IN THE HIGH COURT OF ORISSA, CUTTACK

W.P.(C) No. 1138 of 2013

An application under Articles 226 & 227 of the Constitution of India.

Goshibananda Naik .... Petitioner

-Versus-

State of Odisha & others .... Opp. Parties

For Petitioner: - Mr. S.K.Joshi, Advocate

For Opp. Parties: - Mr.H.M.Dhal, Addl. Govt. Advocate

JUDGMENT

P R E S E N T:

MR. JUSTICE BISWAJIT MOHANTY
MR. JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 11.05.2022 Date of Judgment: 24.06.2022

B. Mohanty, J. The petitioner has filed the present writ petition with a prayer to quash the Government of Odisha Revenue and Disaster Management Department Notification dated 20.10.2010 under Annexure-3 containing clarification on "Displaced/Affected families" with reference to Odisha Resettlement and Rehabilitation

Policy, 2006, for short, "2006 Policy". He has also made an alternative prayer that the above mentioned Notification under Annexure-3 should not be given retrospective effect and the opposite parties be directed to extend the benefits of the Odisha Resettlement and Rehabilitation Policy, 2006 to the project affected persons.

2. Mr.S.K.Joshi, learned counsel for the petitioner submitted that the father of the petitioner had purchased Ac.3.15 dec. from Ghasiram Domb on 10.3.2003 and Ac.4.09 dec. from one Sabe Harijan and others on 17.4.2003 through Registered Sale Deeds and the above noted lands were mutated in favour of the father of the petitioner vide orders dated 3.12.2003 and 2.1.2004 passed respectively in Mutation Case No. 1055 of 2003 and Mutation Case No. 1057 of 20223. More than 75% of such land was acquired by the Government for Ret Irrigation Project in the district of Kalahandi pursuant to initiation of land acquisition proceeding on publication of preliminary Notification under Section 4(1) of the Land

Acquisition Act, 1894 on 19.1.2006 and compensation for such acquisition was paid to father of the petitioner. On 14.5.2006 the Government of Odisha brought into force "2006 Policy". On 4.6.2007 vide Annexure-1A, certain amendments were introduced to the "2006 Policy". By the selfsame amendment the definition of "affected family" was introduced to mean a family whose land is affected by construction of the project but is not displaced or required to be displaced. It also introduced beneficial provisions for such affected families under Clause 3. On 25.8.2010 vide Annexure-2, the Government of Odisha sanctioned rehabilitation assistance for payment to both displaced families as well as affected families. Thereafter though the benefits under the "2006 Policy" concerning the affected families were deposited however subsequently the authorities directed the bank not to disburse the same. The petitioner came to know that such withholding of the disbursement occurred on account of the clarification dated 20.10.2010 issued by the Government in Revenue and Disaster Management

Department under Annexure-3 which made it clear that the persons or families who are not ordinarily residing in or near the project area for a period of at least three years prior to the date of Notification under Section 4(1) of the Land Acquisition Act, 1894, for short, "1894 Act" are not eligible for getting R & R benefits. On account of this though rehabilitation assistance was sanctioned under Annexures-2 and 4, the father of the petitioner did not get the R & R benefit under the "2006 Policy" read with amendments as introduced in 2007 under Annexure-1A. Since the father has died in the meantime, the petitioner has moved this Court by filing the present writ petition with the above noted prayers.

According to Mr.Joshi when the father of the petitioner purchased the case lands in 2003, there was no proposal for establishment of Ret Medium Irrigation Project at Kusumkhunti. Much after the purchase only in 2005 as would be clear from first paragraph of Annexure-1, the State Government proposed to construct the irrigation work known as Ret Irrigation Project. Therefore, it cannot be said that the father of the petitioner acted in an oblique or malafide manner in purchasing the land in question to avail the benefits under “2006 Policy” more particularly when on the dates of purchase in 2003 neither such a policy nor the later amendment to “2006 Policy” under Annexure-1A were in existence.

Secondly he contended that Annexure-3 only covers the cases where the persons purchased the land just before the land acquisition. In the present case the lands in question were not purchased just before the land acquisition process started in January, 2006 rather as indicated earlier the same were purchased much earlier during March and April, 2003 i.e. much before the initiation of land acquisition proceedings.

Thirdly he submitted that Annexure-3 covers the case of purchase of small extent of land. Here the father of the petitioner has purchased more than seven acres of land in 2003 which cannot by any stretch of imagination be described as a small extent of land.

Lastly he submitted that as the benefits flowing from “2006 Policy” read with its amendment under Annexure-1A have been sought to be negatived by introducing further conditions under Annexure-3 that the affected family in order to get benefit has to reside in or near the project area for a period of at least three years prior to the date of Notification under Section 4(1) of 1894 Act, the Circular under Annexure-3 be declared illegal. But as the hearing progressed, he put stress mainly only on the alternative prayer made in this petition and submitted that the notification under Annexure-3 should not be given retrospective effect and should be confined to cases where purchase of the lands and Section 4(1) Notifications have been made after issuance of Annexuxre-3 and accordingly the benefits of R & R Assistance under “2006 Policy” with its later amendment under Annexure-1A be extended to his late father and consequently to him.

3. A counter affidavit filed on behalf of opposite party Nos. 1 to 4 wherein it is stated that Ret Irrigation

Project was started vide Notification No. 2448-Irr.Med(5)-39/2004(pt)/WR dated 22.1.2005 of Government in Water Resources Department, Odisha, Bhubaneswar. For the said purpose Notification under Section 4(1) of the “1894 Act” was issued on 19.1.2006. All the displaced persons and project affected persons were paid Resettlement and Rehabilitation Assistance in the year 2007 as per “2006 Policy”. Though the father of the petitioner was paid land acquisition compensation for his land including trees however the Resettlement and Rehabilitation Assistance was not paid to him because he had purchased the lands within three years of the date of Notification under Section 4(1) of the “1894 Act” as per Government resolution under Annexure-3.

Mr.Dhal, learned Addl. Government Advocate reiterated the above noted stand of the opposite parties made in the counter affidavit and submitted that the case of the petitioner is without any merit and same should be dismissed.

4. Heard Mr.S.K.Joshi, learned counsel for the petitioner and Mr.H.M.Dhal, learned Addl. Government Advocate.

5. The undisputed facts of the case are that the father of the petitioner had purchased Ac.3.15 dec. of land from Ghasiram Domb by Registered Sale Deed No. 569 dated 10.3.2013 and Ac.4.09 dec. of land from Sabe Harijan and others vide Registered Sale Deed No. 921 dated 17.4.2003 as indicated in paragraph six of the counter affidavit. The opposite parties in counter affidavit at paragraph five have clearly admitted that the Ret Irrigation Project was started vide Notification dated 22.1.2005 of the Government of Odisha in Water Resources Department and the Notification under Section 4(1) of the 1894 Act was issued on 19.1.2006. The opposite parties also make it clear that "2006 Policy" is clearly attracted in respect of the above Irrigation Project and project affected persons/affected families have been paid Resettlement and Rehabilitation Assistance in the year 2007 as per the provisions of "2006 Policy". It is not

disputed that the "2006 Policy" came into force from 14.5.2006 and the said policy was amended on 4th June, 2007 and was published in the Odisha Gazette on 6.6.2007 under Annexure-1A defining the "affected family" and providing rehabilitation package for such families. Accordingly all the displaced persons and project affected persons as averred in Paragraph 5 of the counter were paid R & R Assistance. Since the family of father of the petitioner clearly came under the definition of "affected families" as his land was acquired, he was clearly entitled to get the R & R benefits under "2006 Policy" read with amendments under Annexure-1A. But on account of clarificatory Notification dated 20.10.2010 under Annexure-3 which reads as follows, he was deprived of such benefits.

" GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
No. R & R E H-56/10 42388/R &DM. date. 20.10.2010

From

Sri R.K.Sharma
Commissioner-cum-Secretary to Government

To

All RDOs/All Collectors.

Sub: Clarification on "Displaced/Affected families" with reference to Orissa R & R Policy, 2006.

Sir,

I am directed to say that it has been brought to the notice of the Government that there are instances of misuse of the provision of R & R Policy, 2006 by persons who anticipating acquisition of land for a development project in a particular area, purchase small extent of land and/or construct dwelling house thereon for availing benefits meant for displaced/affected families.

The intention of the R & R Policy is to provide benefits to people who are actually displaced by projects or whose livelihood is affected by such projects. Persons who are not ordinarily residing in or near the project area, but purchase land just before the land acquisition cannot be treated as affected or displaced families. In most such cases, the purpose of such transaction is to avail benefit from the resettlement and rehabilitation packages as per R & R Policy, 2006 often at the cost of the local original land owners who were actually residing in the project area for generations together.

Government after careful consideration have been pleased to clarify that the persons or families who were ordinarily not residing in or near the project area are not eligible for and shall not be enumerated as displaced or affected families for the purpose of Resettlement and Rehabilitation benefits. Persons or families who are normally residing in or near the project areas for a period of at least 3(three) years prior to the date of section 4(1) notification (under Land Acquisition Act) above may be considered as ordinarily residing therein for the purpose of R & R benefits.

The above clarification may be brought to the notice of all concerned. "

A perusal of the above noted clarification shows that the clarification as contained in the third paragraph of the above noted notification makes it clear that persons or families who were ordinarily not residing in or near the project area shall not be enumerated as displaced/affected families and accordingly they will not be eligible to get Resettlement and Rehabilitation benefits. It further clarifies that the persons or families who are normally residing in and near the project area for a period of at least three years prior to the date of Notification under Section 4(1) of "1894 Act" may be considered as ordinarily residing therein for the purpose of getting the Resettlement and Rehabilitation benefits. Thus, unless a person/ a family resides in or near the project area for a period of at least three years prior to the date of Notification issued under Section 4(1) of "1894 Act" he/the family will not be enumerated as a displaced/affected family and accordingly will not be eligible for Resettlement and Rehabilitation benefits. Thus the circular added a new dimension to the definition of “affected family” and “displaced family” requiring fulfillment of additional conditions to get the R & R benefits under “2006 Policy” and its amendment as introduced in 2007. As per the circular, this clarification was introduced as the Government found that many persons who are not ordinarily residing in or near the project area purchased small extent of land just before the land acquisition commenced for the purpose of availing benefits of Resettlement and Rehabilitation package under “2006 Policy” at the cost of original land owners who were actually residing in the project area for generation together. Though this clarificatory Notification was assailed by the learned counsel for the petitioner however as indicated earlier, as hearing progressed, he confined his attack to giving retrospective operation to Notification under Annexure-3 thereby depriving the father of the petitioner of his accrued benefits /dues under “2006 Policy” read with the amendment brought under such policy under Annexure-1A and consequent deprivation of the petitioner. It is not disputed that the petitioner is laying his claim on the ground that his father was a project affected person or as one who belonged to a project affected family. The father of the petitioner would have got all the benefits as an affected family but for Annexure-3. It is admitted in the counter affidavit that the father of the petitioner was not paid the Resettlement and Rehabilitation Assistance as he had purchased the land within three years of the date of Notification under Section 4(1) of the “1894 Act”. Thus entitlements of the late father of the petitioner as an “affected family” under Clause 8-III-Type C of “2006 Policy” have been nullified by virtue of the Notification under Annexure-3 by requiring additional conditions to be fulfilled to the effect that the affected families/persons should be residing in or near the project area for a period of at least three years prior to the date of Notification under Section 4(1) of the “1894 Act”. Since the father of the petitioner purchased the land within three years naturally he could not be taken as residing for at least three years prior to Section 4(1) Notification in or near by project, thereby depriving father of the petitioner of the Resettlement and Rehabilitation Assistance. In this connection the submission of Mr.Joshi relating to deprivation of the accrued benefits/dues of the father of the petitioner to receive R & R benefits on account of retrospective operation of Annexure-3 assumes significance. Now the moot question is whether such right/rights flowing from beneficial provisions of "2006 Policy" and its later amendments under Annexure-1A can be taken away by a circular under Annexure-3 when process of acquisition was initiated much earlier ? It is well settled that a beneficial circular has to be applied retrospectively while an oppressive circular has to be applied prospectively. ***(See Director of Income Tax, Circle 26(1) New-Delhi Vrs. S.R.M.B. Dairy Farming Private Limited*** reported in ***2018(I) Supreme 94***. Since the Circular/Notification under Annexure-3 takes away the accrued rights of a category of displaced families and affected families under amended "2006 Policy" in getting the R & R benefits, the same cannot be described as a beneficial circular/Notification. It can only be described as oppressive. Thus, such a circular can only have prospective operation. Even otherwise Annexure-3 does not clearly indicate that it will have any retrospective operation. In other words the circular under Annexure-3 can only apply to the purchases made and the Notifications made under Section 4(1) of "1894 Act" after 20.10.2010 and it cannot apply to purchases made and Notifications made under Section 4(1) of the "1894 Act" prior to 20.10.2010. It may be noted that merely holding that Annexure-3 will apply to Section 4(1) Notifications issued under "1894 Act" after issuance of Annexure-3 will not be enough as the same still will have retrospective operation vis-a-vis purchases made before issuance of Annexure-3, where Section 4(1) Notification was issued immediately after issuance of Annexure-3. Therefore, the refusal of the authorities in not paying the R & R Assistance to the late father of the petitioner being a product of arbitrary exercise of power, cannot be legally sustained. Additionally also it may be noted here that when the lands to the tune more than Ac.7.00 dec. were purchased by father of the petitioner in 2003, there was no notification for construction of project. Such a notification came in 2005. Also at that point of time there was no existence of either "2006 Policy" or the amendments introduced under Annexure-1A. Therefore it cannot be alleged that lands were purchased only with an intention to get the R & R benefits under the above noted beneficial policies.

For all these reasons, it is made clear that the late father of the petitioner was entitled to all the benefits those are due to the affected families as his family clearly came within its definition of "affected family". Accordingly, this Court directs the opposite party Nos. 2 to 4 to pay all his dues relating to R & R Assistance under the "2006 Policy" as amended under Annexure-1A within a period of six months to his legal heirs. For the said purpose the petitioner is directed to produce a copy of the legal heir certificate of his late father before the authorities more particularly before opposite party No.4.

6. Accordingly the writ petition is disposed of.

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Biswajit Mohanty, J.

I agree

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Biraja Prasanna Satapathy, J.

Orissa High Court, Cuttack
The 24th June, 2022 /Kishore