her and dependent on him or her for his / her livelihoods.

Note: Each of the following categories will be treated as a separate family for the purpose of extending rehabilitation benefits under this Policy.

- (i) A major son irrespective of his marital status.
- (ii) Unmarried daughter / sister more than 30 years of age."

As per the Policy the R&R benefits are extended to Displaced family and as per the definition of 'Displaced Families' in clause 3(d) of the policy, 'Displaced family'

means a family ordinarily residing in the project area prior to the date of notification under the provisions of the Act. Further, family means the person and his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him or her and dependent on him or her for his / her livelihoods. As per above definition in case the Displaced family / Project Affected Persons is eligible for the benefits under R&R Policy then the benefits are to be extended to major son, unmarried daughter / sister more than 30 years old etc., as a separate family. However, if the recorded owner is not found to be himself eligible then the benefits under R&R Policy cannot be extended to the persons categorized as separate family. If the benefit is being given to the said person, only then those persons not depended on the recorded owner will have to be extended the benefit separately. The object behind the said clauses is that the persons who are resident in the project area 3 years prior to the Notification and are the recorded owner of land should be granted benefits of R&R along with his dependents as one unit and that the benefits should be extended to those not dependent upon him/her as a separate unit. However, if such person himself is not found eligible for R&R Benefits, the major sons/sisters/widow cannot be granted the benefits and R&R Policy, 2006.

In any event, in the Socio Economic Survey of the Village Derang conducted by the Agency Blue Yatch Consultancy Pvt. Ltd., Bhubaneswar, the recorded owners of land i.e. Shri Duryodhan Sahoo, the father of petitioners Nos.1 to 4, petitioner No.5 and Shri Dusashan Sahoo, late husband of petitioner No.6 were found to be not residing in Village Derang. Hence, their claims for R&R benefits under the 2006 policy have been rejected by the Land Acquisition Officer (Opposite Party No.2)."

4. In short, it is stated that in view of the further clarification issued under the R & R Policy, the Petitioners are not eligible to the benefits under the R & R Policy.

5. Learned counsel for the Petitioners insisted that the Petitioners have satisfied the requirement of 'Displaced Families/Project Affected Persons' under the R & R Policy. According to him, the insistence that in order to be eligible for the benefits under the R & R Policy, a person must be resident of the project area for 3 years prior to the Notification, is not at all 'relevant' or 'necessary.'

6. Interestingly, the R & R Policy itself is not under challenge. In terms of the clarification to the R & R Policy dated 20th October, 2010, the person claiming R & R Policy "has to be resident of the Project affected place for a period of at least 3 years prior to the date of the Notification under Section 4 of the LA Act."

7. Learned counsel for the Petitioners relies on the 'Resident/Nativity certificates' and Voter Identity Cards of the Petitioners to show that they were residents of Derang. However, as pointed out in the counter affidavit, these documents do not show that they were residents 3 years prior to the date of the Notification. In the voter list of Derang for 2007, none of the Petitioners' names figured.

8. Not having challenged the R & R Policy, the Petitioners cannot insist that even though they do not satisfy the requirement thereunder, they must be extended the benefits.

9. It is therefore not possible for this Court to grant the reliefs as prayed for by the Petitioners. The petition is dismissed.

10. Issue urgent certified copy of this order as per Rules.

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