

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.16135 of 2019

Kamal Banarjee

.....

Petitioner

Mr. S. Dash, Advocate

Vs.

State of Odisha & Anr.

.....

Opposite Parties

Mr. H.M. Dhal, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

22.11.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. S. Dash, learned counsel for the petitioner and Mr. H.M. Dhal, learned Additional Government Advocate appearing for the opposite parties.

3. The petitioner has filed this writ petition seeking to quash the letter no.158 dated 20.03.2019 under Annexure-5 series and further to issue direction to the State-opposite parties to take immediate steps for payment of compensation amount in favour of the petitioner.

4. Mr. S. Dash, learned counsel for the petitioner contended that the petitioner is entitled to get compensation for the land acquired by the opposite parties and the same should be done in accordance with the provisions contained in Section-24 of RFCTLAR & R Act, 2013.

5. Mr. H.M. Dhal, learned Additional Government Advocate

appearing for the opposite parties disputed such contentions of learned counsel for the petitioner and contended that the petitioner is not entitled to get the benefit under the new Act, as the land has been acquired under Sections-4(1) and 6(1) of RFCTLAR & R Act, 1894. It is also contended that the compensation has been determined and some of the co-sharers have already received their compensation amount except the petitioner. Therefore, the claim of the petitioner for compensation under Section-24 of RFCTLAR & R Act, 2013 is not admissible.

6. Considering the contentions raised by learned counsel for the parties and after going through the records, it appears that Records of Rights bearing Khata No.180 under Annexure-2 indicates the name of the petitioner along with other co-sharers. On 13.01.2006, notification under Section 4(1) of RFCTLAR & R Act, 1894 was issued and thereafter notification under Section 6(1) of RFCTLAR & R Act, 1894 was issued. As a consequence thereof, award under Section 11(1) of the said Act was passed without issuing notice to the petitioner. Possession of the land was taken over on 29.04.2010 and part payment of the award was made in favour of the co-sharers except the petitioner. This being the admitted fact, now question arises to be considered whether the petitioner is entitled to get the benefit under the old Act or the new Act, as claimed in the writ petition. But fact remains the land was acquired by issuing notification under Sections-4(1) & 6(1) of RFCTLAR & R Act, 1894 and the award was passed under Section 11(1) of RFCTLAR & R Act, 1894 and, as such, possession of the land was taken over on 29.04.2010. Apart from the same, compensation amount has not been paid to the petitioner and, as

such, the co-sharers have received the compensation amount. The share of the petitioner has not been determined nor the same has been placed on record. Therefore, in course of hearing, on query being made by this Court, learned counsel for the petitioner is not able to assist this Court with regard to extent of share of the petitioner. In absence of the same, this Court is unable to issue direction for payment of compensation even under the old Act, unless the share of the petitioner is determined by the competent Civil Court.

7. In that view of the matter, this Court permits the petitioner to pursue his remedy before the competent Civil Court for determination of his share so that the award of compensation shall be passed by the competent authority, if so required. If compensation amount is lying with the opposite party-authority, it is open to the petitioner, pending determination of his share, to file an application for withdrawal before the authority concerned, who shall consider the same in accordance with law.

8. With the above observation, the writ petition stands disposed of.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B. P. SATAPATHY)
JUDGE

Alok