

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.35816 of 2018

ORDER:

This Writ Petition is filed to declare the action of the respondents in insisting petitioners 1 to 10 to produce SSC (X Class) Marks Memo for paying compensation for losing their source of income; petitioner Nos.11 to 14 were not paid full compensation for losing the land; and petitioner Nos.15 to 21 were not paid compensation for losing the land as well as their source of income on par with other 280 Project Affected Families, as illegal, arbitrary and violation of principles of natural justice.

2. Heard learned counsel for the petitioners; learned Government Pleader appearing for respondent Nos.1 to 5; and Sri J.Srinivasa Rao, learned Standing Counsel appearing for the 6th respondent.

3. The petitioners contend that they are all poor people falling under Below Poverty Line (BPL) category and are eking out their livelihood by doing menial works and agricultural support activities; that the respondents have initiated proceedings for acquiring the lands for the 6th respondent for extension of Open Cast Mining, and have paid compensation and extended the benefit of R&R package to about 280 Project Affected Families; that the petitioners were excluded from being granted any benefit under the Act 30 of 2013 on the ground of non-production of SSC (X Class) Marks Memo; and that they, being tribal people, did not have any education, and as such, the insistence of the respondents to produce SSC (X Class) Marks Memo for paying compensation, is illegal.

4. The petitioners further contend that the stand of the respondents in the counter-affidavit that the petitioners are not entitled for any compensation or benefit of R&R package under Act 30 of 2013, since the petitioners do not have land in the village and that they are in possession of forest land, to which admittedly they cannot make any claim, clearly shows non-application of mind.

5. When the matter is taken up for hearing, learned counsel for the petitioners by drawing the attention of this Court to the counter-affidavit filed by the respondents and annexure 1 thereof, would submit that subsequent to filing of the writ petition, the respondents appear to have taken into consideration the claims made by petitioner Nos.1 to 3, 5 to 9, 17 and 21, which it is stated to be under verification by the 3rd respondent. The petitioners contend that even the other petitioners are also similarly placed and are entitled for the benefit of R&R package under Act 30 of 2013.

6. A counter-affidavit on behalf of the respondents is filed. Learned Government Pleader would submit that other than the claims of petitioner Nos.1 to 3, 5 to 9, 17 and 21, the respondent authorities have considered the claims of the petitioners and rejected the same, since these petitioners do not meet eligibility criterion for being conferred with the benefit of R&R package, for more than one ground, as the petitioners were not residing within the village for the last three years or that they did not submit any material to substantiate the claim under the Act to be eligible for being conferred with the benefit of R&R package.

7. Learned counsel, in reply, by drawing the attention of this Court to the National Food Security Cards issued by the State Government under

Department of Consumer Affairs, Food and Civil Supplies and Family House Hold Card and Aadhar Card would submit that the above indicate that the petitioners are residing in the village of Kistaram, Gangaram Gram Panchayat, Telukapally Mandal, Kothagudem District, and thus, would be covered by definition of the "Affected Family" as defined under Section 3(c) of the Act of 30 of 2013.

8. I have taken note of the submissions made by the learned counsel appearing for the parties.

9. In the counter-affidavit filed, the respondents claim to have denied the benefit to the petitioners (other than petitioner Nos.1 to 3, 5 to 9, 17 and 21), pursuant to the enquiry conducted by the 4th respondent on 15.02.2018, whereat the petitioners were directed to submit age proof to ascertain their age as major/minor, for payment of R&R package and land cost to eligible persons. However, as the 4th petitioner did not have any land in the said village, it is stated that she is not eligible for any package. Similarly, insofar as petitioner Nos.11, 12 and 14 are concerned, it is stated that they are having forest land and as per Section 4(6) of the Scheduled Tribes and Other Traditional Dwellers Recognition of Forest Rights Act, 2006 (for short, 'the RoFR Act'), only one person in a family belonging to Schedule Tribe is entitled for R&R package, equal to about Acs.10.00 of land, and as petitioner Nos.11, 12 and 14 were paid compensation for Acs.10.00, they are not entitled for any further compensation under R&R package. Similarly, for petitioner No.13, it is stated that he, being a Government employee, is not entitled to take his title in the forest land as per RoFR Act and therefore, the authority had rejected his claim for conferring benefit of R&R package.

10. In the counter-affidavit, in respect of petitioner Nos.15 and 16 are concerned, it is stated that the provisions of RoFR Act are applicable only to scheduled tribes living in forests and since petitioner Nos.15 and 16 belong to scheduled castes, they are not eligible for claiming title to forest land under RoFR. Insofar as petitioner No.17 is concerned, it is stated that he is having Ac.1.25 acres of forest land, but he has not produced RoFR certificate. It is stated that similarly, petitioner Nos.18 to 20 are not land losers in this project as they do not have any land in the acquired area and did not provide any documents for being eligible to be conferred with benefit under the Act 30 of 2013.

11. The above stand of the respondents by their counter filed would clearly show that the basis of rejection of the claims made by the petitioners is either on the ground of petitioners not holding any land in the village or being in possession of forest land.

12. Section 3(c) of the Act 30 of 2013 defined the term "Affected Family", as under:

"3(c) — "affected family" includes—

- (i) a family whose land or other immovable property has been acquired;*
- (ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;*
- (iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;*

- (iv) *family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;*
- (v) *a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;*
- (vi) *a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;"*

13. The above definition of the "Affected Family" in sub-section (ii) covers not only the family possessing land or immovable property sought to be acquired, but also takes in its ambit family, which does not own any land but a member who has been doing work as an agricultural labour, tenant or holding usufruct right or an artisan who may be working in the affected area for three years prior to acquisition and whose primary source of livelihood stands affected by the said acquisition.

14. Thus, the primary consideration for conferring the benefit of R&R package under the Act 30 of 2013 is to ascertain as to whether the said person claiming benefit under the Act, is covered by the term "Affected Family", by undertaking any of the activities either in relation to agricultural or making a living depending on the land that is sought to be acquired being in the affected area for three years prior to acquisition.

15. In the counter-affidavit filed, there is no whisper with regard to the petitioners not fulfilling the above requirement/criteria. On the other hand, the stand of the respondents appears to be that the petitioners do not

possess any land, which stand of the respondents cannot be accepted as a valid basis for rejection of the claim of the petitioners.

16. In view of the above, this Court is of the considered view that the claims of petitioner Nos.1 to 3, 5 to 9, 17 and 21 also need to be considered by the respondents. Thus, the petitioners, whose claims have been rejected by the respondents, as noted hereinabove, are directed to approach the respondents and submit a representation enclosing therewith all the relevant material to substantiate their eligibility to claim compensation under the Act 30 of 2013 within a period of two (02) weeks from the date of receipt of a copy of this order. Upon the petitioners approaching the respondents and submitting the said representation along with necessary material, the respondents shall consider the same in accordance with the provisions of the Act and confer the benefit under Act 30 of 2013, if the petitioners are found otherwise eligible. It is needless to mention that the respondents shall undertake and complete the exercise of verification and confer the benefit expeditiously but not later than eight (08) weeks from the date of receipt of representation from the petitioners.

17. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE T.VINOD KUMAR

Date:09.12.2021

GJ