

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11492 of 2012

Pabitra Mohan Pradhan and another* *Petitioners

Mr. Jagabandhu Sahoo, Senior Advocate

-versus-

***Director, Rehabilitation and* *Opposite Parties*
***Resettlement-cum-Ex Officio and*
others****

Mr. Ishwar Mohanty, ASC

Mr. Niranjana Panda-1, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
12.07.2022**

Order No.

08. 1. Petitioner No.1 and his son have filed this writ petition seeking *inter alia* a declaration that the Petitioners' family should be classified as Substantially Affected Persons (SAP) and not Less Affected Persons (LAP) as categorized by the Opposite Parties, i.e., National Aluminium Company Limited (NALCO) and the Director, Rehabilitation and Re-Settlement, Revenue & Disaster Management Department (OP No.1). A further direction is sought to the Opposite Parties to give employment to the Petitioner No.2 under the R&R Policy of NALCO after declaring the Petitioners as SAP.

2. The Petitioners state that their family are "owner/ have acquired right" on the area of Ac. 3.80 decimal of un-irrigated land in village Kukudanga and Ac.1.65 decimal of irrigated land in village

Kansaragadi and Ac. 0.317 decimal of land with Kisam-Bagayat under Khata No.148 in village Kansaragadi under a joint Khata. It is stated that NALCO acquired Ac.1.65 decimal of irrigated land and Ac.0.317 decimal of Bagayat land belonging to the Petitioners. It is further contended by the National R&R Policy 2006 & 2007 Ac.1.65dec of irrigated land is equivalent to Ac.3.30 decimal of non-irrigated land. Under the letter of the Secretary to the Government in the Revenue Department Ac.1.65 decimal of irrigated land is equivalent to Ac.2.476 decimal of non-irrigated land. According to the Petitioners while in former case the percentage of land lost is 46.47% in the latter case the percentage of land acquired comes to 39.39% and that is to say in either way the land acquired is more than 33% or 1/3rd of the total land owned by the family. It is claimed that in addition to this, NALCO has also acquired Ac.0.317 decimal of Bagayat land on which valuable trees were existing and in respect of which award/ compensation is yet to be disbursed to the Petitioners.

3. It is pointed out that in terms of the Policy of both the Government of Orissa as well as the Policy of NALCO, a family/ person which loses more than 1/3rd of the total landed property is to be treated as SAP. The families losing less than 1/3rd of their total landed property are to be treated as LAP.

4. It is further stated that since they are SAP, in view of Point 4(d) of the Policy, the family of the Petitioners is entitled to avail employment for one of their members. Petitioner No.2 is stated to

be interested in being engaged under the NALCO. It is further stated that since there is no other forum for redressal of their grievances, the Petitioners are approaching this Court with the present petition.

5. It must be noted that the present petition was filed on 29th June, 2012 and came up for hearing on 7th August, 2012 on which date, the Additional Government Advocate (AGA) accepted notice on behalf of Opposite Party Nos.1 and 2. Notice was asked to be issued to NALCO. Pursuant to the notice issued, replies have been filed both by NALCO as well as the Special Land Acquisition Officer (SLAO).

6. In NALCO's counter affidavit, it is submitted that the acquisition of the land in question was made way back in 1984. The Petitioner No.1 and his father Kathi Pradhan were the Joint Awardees under the Land Acquisition Award along with others. It is stated that compensation has been paid to the Awardees vide L.A. Case No.24 of 1982 (Award No.22). It is submitted that the Orissa R&R Policy dated 2nd January, 1989 is not applicable to NALCO which has its own R&R Policy for Displaced Persons, which was formulated in 1984. In terms of the said Policy, employment is offered to only one nominee under the category of SAP and Land Displaced Person (LDP) subject to availability of vacancy.

7. It is stated that a list of SAPs and LDPs was prepared way back in 1986. Persons who lost their homestead were put in the category

of LDP and persons who lost 1/3rd or more of their lands were put in the category of SAP. The remaining who had lost marginal portions of their land, were categorized as LAP.

8. It is stated that of the list of 1528 persons, 109 persons are still awaiting employment due to non-availability of vacancy. As far as the Petitioners are concerned, since they categorized as LAP. In case they are to be considered for employment, then about 2626 persons registered with the Government, would have to be similarly considered and this would adversely affect the working of the NALCO plant.

9. It is pointed out that the Petitioners have approached this Court after a lapse of 26 years without any explanation for the inordinate delay in doing so.

10. In Para-8 of the counter affidavit of NALCO, it is stated that only Ac.1.65dec of land of the Petitioners has been acquired for construction of the NALCO Project of the total land of Ac.5.45 dec. The Petitioners' share of land comes to Ac.0.55 decimal out of their total share of Ac.1.816 decimal. Since the loss of land was less than 33%, the Petitioners were categorized as LAP. Again in para 9, it is reiterated that out of a total land of Ac.5.45 dec, only Ac.1.65 dec has been acquired for construction. In other words, the assertion by the Petitioners in para 6 of the writ petition that in addition to the above extent, the extent of Ac.0.317 dec of Bagayat land has also been acquired by NALCO has not been accepted by NALCO.

11. A separate counter affidavit has been filed by the State where again in para 5, it is stated as under:

“5. That in reply to the averments made in paragraph-1 of the writ application, it is humbly submitted that in 4 (1) notification No.45650 dated 15.7.82 was issued by the Government of Odisha in Revenue & Disaster Management Department and land have been acquired for NALCO project in village- Kansaragadi. Khyatigrasta Praja Register SI No.22 shows that Khata No.11 measuring as area Ac 1.65 of Vill- Kansaragadi and Khata No.91 measuring Ac 3.80 stand recorded in the names of Nabin Chandra Pradhan, Raj Kishore Pradhan, Pabitra Mohan Pradhan, Sons of Kathi Pradhan & Kamala Pradhan W/o- Kathi Pradhan of vill- Kukudang. Entire Ac 1.65 land of Vill- Kansaragadi was acquired for NALCO and an amount of Rs.33011.69 was paid to the land oustees on 27.2.85. Total land held by the family was Ac 5.45 out of which an area measuring Ac 1.65 was acquired which is about 30% of the total land. Accordingly the awardees have been recorded as LAP vide Serial No.9 of LAP register of Vill. Kansaragadi.”

12. In other words, it is not accepted even by the State Government that apart from Ac. 1.65 dec of land, another parcel of Ac.0.317 dec of land in Kisam- Bagayat belonging to the Petitioners has been acquired. Specifically it is stated that since the Petitioners have lost Ac.1.65 dec out of total land Ac.5.45 dec, the percentage of loss is only 30.2% in village Kansaragadi. Therefore, the Petitioners have been enlisted in the LAP Register for which there is no guarantee of a job.

13. The said two counter affidavits were filed on 23rd September 2016 and 8th September 2017 respectively. However, a rejoinder

affidavit by the Petitioners in is filed only today . It is again sought to be contended by the Petitioners that both under the State Government's Policy and the NALCO's R&R Policy, the Petitioner have lost more than 1/3rd. This is calculated by adding land of Ac.0.31 dec to the percentage of land acquired, whereas this is disputed both by NALCO and the State Government.

14. Mr. Jagabandhu Sahoo, learned Senior Counsel for the Petitioners further refers to Section 24(1) and 24(2) of the Land Acquisition and Rehabilitation & Re-Settlement Act, 2013 (2013 Act) to urge that the land in respect of the land to the extent of Ac.0.31 dec, no award has been passed and as such the 2013 Act would still apply.

15. On the other hand, Mr. Niranjana Panda, learned counsel appearing for the NALCO and Mr. Ishwar Mohanty, learned Additional Standing Counsel appearing for the State point out that there is absolutely nothing produced on record to show that the land to the extent of Ac.0.31 dec stated to be belonging to the Petitioners has been acquired by NALCO. They maintain that land to the extent of only Ac.1.65 dec has been acquired and this constitutes 30.2% of the total land of Ac.5.45 dec.

16. Indeed, no documents have been placed on record by the Petitioners to substantiate their plea that the land to the extent of Ac.0.31dec has in fact been acquired by the NALCO. If that is not

true, then the question of an award being passed in respect of such land under the 2013 Act does not arise.

17. As a corollary, if the land of the Petitioners which has been acquired is less than 33% of the total land belonging to the Petitioners, then they cannot be categorized as SAP. They have, therefore, been rightly categorized as LAP whether the Policy of NALCO or that of the State Government applies.

18. Further, the Court finds no explanation for the inordinate delay in the Petitioners approaching this Court for relief in 2012 for an acquisition that took place way back in 1984. For the reasons already discussed, on merits also, the Court finds that no case is made out for granting of the reliefs as prayed for,

19. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S. Behera