

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 13068 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Kasti Turuk Petitioner

-Versus-

State of Orissa and Ors. Opp. Parties

For petitioner : M/s. S.K. Bhanjadeo, P. Panda
and S.B. Ray, Advocates

For opp. parties : Mr. L. Samantaray,
Addl. Govt. Advocate
[O.Ps.No.1-3]

M/s. S.P. Sarangi, D.K. Das,
D. Mahapatra, V. Mohapatra &
P.K. Dash, Advocates
[O.P.No.4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE M.S. RAMAN**

Date of hearing and judgment : 25.08.2023

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the order dated 10.03.2016 under Annexure-10, by which opposite party no.2-

Revenue Divisional Commissioner, Southern Division, Berhampur has rejected the claim of the petitioner for the villagers of D. Koral Upper Street in the district of Rayagada to become displaced persons and the demand for alternate house, and further to issue direction to opposite party no.4 to provide alternative house site and adequate compensation in favour of those villagers.

2. The factual matrix of the case, in a nutshell, is that the petitioner, claiming to be the President of the Village Development Committee of D. Koral Upper Street, has filed this writ petition seeking reliefs, as mentioned above, and contended that he filed a representation on 19.01.2015 before the Revenue Divisional Commissioner, Southern Division, Odisha, Berhampur. Though hearing on the representation of the petitioner was initially fixed to 03.02.2015 at Rayagada, it could not take place. Subsequently, the date was deferred to 08.01.2016 and the petitioner as well as Collector, Rayagada were intimated to attend the hearing at the office of the Revenue Divisional Commissioner, SD, Odisha, Berhampur. Pursuant to notice, the petitioner along with

his advocate, Collector, Rayagada and LAO, Rayagada attended the hearing on 08.01.2016. On that day, the petitioner prayed for time and it was allowed fixing the date of next hearing on 20.02.2016. The hearing could not take place on 20.02.2016 and the next date was fixed to 02.03.2016, which was intimated to all concerned.

2.1 On 02.03.2016, the final hearing was conducted. The petitioner along with his advocate; Collector, Rayagada; LAO, Rayagada; representatives of Utkal Alumina Industries Ltd. and their advocate were present. All the parties were heard. It was stated that the total land of the village D. Koral Upper Street is Ac.450.00, out of which Ac.390.00, i.e., 90% of the total land of the village has been acquired by M/s Utkal Alumina Ltd. Major portion of this acquired land is agricultural land. The surrounding area of the village D.Koral Upper Street is completely within the factory area and the residential area of the inhabitants was intentionally not acquired by the Industrial Development Corporation of Odisha (IDCO) in order to save project cost.

2.2 Since all the agricultural land of the village D. Koral Upper Street has been acquired by the company, the inhabitants have no agricultural income and hence, should be declared as displaced persons. The list of Inhabitants, whose land has been acquired but they have not been declared as displaced persons, as stated by the petitioner, is at An Annexure-A.

2.3 Due to acquisition of their land, the villagers have lost their livelihood which was primarily cultivation. Thereby, the inhabitants of D. Koral Upper Street are economically downtrodden. Despite acquisition of lesser extent of land from the inhabitants of D. Koral Lower Street, they have not been given the status of displaced persons. D. Koral Upper Street has been affected by pollution, caused due to smoke coming out of the main chimney of the plant located nearby. Also pollution caused by vehicular movement and other activities of the plant is affecting the inhabitants of D. Koral Upper Street, D. Koral Lower Street and nearby villages. This has caused health hazards to the people of the locality. Accordingly, a committee was formed

by the villagers of D. Koral on 27.12.2004 in presence of the then Collector, Rayagada. The petitioner was elected as president and, subsequently ventilated the grievance before the court on behalf of the villagers

2.4 Both the villages, i.e., D. Koral Tala Street and D. Koral Upper Street are situated at an equal distance from the Alumina Refinery Plant. They are situated at the same altitude rather D.Koral Upper Street is very much suitable for township. Thereby, the petitioner sought that the inhabitants of the D. Koral Upper Street to be declared as displaced persons and all the facilities, presently being provided to the inhabitants of D. Koral Talasahi be made available to D. Koral Upper Sahi, invoking the provision under Clause-8 of the Rehabilitation Scheme, formulated by the Govt. of Odisha.

3. Mr. S.K. Bhanjadeo, learned counsel appearing for the petitioner vehemently contended that the petitioner, being the President of D. Koral Village Development Committee, was authorized to ventilate the grievance of the villagers before the authority to declare

them as displaced persons for acquisition of their 90% agricultural land. As per the instructions received under the RTI Act, it was found that the total land acquired by Utkal Alumina International Ltd. is Ac.2155.46 dec. from 24 villages and out of that only Ac.448.62 dec. of land was acquired from village D Koral, the total land of which is Ac.450.77 dec. It is contended that due to non-extension of benefit, the petitioner initially had approached this Court by filing W.P.(C) No.5971 of 2005, wherein this Court observed that if similarly situated persons availed the benefit, then the petitioner's committee will also be allotted alternative land outside the factory area, as per Clause-8 of the Rehabilitation and Resettlement Scheme, 2006. In compliance of the said order, the authority rejected the grievance of the petitioner, vide order dated 20.11.2007. Challenging the said order, the petitioner again approached this Court by filing W.P.(C) No.3265 of 2009 and this Court, vide order dated 24.10.2014, quashed the order dated 20.11.2007 and remitted the matter to the authority concerned to consider the grievance of the petitioner in the light of the observation

made in W.P.(C) No.5971 of 2005 and pass a reasoned order. It is contended that the authority again, vide order dated 10.03.2016, rejected the grievance of the petitioner. Therefore, the petitioner has filed the present writ petition. It is further contended that although more than 90% land of the villagers of village D. Koral have been acquired by the Utkal Alumina International Ltd., the authority has rejected the grievance of the petitioner holding that the major portion of D. Koral Upper Sahi is not within the project area of the company. It is further contended that the authority, while rejecting the grievance of the petitioner, has observed that D. Koral Upper Sahi was not found suitable for industrial purpose, as because it is densely populated and that a major portion of the D. Koral Upper Sahi was excluded from the process of the land acquisition, although 90% of the land of the villagers of the petitioner have been acquired by the company. Therefore, non-declaration of the villagers of village D. Koral Upper Sahi as displaced persons is arbitrary and contrary to the provisions of law. Therefore, he seeks interference of this Court.

4. Mr. L. Samantaray, learned Addl. Government Advocate appearing for the State-opposite parties contended that the revenue village D. Koral consists of six hamlets. Total extent of land of D. Koral revenue village is 1729.50 acres, of which 448.59 acres have been acquired by the Government of Odisha, vide notification dated 18.05.1995 issued under the provision of Section 4(1) of Land Acquisition Act, 1894, which comes to 25.9% only leaving a balance of 1280.91 acres. It is contended that out of the total extent of land measuring Ac.1729.50 available in D. Koral revenue village, only 607.26 acres belong to D. Koral Upper Sahi, of which 589.11 is agricultural land and 18.15 is non-agricultural land. As against 589.11 acres of agricultural land, only 265.12 acres have been acquired leaving a balance of 323.99 acres. Similarly, out of 18.15 acres of non-agricultural land, only 0.27 acres have been acquired leaving a balance of 17.88 acres with the villagers. Thus, land measuring Ac.265.39 has been acquired out of total land of Ac.607.26 of D. Koral Upper Street, which amounts to 43.70%. This is higher than 25.9% of the land acquired

for the entire D. Koral revenue village. At present, Ac.341.87 balance land is available with the villagers of D. Koral Upper Sahi. At the time of land acquisition, D. Koral Upper Street was thickly populated and located on a sloppy area whereas D. Koral Lower Street is situated in a flat area. Keeping in view the national policy of minimum displacement and based on the topographic conditions of these two villages, major area of the D. Koral Upper Street was excluded from the process of land acquisition. It is further contended that the impact assessment report for the project was done in 2006 and the post commissioning environmental parameters are monitored on a monthly basis by the State Pollution Control Board, Odisha. So far there has been no report regarding violation of the Consent to Operate conditions. D. Koral Upper Street is at an aerial distance of 1.8 km from the chimney and the impact of pollution is negligible on this count. As such, there is no material placed before the authority with regard to health hazard caused to the villagers.

5. Mr. D.K. Das, learned counsel appearing for opposite party no.4-Utkal Alumina International Ltd.

contended that the petitioner, who claims to be the President of D. Koral (Upper Sahi) Development Committee, has not been authorized and duly empowered by the villagers of D. Koral Upper Sahi to ventilate their grievances before the authority. Therefore, at his behest, the writ petition is not maintainable before this Court. It is further contended that the petitioner left D. Koral village since 40 years and now he is residing in Koraput and running a private school. The Development Committee of D. Koral village, of which the petitioner claims to be selected as President to discuss the grievance of the villagers of D. Koral with regard to their rehabilitation, is neither registered nor formed under any statutory provision of law. Besides, the villagers have already received the compensation and ex-gratia amount from the Land Acquisition Officer, Rayagada without any protest and handed over their lands to the company in the greater interest for the public purpose. It is further contended that the petitioner is also involved in active politics and he had contested the General Election held in the year 2014 from Koraput Assembly Constituency.

Apart from this, the petitioner is in the habit of filing many writs/PILs against the company as well as government officials. Therefore, it is contended that the writ petition filed at the behest of the petitioner cannot be sustained and the same should be dismissed.

6. This Court heard Mr. S.K. Bhanjadeo, learned counsel appearing for the petitioner; Mr. L. Samantaray, learned Addl. Government Advocate appearing for the State-opposite parties and Mr. D.K. Das, learned counsel appearing for opposite party no.4 in hybrid mode and perused the record. With the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

7. On the basis of the pleadings available on record as well as the arguments advanced by learned counsel for the parties, it appears that the Government in Revenue and Excise Department issued guidelines, vide letter dated 10.06.1998, that “a family/person shall be considered as displaced and will be eligible for rehabilitation benefits if such family/person is a

permanent resident of Odisha and ordinarily resides in the project area for at least 3 years prior to the date of publication of notification under Section 4(1) of Land Acquisition Act, 1894 for acquisition of his/her homestead land". "Project area" for the purpose of extending R&R benefit means the land which is acquired/alienated/purchased for establishment of any project. The major portion of D. Koral Upper Sahi does not within the project area of the company. Being situated at a higher altitude, D. Koral Upper Sahi (Basti area) was not found suitable for industrial purpose whereas D. Koral Tala Sahi located on a flat terrain was selected for acquisition due to its topographic compatibility. Moreover, D. Koral Upper Sahi was densely populated. Land acquisition was kept to the minimum following the guidelines of the national policy of minimum displacement. Hence, major portion of D. Koral Upper Sahi was excluded from the process of land acquisition. Total extent of land of revenue village D. Koral consisting of six hamlets is Ac. 1729.50. Of this, Ac.448.59 was acquired for the project by Government of Odisha, vide

notification no.19923 dated 18.05.1995 under Section 4(1) of Land Acquisition Act, 1894, which is 25.09% of the total area leaving a balance of Ac.1280.91. Only 607.26 acres belong to D. Koral Upper Sahi, of which 589.11 acres are agricultural land and 18.15 acres are non-agricultural land. As against 589.11 acres of agricultural land, only 265.12 acres have been acquired leaving a balance of 323.99 acres. Similarly, out of 18.15 acres non-agricultural land, only 0.27 acres have been acquired leaving a balance of 17.88 acres with the villagers. Thus, land measuring Ac.265.39 have been acquired out of total land of Ac.607.26 of D. Koral Upper Street which amounts to 43.70%. This is higher than the 25.9% of land acquired for the entire D. Koral revenue village. At present, Ac.341.87 of balance land is available with the villagers of D. Koral Upper Sahi.

8. The Environment Impact Assessment report for the project was prepared in Feb-April-2006. As is revealed therefrom, post- commissioning, as per consent to operate (CTO) conditions, the environmental parameters are monitored on daily basis. The State Pollution Control

Board (SPCB) is also monitoring the system from time to time. Ambient Air quality near plant site and the Stack Emission of Chimneys of the plant are within permissible limit, as per the conditions stipulated in the consent to operate (CTO). Emission level inside and outside of the plants, being regularly monitored by a third party, is recognized by State Pollution Control Board/Ministry of Environment and Forest. All parameters of air quality, water quality and noise level are reported to be within prescribed norms. Further, D. Koral village is situated at a distance of 1.8 KMs from the plant and as such is not likely to be affected due to installation of Chimney of the plant. The villagers of D. Koral Lower Sahi who are residing adjacent to D. Koral Upper Sahi since inception of the plant have never faced any environmental/health hazard. In this connection not a single medical report of occupational diseases is found in the peripheral areas due to operationalization of the plant. With regard to issue of accessibility, it is found that D. Koral Upper Sahi and Lower Sahi are situated on adjacent sides of the PWD road, which passes through the two streets and equality

accessible from both sides. The contentions raised by learned counsel for the petitioner that there are about 23 families whose homestead land has been acquired and they have to be declared as displaced families. The remaining families, which were not eligible to be declared as displaced, accepted compensation as per their entitlement.

9. It may be noted that the land was acquired for the economic growth of the country, which is in the greater interest of the public and involves 'public purpose'. In lieu of such acquisition of land, compensation was paid and the same was received by the villagers without any protest. Therefore, 'public purpose' means a purpose which confers or is conducive to the good of a considerable section of the community at large or of the locality or region, like construction of schools, temples, churches, mosques, choultries, road, hospitals, and office building of a local body or local authority, but not any purpose which is but ancillary to a public purpose.

10. In ***State of Bihar v. Kameshwar Singh***, AIR 1952 SC 252, the apex Court held that whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose.

11. In ***State Of Bombay v. Bhanji Munji and Anr.***, AIR 1955 SC 41, the apex Court held that it is not absolutely necessary to the validity of the land acquisition proceeding that, the statement that the land sought to be acquired was needed for a public purpose, should find a place in the notification actually issued. The requirements of the law will be satisfied if, in substance, it is found on investigation, and the appropriate Government is satisfied as a result of the investigation that the land was needed for the purposes of a company, which would amount to a public purpose.

12. In ***(Pandit) Jhandu Lal v. State of Punjab***, AIR 1961 SC 343, the apex Court held that the essential condition for acquisition for a public purpose is that the

cost of the acquisition should be borne, wholly or in part, out of public funds.

13. In **Somawanti v. State of Punjab**, AIR 1963 SC 151, the apex Court observed that the expression 'public purpose' would include a purpose in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned.

14. In **State of Karnataka v. Ranganath Reddy**, (1977) 4 SCC 471, the apex Court observed that the expression 'public purpose' as used in Article 23(2) indicates that the Constitution used those words in large sense. We must regard as 'public purpose' all, that will be calculated to promote the welfare of the people as envisaged in Directive Principles of State Policy whatever else that expression may mean.

15. In **Bhim Singhji v. Union of India**, (1981) 1 SCC 166, the apex Court held that the concept of 'public purpose' necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the

general public, and the purpose of such a law directly subserves public interest.

16. In ***Daulat Singh Surana v. First Land Acquisition Collector***, (2007) 1 SCC 641, the apex Court observed that the expression 'public purpose', in a broad sense, would include a purpose in which the general interest of the community as opposed to the particular interest of the individuals is directly and virtually concerned. The concept of 'public purpose' would include the matters, such as, safety, security, health, welfare and prosperity of the community or public at large.

17. Applying the above principles to the present context, since the land in question has been acquired for the public purpose and the persons, who have been displaced, have been granted benefit by paying compensation and some of the families have been declared as displaced families, which have been provided alternative accommodation by providing houses and other benefits, the remaining families, which have not been

evicted from their own houses, are not entitled to get such benefits in the larger interest of the public.

18. In view of such position, the grievance raised by the petitioner to declare the villagers of D. Koral Upper Street in the district of Rayagada as displaced persons and give them alternate house and other benefits cannot be sustained in the eye of law.

19. In the result, the writ petition merits no consideration and the same stands dismissed. But, however, under the circumstances of the case, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

M.S. RAMAN, J. I agree.

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M.S. RAMAN,
JUDGE

Orissa High Court, Cuttack
The 25th August, 2023, Alok