

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6170 of 2022

Pabitra Sethi

.... **Petitioner**
Mr. M.K. Mohanty,
Advocate

-versus-

State of Odisha & Ors.

.... **Opposite Parties**
Mr. H.M. Dhal
Addl. Govt. Advocate (for
Opp. Party Nos.1, 2 & 5)
Mr. S.D. Das, Sr. Advocate
(for Opp. Party Nos.3 & 4)

**COROM:
JUSTICE S.K. SAHOO
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
31.05.2022**

Order No

13. 1. This matter is taken up through Hybrid Mode.

2. Heard Mr. M.K. Mohanty, learned counsel appearing for the Petitioner, Mr. H.M. Dhal, learned Addl. Govt. Advocate appearing for Opp. Party Nos.1, 2 & 5 and Mr. S.D. Das, learned Sr. Counsel appearing for Opp. Party Nos.3 & 4.

3. The Petitioner has filed the present writ Petition challenging the inaction of the Opp. Parties with regard to payment of compensation for acquisition of land under Annexure-2 as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and benefit under the provisions of Orissa Resettlement and Rehabilitation Policy, 2006.

4. It is submitted by Mr. Mohanty, learned counsel for the Petitioner that the State Authorities acquired land recorded in the name of the Petitioner under Khata No.412/62 in Mouza- Jamunali under Annexure-2 and out of the said acquired land, Ac.0.02 dec. of land was acquired from out of Plot No.582/3839.

5. It is submitted that in the said Plot No.582/3839 since the residential house of the Petitioner situates and the Authorities of Mahanadi Coal Field Ltd. while laying the Railway Line are in the process to demolish the same, the Petitioner is entitled to get the benefit under the provisions of Orissa Resettlement and Rehabilitation Policy, 2006.

6. This Court while issuing notice of the matter vide order dtd.06.04.2022 passed an interim order directing maintenance of statusquo with regard to land indicated under Annexure-2. Subsequently though a counter was filed on behalf of Opp. Party Nos.3 & 4, but this Court vide order dtd.10.05.2022 directed the learned State Counsel to produce a copy of the award relevant to this case and the plot index. But in the counter affidavit filed by O.P. Nos.3 & 4, it is clearly indicated that the notification for acquisition of the land in question was issued on 28.08.1999 and the Petitioner has received the award since 15.11.2002 and the possession has been taken since 17.01.2006. Accordingly, it is contended that since the Petitioner has already received the award in respect of the land under acquisition, no benefit can be extended in his favour as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. This Court when put a query as to whether any structure is there over the land recorded vide Plot No.582/3839, none of the counsel appearing for the Parties gave a positive reply to the same. Accordingly, this Court vide order dtd.20.05.2022 directed the learned state counsel to file an affidavit along with a map indicating clearly which portion of Plot No.582/3839 covering an area of Ac.0.02 dec. has been acquired by the State and whether any structure exists over the said area. Pursuant to the order passed by this Court on 20.05.2022, an affidavit was filed by O.P. No. 5. In the said affidavit a clear statement was made that Plot No.582/3839, Khata No.412/62 having an area of Ac.0.10 dec. in Mouza - Jamunali stood recorded in the name of the Petitioner and out of the said Plot an area Ac.0.02 decimals from the Eastern side of the Plot was acquired by virtue of notification dtd.28.08.1999 under Sec. 4(1) of the Land Acquisition Act, 1894.

8. It is further stated in the said affidavit that no structure exist over the acquired Ac.0.02 dec. from out of Plot No.582/3839. A sketch map showing the area in Acquisition from out of aforesaid Plot No.582/3839 is also enclosed to the said affidavit.

9. Mr. Mohanty, learned counsel for the Petitioner on receipt of the said affidavit also filed a reply. In Para 4 of the said reply, it is submitted that the residential house of the Petitioner since the time of the forefathers of the Petitioner is situated on the rest Ac.0.08 dec. of land of Plot No.582/3839 under Khata No.412/62 in Mouza

Jamunali and the same has not been acquired by the Opp. Parties for laying the Railway line.

10. It is further stated that the Opp. Parties be directed not to demolish the residence of the Petitioner situated over the rest Ac.0.08 decimals of the land which has not been acquired. Mr. Das, learned Sr. Counsel as well as Mr. Dhal, learned AGA fairly submitted that the Authorities of the Mahanadi Coal Ltd. are not going to demolish the residence house, which is admittedly constructed over the rest Ac. 0.08 dec. land out of Plot No.582/3839.

11. Heard learned counsel for the Parties at length. Perused the materials available on record. Since there is no dispute that the notification for acquisition of the land in question was issued on 28.08.1999 under Sec. 4(1) of the Land Acquisition Act, 1894 and the Petitioner has already received the award since 15.11.2002 with delivery of possession in favour of O.P. Nos. 3 & 4 on 17.01.2006, the claim of the Petitioner to get the benefit under the provision of 2013 Act cannot be accepted.

12. Secondly, since no structure/residential house is there over the acquired land from out of Plot No.582/3839 under Khata No.412/62, the Petitioner is also not eligible and entitled to get the benefit under the Orissa Rehabilitation and Resettlement Policy, 2006. Therefore, the prayer made by the Petitioner in the writ Petition cannot be allowed and is hereby rejected.

13. However, in view of the undertaking given by the learned counsel appearing for the State Opp. Parties as well as learned Sr. Counsel appearing on behalf of

Mahanadi Coal Fields Ltd. that they are not going to demolish any structure constructed over the rest Ac. 0.08 dec. of land from out of the aforesaid Plot No.582/3839 under Khata No.412/62, this Court dispose of the writ Petition with the observation that Opp. Party Nos.3 & 4 shall not cause any demolition of any construction raised by the Petitioner over the rest Ac.0.08 decimals of land and they are free to take the Railway Line over the acquired Ac.0.02 dec. of the land from out of the aforesaid Plot No.582/3839.

14. With the aforesaid observation and direction, the writ Petition is disposed of. The interim order passed earlier stands vacated.

(S.K. Sahoo)
Vacation Judge

(Biraja Prasanna Satapathy)
Vacation Judge

Sneha