
(2020) 09 TEL CK 0005
In the Telangana High Court
Case No : Writ Petition No. 2188 Of 2020

Yedla Babulu And others

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 3(m), 11(1), 15, 16, 17, 18, 19(1), 21(4), 26, 31, 31A, 77(2), 108, 109(2)(v)
Constitution Of India, 1950 — Article 14

Citation : (2020) 09 TEL CK 0005

Hon'ble Judges : M.S. Ramachandra Rao, J;K. Lakshman, J

Bench : Division Bench

Advocate : Ch. Ravi Kumar

Final Decision : Allowed

Judgement

1. The petitioners are residents of Mamidyala Village, Mulugu Mandal, Siddipet District in the State of Telangana. They have all attained the age of majority, but are unmarried (except the 18th petitioner who is stated to have got married in April, 2019). They claim to be working on the lands of their parents and others in the village and thus contributing to the income of their respective families.
2. The parents of the petitioners had houses in the above village and the petitioners, since they did not have any houses of their own, claim to be living with their parents.
3. A preliminary notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act 30 of 2013') was issued for acquiring 45 houses in the said Village including that of the parents of the petitioners [Ex.P.3 Award Enquiry Notice under Rule 26 read with Section 21(4) of Act 30 of 2013 issued to the father of the 1st petitioner gives these details] under Act 30 of 2013 as amended by the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement (Telangana Amendment) Act, 2016 (for short, 'Act 21 of 2017) for constructing 'Kondapochamma Sagar Reservoir' under the 'Kaleswaram Irrigation Project' by the District Collector, Siddipet District. This was published in 'Eenadu Telugu Daily Newspaper' on 24.09.2018 and in the 'Times of India' English Daily Newspaper on 26.09.2018. No objections were filed by the petitioners to the said acquisition. Declaration under Section 19 was published on 31.08.2019 in Vaartha Telugu Newspaper and 'The Hindu' English Daily newspaper.

4. Under the preliminary notification, the Joint Collector, Siddipet was appointed as Administrator for administering Resettlement and Rehabilitation of the persons who would lose their houses.

Contentions of the petitioners

5. According to the petitioners, it had become difficult to live in the Village because of heavy dust and noise coming from the construction work; there were no livelihood opportunities because of earlier acquisition of agricultural lands in the village; and the petitioners were hoping that proper Resettlement and Rehabilitation (for short, 'R & R') would be provided as per the provisions of Act 30 of 2013 and they can relocate to a new place and begin a new life.

They allege that Officers attached to the District Collector's Office came to the village and did listing of houses and members living therein under a purported survey in 2019 but did not provide any details and did not issue any notices; procedure laid down in Sections 15 to 18 of Act 30 of 2013 was not followed; without preparing and notifying any R & R Scheme and without even publishing any declaration under Section 19 (1) of the Act 30 of 2013, the respondents conducted a camp in May, 2019 and asked the Project Displaced Persons to come and collect cheques towards R & R.

6. Petitioners allege that when they enquired with the respondents, they were informed that R & R benefits were being provided as per Act 21 of 2017 'under consent'; that unmarried adult displaced persons were being given a package of Rs.5 lakhs and a plot of 250 Sq.Yds. by the Government but not full-fledged R & R package under Act 30 of 2013 which was being given to married adult displaced persons.

7. They contend that discrimination is being shown to them by the respondents because adult married displaced persons were being given a Double Bed Room house on a 250 Sq.Yd. plot in the R & R colony along with Rs.7.5 lakhs.

8. According to them, the definition of the term 'family' in Clause (m) of Section 3 of the Act contains an 'explanation' which directs that an adult of either gender with or without spouse or dependents shall be considered as a 'separate family' for the purposes of the Act; and therefore the respondents cannot show any discrimination between the petitioners (who are unmarried adult members) and adult married members who would fall within the definition of the term 'family' in

the matter of benefits of R & R.

9. They contend that they should also be given options to choose R & R package either under Act 21 of 2017 or under Act 30 of 2013; but when they questioned the respondents, they were informed that such aspects are not relevant and they should accept whatever the respondents are offering without questioning it.

10. They also contend that no proper summary of R & R scheme was published along with declaration under Section 19(1) of the Act and only a statement was made that certain number of unmarried Project Displaced Persons older than 18 years of age were paid R & R benefits.

11. Petitioners contend that they gave representations dt.11.11.2019 to the Joint Collector and R & R Administrator to consider payment of equal compensation to them as was given to adult married members of the Project Displaced families, but there was no response from the said official.

12. The counsel for petitioners reiterated the said submissions and relied upon the decision rendered by this Court in Writ Petition No.25664 of 2019 dt.10.07.2020 wherein this Court had held that unmarried adult members of Project-affected families would be entitled to same R & R benefits as were paid by the State to adult married members of such families as per Section 31 / 31-A of the Act 30 of 2013.

The events which occurred after the filing of the Writ Petition:

13. During the course of hearing of the Writ Petition by the previous Bench headed by the Hon'ble Chief Justice on 13.04.2020, the petitioners had contended that the respondents had not published various Government Orders issued by the State of Telangana. So, the said Division Bench directed the Advocate-General to file on or before 20.04.2020 copies of G.O.Rt.No.78 dt.16.04.2019, G.O.Rt.No.192 dt.20.05.2019 and G.O.Rt.No.435 dt.13.11.2019 since the Advocate-General stated that the petitioners' claims would be covered by the said G.Os.

14. The District Collector, Siddipet thereupon filed the above G.O.Rt.s along with an affidavit dt.19.04.2020.

G.O.Rt.No.78 dt. 16.04.2019

15. In G.O.Rt.No.78 dt. 16.04.2019 issued by the 2nd respondent, it is stated that the State Government permitted the Commissioner, R & R and Land Acquisition, Irrigation and C.A.D. Department to make partial payment of R & R package and allotment of house plot of 250 Sq.Yds. / 2 BHK house to the Project Displaced Families. There is a reference therein to an alleged Grama Sabha and public hearing conducted in four villages including Mamidyala Village and an amount of Rs.160.32 crores was directed to be released. A table was given therein which mentioned that Project Displaced families living together would be given Rs.12.54 lakhs each (Rs.7.5 lakh entitlement 11. Rs.5.04 lakh in lieu of 2

BHK) and that in such families, those who are 18+ would be paid Rs.5 lakhs only.

16. The latter probably is what was proposed to be paid to adult unmarried members of the Project Displaced families.

G.O.Rt.No.192 dt.20.05.2019

17. G.O.Rt.No.192 dt.20.05.2019 issued by the 2nd respondent refers to G.O.Rt.No.78 dt.16.04.2019 and states (i) that the Government had agreed that R & R entitlement as per Act 30 of 2013 and the better district specific package as per Act 21 of 2017 will be offered to the Project Displaced Families and they are free to choose either of the options; (ii) all the Project Displaced Families under one 11(1) Notification will be eligible to exercise their options; and (iii) if for any village more than one Section 11(1) Notification was issued, then the entire village has to be offered both the above options to provide a level field.

The G.O. refers to a Socio-Economic Survey allegedly conducted for providing R & R entitlements and tentative list of Project Displaced Families and gives the following table :

(a) Each family (includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him) shall be offered.

(1) 2 BHK House to the family;

(2) Rs.7.50 lakhs;

(3) 250 Sq.yds. plot

(2) 18 + majors (An adult of either gender with or without spouse or children or dependents)

(1) Rs.5.00 lakhs;

(2) 250 Sq.Yds. plot

A sum of Rs.49,06,78,000 was released by the Government for payment.

G.O.Rt.No.435 dt.13.11.2019

18. G.O.Rt.No.435 dt.13.11.2019 refers to the release of a further amount of Rs.14,26,94,000/- by the State to the Project Displaced Families who are married and who are unmarried adults.

I.A.No.2 of 2020 filed by the petitioners:

19. Petitioners thereafter filed I.A.No.2 of 2020 to amend the main prayer in the Writ Petition and seeking setting aside of the said G.O.Rt.s.

20. The said application was allowed on 17.08.2020 by this Bench.

The stand in the counter affidavit of the 6th respondent which is adopted by other respondents

and

consideration of the said stand by the Court

21. It is the stand of the respondents that in order to provide R&R entitlements to the project displaced families, options were given to the petitioners and also their families; and reference is made by the learned Advocate General to the Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lump sum Payment towards R&R) Rules, 2017 framed vide G.O.Ms.No.120, Revenue (JA&LA) Department, dt.30.06.2017.

22. Rule 17 of the said Rules directs the District Collector to offer options to the affected families to choose either entitlements as per Act 30 of 2013 or R&R lump sum package under the Telangana Amendment Act 21 of 2017.

23. Schedule given in the above G.O. provides that for housing units lost in land acquisition, the State of Telangana was offering purportedly under Act 21 of 2017, a sum of Rs.5.04 lakhs (equivalent to a house as per the two bed room housing policy of the State Government) in case of displacement of a family living together or Rs.1.25 lakhs to a single family (equivalent to Indira Awas Yojana); and the term "family" was defined to include a person, widow/widower, his or her spouse, minor children, minor brothers and minor sisters dependent on him/her.

- It is stated by the respondents that some of the petitioners were not residents of the village and so they were not issued any notice.

But the counter affidavit does not mention the name/names of petitioners who were allegedly not in the village. Even if they are not residents of the village, since their parents were admittedly residents of the village, what prevented the respondents to send notices to such persons showing them as residing with their parents is not explained. Obviously if the address of the person is shown to be that of his or her parent, the parent would communicate to him to exercise option.

- It is alleged that the others were asked to make a choice between (a) constructed house as per Indira Awas Yojana specifications within 75 sq. yards, annuity/one time payment of Rs.5.00 lakhs per project displaced family, subsistence grant of Rs.36,000/- per family, transportation cost of Rs.50,000/- per family and one time resettlement allowance of Rs.50,000/- per family and (b) Rs.7,50,000/- in cash to be paid to the family, 250 sq. yards open plot to be given with 2 BHK house or cost of construction of Rs.5,04,000; and that Rs.5.00 lakh cash along with 250 sq. yards open plot will be given to the unmarried adults who have crossed 18 years of age.

Why this discrimination is shown against unmarried adult members of project displaced families (who were being offered only Rs.5.00 lakhs cash along with 250 sq. yard open plot) in comparison to married members (who were being given Rs.7,50,000/- cash along with 250 sq. yard open plot + 2 BHK house or

cost of such construction of Rs.5,04,000/-), is not explained in the counter affidavit.

26. Attention of the learned Advocate General was drawn to Clause (m) of Section 3 of the Act 30 of 2013 which states:

"3(m) "family" includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him:

Provided that widows, divorcees and women deserted by families shall be considered separate families:

Explanation: An adult of either gender with or without spouse or children or dependents shall be considered as a separate family for the purposes of this Act."(emphasis supplied)

27. A reading of the above provision along with its Explanation shows that even unmarried adult members of either gender have to be considered as a separate "family" for the purposes of the Act in addition to married members; and Section 31 of the Act entitles R&R amounts to be paid to such families as well. This view has already been taken by this very Bench in its order dt.10.07.2020 in W.P.No.25664 of 2019.

28. In the said judgment, it was held that in view of Explanation to Section 3(m) of Act 30 of 2013, married and unmarried members of families of project affected families have to be treated on par; that there cannot be any discrimination shown to any adult unmarried member of a family in the matter of payment of R&R settlements under Section 31 or 31(A) of the Act; and whatever benefits are granted to adult married members, same benefits should be given to adult unmarried members.

29. Though the learned Advocate General sought to contend that Act 21 of 2017 was enacted by the State Legislature of Telangana providing for Section 31-A, and that the said provision enabled the State Government to pay lump sum amount in lieu of R&R, and that this entitled the State of Telangana to even give lesser amount to unmarried adult members, he did not dispute that there was no amendment made to Clause (m) of Section 3 of the Act 30 of 2013 by Act 21 of 2017, and that the Explanation thereto mandating the treatment of adult unmarried members also as "family", was not deleted while passing Act 21 of 2017 by the Telangana State Legislature.

Therefore, the said Explanation to Clause (m) of Section 3 of Act 30 of 2013 which defines the term "family" which directs treating/considering as 'separate' family, adult unmarried members of either gender, continues to operate in the State of Telangana.

Thus, the Act 21 of 2017 did not disturb this legal position at all and the said Act or any Rules made thereunder therefore cannot override the above legal position contained in Explanation to Section 3(m) of Act 30 of 2013 treating unmarried

adult members of a family as a "separate family".

The Schedule to G.O.Ms.No.120, Revenue (JA&LA) Department, dt.30.06.2017 which is referred to in para 23 supra gives the following definition of the term "family" i.e term "family" was defined to include a person, widow/widower, his or her spouse, minor children, minor brothers and minor sisters dependent on him/her. It deliberate excludes unmarried adult members of project displaced families from consideration for payment of R & R benefits. This is patently contrary to the definition of the term 'family' contained in the Explanation to Sec.3 (m) and such exclusion of unmarried adult members of project displaced families from receiving R & R benefits is illegal.

Therefore the term 'family' mentioned in the Schedule to the said G.O is declared to have the same meaning in Sec.3 (m) of the Act and the Explanation thereto and the unmarried adult family members of project displaced families shall also be given option under Rule 17 of the rules by the District collector, Siddipet.

We reiterate that no discrimination can be shown in the manner of payment/grant of R&R benefits either under Section 31 or under Section 31-A to adult unmarried members of project displaced families and they should be given the same identical benefits which are paid/granted to adult married members of such families.

30. In para 6 of the counter affidavit, it is stated that R&R awards were passed extending R&R entitlements under Section 31 of the Act 30 of 2013 in favour of "entitled persons" as per Section 38 of the Act. Which of the petitioners fall in the said category is not mentioned and not a single copy of any R&R Award in respect of any of the petitioners is filed. Therefore, we disbelieve this story that there was any such Award in respect of any of the petitioners passed by the respondents.

31. In the next sentence in para 6, it is stated that "except petitioners 2, 3, 4, 12, 13, 19, 20, 23 and 24, other petitioners have not attended the socio-economic survey conducted for identification of entitled persons".

But the respondents have not denied that the other petitioners are adult unmarried members of project displaced families, and therefore on the pretext of non-participation, they cannot be denied R&R benefits on par with adult married members of project displaced families.

32. It is next stated in para 7 by respondents that petitioners who participated in the socio-economic survey and who were found eligible did not accept R&R entitlements as determined by the competent authority and that the said amount determined under Act 30 of 2013 was deposited before the authority under Section 77(2) of Act 30. of 2013 on 30.03.2020.

In any event, even if this is true, the petitioners have to be paid R&R entitlements on par with adult married members of project displaced families and they cannot be given any lesser benefits. They cannot be compelled to accept

lesser R & R benefits by the respondents when they are entitled to identical benefits which were paid to married adult members of such families.

33. In para no.8 of the counter-affidavit, reference is made to certain Writ Petitions filed by the parents of the petitioners challenging proceedings initiated for acquisition of their lands and also house structures and the said fact has no bearing on this Writ Petition. In para no.9, there is a reference to the direction given by the Division Bench presided over by the Chief Justice to produce the relevant G.Os, which has already been adverted to supra by us.

34. In para no.10,1 it is the stand of the respondents that there is no substance in the plea of the petitioners that they should be treated as a 'separate family' for the purpose of R & R entitlement.

The respondents cannot ignore the Explanation to clause 13. of section 3 of the Act which mandates that unmarried adult members of project displaced families should be considered as 'separate family' .They are bound to treat them as a 'separate family' for purpose of being given R & R entitlements.

We have already rejected the said plea by relying on the earlier order passed by this very Bench on 10.07.2020 in Writ Petition No.25664 of 2019.

2 it is further stated by the respondents that the State of Telangana had framed a policy as per Section 108 of Act 30 of 2013 with regard to R & R entitlements.

This policy is contained in G.O.Ms.No.75, Revenue (JA & LA) Department dt.05.06.2015 and Annexure thereto.

The said policy contemplates constitution of a District Level Negotiation Committee by the State to negotiate with the interested persons consisting of the District Collector, the Joint Collector, Special Deputy Collector / Revenue Divisional Officer, Executive Engineer of R & B / Panchayat Raj / Irrigation 21. R.W.S. or any other (other than the requisition Department) and also Requisition Authority from the requisitioning body. There is a detailed procedure prescribed which is to be adopted by the said Committee including (i) fixing of market value of the land to be acquired under Section 26 of Act 30 of 2013, (ii) obtaining of consent from Requisitioning Department, negotiations to be undertaken with the land losers for final settlement, (iii) publication of a show-cause notice in Form II at two or more public places like Grama Panchayat or Chavidi, etc., of the village in which jurisdiction the proposed area of acquisition lies and to the persons interested in the land to appear personally and to state their willingness or otherwise or otherwise to settle their claims through the said Committee, etc. (iv) the proceedings or deliberations of the Committee pertaining to the claims of compensation were to be recorded; and (v) the negotiated value as agreed to before the Negotiations Committee shall not be more than 25% increase on the market value calculated as per Section 26.

Not a scrap of paper is produced by the respondents to show that anything has been done by them pursuant to the procedure contained in the said policy of the

State of Telangana contained in G.O.Ms.No.75 dt.05.06.2015 as regards determination of compensation or R & R entitlements to the residents of Mamidyal Village such as the petitioners or their parents.

Therefore, this plea about policy existing under Section 108 of the Act 30 of 2013 has no substance.

(iii) it is next contended by respondents that parents of the petitioners were paid R & R entitlement as per the State policy and so it would not lie in the mouth of the petitioners to contend that they are entitled to R & R entitlements under Act 30 of 2013 or that they are entitled to such entitlements on par with married displaced persons. It is stated that if the petitioners insist for payment of R & R entitlements as per Act 30 of 2013, or if they insist on being treated on par with married displaced persons and be paid R & R benefits under the State policy, the payments which were given to their parents have to be returned and all of them should exercise fresh options for payment of R & R entitlements either under Act 30 of 2013 or under Act 21 of 2017.

This plea of the respondents is an extension of their plea that unmarried adult displaced persons cannot claim R & R entitlements equal to what were granted to married adult displaced persons, which plea we have rejected as legally unsustainable in view of Explanation to Clause (m) of Section 3 of Act 30 of 2013, which continues to operate in the State of Telangana, notwithstanding the amendment to Act 30 of 2013 by Act 21 of 2017.

In our opinion, the right of adult unmarried displaced persons to R & R entitlements is a right independent of the right conferred on adult married displaced persons for such R & R entitlements.

The two cannot be linked by the respondents and they cannot contend that if petitioners make a claim for equal R & R entitlements which were paid to married adult members of Project Displaced Families, their parents should return the R & R entitlements granted to them by the respondents. Such a plea of the respondents shows their lack of respect of the law made by the Parliament and indicates a cavalier attitude and a contempt towards poor people like the petitioners and their parents, and such attitude cannot be countenanced.

4. it is next contended that R & R entitlements of petitioners 2, 3, and 4, 12, 13, 19, 20, 23 and 24 are ready for payment and that they would be paid if they accept and opt for the State policy without insisting that they should be treated on par with married displaced persons for payment of R & R entitlements.

It is the duty of the respondents to comply with the mandate of Section 31 of Act 30 of 2013 / Act 31-A introduced by Act 21 of 2017 and pay to adult unmarried displaced persons R & R entitlements on par with what is given by the State to married adult displaced persons; and such payment ought to be made not only to the petitioners 2, 3, 4, 12, 13, 19, 20, 23 and 24, but also to the other petitioners. No discrimination shall be shown to them by respondents in regard

to payment of R & R entitlements when compared to married displaced persons or among the petitioners.

35. In para no.11, there is a reference to G.O.Ms.No.120, Revenue (JA & LA) dt.30.06.2017, but it is stated that the 'State policy' is contained in the said G.O., which is factually incorrect.

The said G.O. contains the Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lumpsum Payment towards Rehabilitation and Resettlement) Rules, 2017 framed under Section 109 (2) (v) of Act 30 of 2013 as amended by Act 21 of 2017, but not the 'State Policy' of Telangana State which is contained in G.O.Ms.No.75, Revenue (JA & LA) Department dt.05.06.2015.

This shows the casual manner in which the counter-affidavit is filed by the respondents in the Court. We strongly deprecate this negligence.

36 It is stated by the respondents in para no.11 that the State Policy is more beneficial to the affected persons and so the petitioners ought to opt for the State Policy or the Schedule II to benefits under Act 30 of 2013.

The question in this Writ Petition is not whether the R & R benefit offered to Project Displaced Families in the form of lumpsum package under Act 21 of 2017 is more beneficial than what is available under Act 30 of 2013 or not.

Assuming it is more beneficial, if adult married members of such families are being paid Rs.7.5lakhs in cash and are getting a 250 Sq.Yd. open plot with a 2BHK house thereon or cost of construction of Rs.5,04,000/-, the same identical benefits ought to be given by the respondents to adult unmarried members of such families as well, without any discrimination.

37. We consequently hold that G.O.Rt.No.78 Irrigation and C.A.D. (LA.R & R/A2) Department dt.16.04.2019, G.O.Rt.No.192 Irrigation and C.A.D. (LA.R & R/A2) Department, dt.20.05.2019; and G.O.Rt.No.435 Irrigation and C.A.D. (R & R) Department, dt.13.11.2019 insofar as they discriminate between married members of Project Displaced Families and unmarried adult members of such families in the matter of payment of R & R benefits, are arbitrary, illegal and violative of Article 14 of the Constitution of India and the provisions of Act 30 of 2013 as amended by Act 21 of 2017, and are accordingly set aside.

38. In the result, the Writ Petition is allowed; the action of the respondents in denying to the petitioners, who are unmarried adult members of Project Displaced Families in Mamidyal Village, Mulugu Mandal, Siddipet District of the Kondapochamma Sagar Reservoir under Kaleswaram Project, R & R entitlements on par with what was given / paid to adult married members of such families is declared as arbitrary, illegal and violative of Article 14 of the Constitution of India and the provisions of Act 30 of 2013 as amended by Act 21 of 2017;

3. the petitioners are held entitled to Rs.7.5lakhs in cash and a 250 Sq.Yd. open plot with a 2BHK house thereon or cost of construction of Rs.5,04,000/- on par

with married adult members of their families as R & R entitlements under Section 31-A of Act 30 of 2013 as amended by Act 21 of 2017; and the said benefits shall be paid / given to each of these petitioners by the respondents within six weeks from the date of receipt of copy of this order;

4. the respondents cannot insist that the parents of the petitioners shall return the R & R entitlements given to them or take back such entitlements, on the pretext that the petitioners are also being given R & R entitlements on par with their parents;

5. G.O.Rt.No.78 Irrigation and C.A.D. (LA.R & R/A2) Department dt.16.04.2019, G.O.Rt.No.192 Irrigation and C.A.D. (LA.R & R/A2) Department, dt.20.05.2019; and G.O.Rt.No.435 Irrigation and C.A.D. (R & R) Department, dt.13.11.2019 insofar as they discriminate between married members of Project Displaced Families and unmarried adult members of such families in the matter of payment of R & R benefits are declared as arbitrary, illegal and violative of Article 14 of the Constitution of India and the provisions of Act 30 of 2013 as amended by Act 21 of 2017, and are accordingly set aside; and the respondents shall also pay costs of Rs.5,000/- to each of the petitioners within six weeks from the date of receipt of copy of the order.

39. Accordingly, the Writ Petition is allowed as above with costs.

40. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.