

Arna Sahu Vs. General Manager, (Talcher Area) Mahanadi Coal Fields Ltd. and anr.

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Court : Orissa

Decided On : Dec-08-1998

Reported in : (1999)IILLJ675Ori; 1999(I)OLR237

Judge : Susanta Chatterji and ;D.M. Patnaik, JJ.

Acts : [Constitution of India](#) - Article 300

Appeal No. : O.J.C. No. 5606/1996

Appellant : Arna Sahu

Respondent : General Manager, (Talcher Area) Mahanadi Coal Fields Ltd. and anr.

Advocate for Def. : S. Mohanty, ;S.C. Samantray, ;N.C. Sahoo, ;G.P. Panda and ;A.K. Patnaik, Advs.

Advocate for Pet/Ap. : S.K. Das, ;L.D. Dash and ;B.P. Das, Advs.

Judgement :

ORDER

1. A short point has arisen in the instant case to be resolved by this Court as to whether the petitioner can get any relief in terms of Annexure-1 which is a

communication made by the State Government to the Collector, Sambalpur/Dhenkanal as to the uniform guidelines for rehabilitation of the displaced persons/ families due to SECL Projects at Sambalpur and Dhenkanal District.

2. Smt. Arna Sahu, the petitioner, submits, inter alia, that for the purpose of Open Cast Project of Mahanadi Coal Fields Ltd., more than three acres of land belonging to the petitioner were acquired under the Land. Acquisition Act. There was an indication in the aforesaid guideline vide Annexure-1 that one member from each family sustaining loss of dwelling house, homestead land and agricultural land not less than 1/3rd of the total, holding shall be provided with employment on priority basis. It is further indicated, inter alia, that in case of families having lost only homestead land or the total agricultural holding, one member from each family shall be provided with employment according to availability. The present petitioner in the context of acquisition of her land under the aforesaid projects has asked for the following reliefs:-

'..... to issue Rule Nisi on the opposite parties and on perusal of the cases shown make the rule absolute and be further pleased to issue a writ of mandamus or any other appropriate writ or order directing the opposite parties to provide a job to the petitioner's son as per Annexure-1.

And pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case ...'

3. The writ petition is opposed by filing a counter-affidavit sworn to by the Senior General manager of Mahanadi Coal Fields Ltd. Besides controverting the allegations made in the writ petition it is disclosed, inter alia, that a total area measuring Ac.212.82 of village Balugaon was acquired in two phases for Lingaraj Open Cast Project. In Phase No. 1 Ac. 156.46 and in Phase No. II, Ac. 56.36 were acquired. Out of 155.46 acres, award has been passed for an area of Ac. 0.74 in favour of Smt. Arna Sahu vide award No. 32 and a joint award No. 24 had been passed where her share was Ac.0.11. Out of Ac.56.36 (in Phase No. II) award for an area of Ac. 0.62 had been passed vide Award No. 40 in favour of Tanu Sahoo daughter of Pandari Pradhan and Ors. including Arna Sahu. It is submitted that the

petitioner is not a resident of village Balugaon. She is married daughter of late Sukadev Pradhan and is staying with her husband in her father-in-law's house at village Banda in the district of Angul. Annexure-A to the counter-affidavit indicates that the petitioner is not entitled to any employment benefit as she is a married daughter. It transpires from the said Annexure-A that a question arose whether persons belonging to areas outside the State of Orissa/district of Dhenkanal/Talcher Tahasil who had purchased small patches of land on or before publication of the Notification under Section 4(1) of the Land Acquisition Act, with a view to getting employment as Rehabilitation benefit could be considered and whether a family of a major married daughter could be taken into consideration in the matter of rehabilitation. It is placed on record that in the guidelines regarding rehabilitation assistance the term 'family' has been defined to include husband, wife and unmarried children. So far as question of employment of a married daughter is concerned, rehabilitation assistance does not arise.

4. The arguments of both Mr. S.K. Das, learned Counsel for the petitioner, and Mr. Sanjit Mohanty, learned Counsel for the opposite parties for whose benefit the land was acquired raise the bone of contention with regard to the petitioner's claim for obtaining employment by way of rehabilitation assistance with regard to her son.

5. Mr. Mohanty has taken two fold objections to defeat the claim of the petitioner. First it is submitted that there is no fundamental right to the property and after addition of Article 300 of the [Constitution of India](#) there should not be interference in the property save under due process of law. If there is land acquisition proceedings the petitioner is entitled to compensation as provided under the Act and, in fact, an award has been made. Rehabilitation assistance to the actual inhabitants of the village for their sufferings is just an extra benefit and cannot be claimed as a matter of right and the writ petition suffers from such infirmity.

6. In the second part he submits, inter alia, that the guidelines in Annexure-A being read with clarification (Annexure- A) should be construed by the Court that the petitioner being a married daughter and having left the village for her husband's house in different village, question of rehabilitation assistance to her son does not arise and the entitlement being properly clarified, there is no obligation on the part

of the Mahanadi Coal Fields Ltd. to provide any employment. As a third dimension Mr. Mohanty has submitted that the Court may not consider any extraneous circumstances to mandate because there is a Committee headed by the Collector as the Chairman which can consider the claim of rehabilitation and at best the Court may be pleased to send the matter to the said Committee particularly in the context that the employment should be provided subject to availability of Posts. Much emphasis has been laid on the word 'availability' because opposite party No. 1 is already over-burdened with regard to employment and this aspect may not be lost sight of. To meet the argument of Mr. Mohanty and in support of the contention of the petitioner Mr. Das has developed the submission that no doubt there is no fundamental right to the property, but if Government proposes or insists on acquiring the property for public purposes and issues a Notification as envisaged under Section 4 of the Land Acquisition Act and thereafter takes possession by exhausting land acquisition procedures as per law and there is a promise by the State Government giving guidelines that for such acquisition people of the locality would be suffering and for that they would get employment of one per family on priority basis the same has to be carried out. In the instant case the petitioner happens to be the only issue of her father. At the time of Notification under Section 4 of the Land Acquisition Act there was no question of husband, wife, married or unmarried children. The petitioner himself was the owner of the property. Her property having been acquired and her family being considered for employment she is automatically entitled to have the advantage of employment of one member of her family. The question of shifting or migrating from the village by way of marriage cannot negative the claim of an inhabitant. The actual position of an inhabitant of a person having the property in one village and coming on migration either on account of marriage or any other purpose to another village does not ipso facto disentitle the said person to have one of the advantages which was correlated to the acquisition since the time of intending to acquire the property. In this connection it would be at best a case of promissory estoppel and the authority for whom the acquisition has been made is not to deny the claim of the petitioner.

6 A. It is submitted that award has been made so far as the irrigated land is concerned and there is also an award so far as the homestead is concerned in

terms of purported agreement for sale and reference case is pending to decide the question of title and/or appointment of the award as the situation may permit in accordance with law. Lastly Mr. Das has submitted that if the Court has to appreciate the entitlement of the petitioner, the matter may not be sent for further consideration either to the Committee headed by the Chairman or participated by the representative of the Mahanadi Coal Fields Ltd. At best the Court may consider this case on its own merit and the matter may be disposed of in its proper perspective.

7. Patiently we have considered the claim and counter claim. Diligently we have tried to understand the problems arising in the matter. We are of the view that in an appropriate case where the land acquisition is proposed and certain guidelines are there by the State indicating, inter alia, as to employment and there is promise, there is legitimate expectation of the people who really suffered by losing their homestead or irrigated lands as indicated therein. There are two aspects, one is promissory estoppel and the other is legitimate expectation. These are two settled principles which are being followed by the Court and are the guiding factors for effective adjudication. The principles are never in doubt or dispute, but the facts of each case have got to be considered in accordance with merit where such principles are at all attracted or not. True it is, that a person who is not an inhabitant of the village his apparent loss on account of acquisition can well be compensated by compensation and the question of employment does not arise. But in an appropriate case if a person lawfully retains the property but for any reason migrates to any other part of the State or the Country for the reasons including marriage, service or allied objects, it can never be construed that he or she has lost the right to get an advantage for losing the property by way of acquisition with certain concessions given in the guidelines. In the instant case, the status of the petitioner is not like a married daughter. The status of the petitioner is of a lawful owner. Due to marriage she resides in another village which never disentitles her as it cannot be said that she was dispossessed of the property. She always was in possession of the property and her stay in different place would be immaterial for disentanglement. But at the time it should not be lost sight of that as a matter of right she claims employment for her son, but it is subject to availability of job, as indicated in Annexure 1. We have appreciated the

argument that in view of the definition of 'sale' as found under Section 54 of the Transfer of Property Act, but this fact is to be considered by the Labour Court in the Reference Case in accordance with law but since others properties have been acquired and the petitioner does not suffer from any disqualification as indicated in Annexure A filed by the other side, we dispose of the writ petition observing that the petitioner is entitled to have the relief that for acquisition of her property, one of the members of her family is to get an employment, but this question has to be considered by the Committee subject to availability of employment in terms of Annexure 1. But at the same time we observe that under the same circumstances in and around the village if others have been rehabilitated and the petitioner's family stands at par, the Committee will consider accordingly and take such decision to offer employment to the petitioner's son within a period of six months from the date of communication of the order and the Committee will consider the same as per the Notification made under Section 4(1). There would be no order as to costs.