HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.28096 of 2012

ORDER:

Challenging the action of the third respondent i.e. Revenue Divisional Officer, East Division, Ranga Reddy District in not determining the ex-gratia/market value of the lands held by the petitioners as per the basic value register maintained at the office of Sub-Registrar as on 05.09.2009 the present writ petition is filed.

The averments in the affidavit filed in support of the writ petition are as under:

The writ petitioners were granted D-Form pattas in the years 1993 to 1995 to various small extents of land in Sy.No.18 situated at Ravirala Village, Maheshwaram Mandal, Ranga Reddy District. Pattadar Pass books and title deeds were also issued in favour of the petitioners. Pursuant to which they claimed to have developed the land by raising jawar and paddy crops. The total extent of land in Sy.No.18 was about Ac.65.35 gts. Out of the same, land to an extent of Ac.23.17 gts., was acquired by the Government for the purpose of outer ring road and compensation was paid to the pattadars of the said land. The remaining extent of Ac.42.18 gts., was said to be in possession of the petitioners. When the revenue officials tried to enter onto the land, the petitioners herein filed W.P.No.27233 of 2008 before this Court, which was disposed of by an order dated 23.12.2008. The operative portion of the order is as under:

"In view of this, there shall be status-quo for a period of

> two weeks from the date of furnishing a copy of the order. During this time, the petitioners may file an appeal before the Joint Collector and obtain necessary orders. As and when necessary appeal is filed, the Joint Collector shall entertain the appeal and dispose of the same after giving notice to the petitioners and considering the evidence that may be produced by the petitioners."

After obtaining a copy of the order, an appeal was filed before the Joint Collector, Ranga Reddy on 06.01.2009 along with stay application. Pending appeal, the fourth respondent issued a show cause notice, dated 05.09.2009, to the petitioners stating that the Government has proposed to resume the land under G.O.Ms.No.1307, Revenue (Assignment-I) Department dated 23.12.1993 by paying ex-gratia and accordingly requested them to file objections. Reply to the said show cause notice came to be filed by the petitioners on 15.09.2009. It is stated that the claim of the petitioners was to get ex-gratia as per G.O.Ms.No.1307, dated 23.12.1993 and also having regard to the sale transaction that took place in adjacent patta lands. When the respondents made efforts to take possession of the land by dispossessing the petitioners from the land, W.P.No.22658 of 2009 came to be filed before this Court. The said writ petition was disposed of on 23.10.2009 directing the fourth respondent to consider the explanation submitted to the show-cause notice and forward the matter to third respondent for taking appropriate decision in accordance with law, within a period of four weeks from the date of such forwarding by the fourth respondent.

While things stood thus, the Joint Collector-I, Ranga Reddy District issued proceedings dated 24.10.2009 in E5/846/2009, confirming the order of the third respondent dated 18.03.2006.

Challenging the same, the petitioners filed W.P.No.24506 of 2009 before this Court. By an order, dated 12.11.2009, this Court granted interim suspension of the order dated 24.10.2009. W.P.No.14271 of 2010 was also filed by the petitioners questioning the fixation of quantum of compensation at Rs.6,00,000/- per acre by the third respondent vide proceedings No. DA/727/2008 dated 24.11.2009, pursuant to an order of this Court. Initially, there was an interim stay of the said proceedings and subsequently, by an order, dated 07.03.2011, this Court while dismissing W.P.No.24506 of 2009 as infructuous, allowed W.P.No.14271 of 2010 by setting aside the order dated 24.11.2009. Consequently, the third respondent was directed to determine the ex-gratia payable to the petitioners strictly in accordance with G.O.Ms.No.1307, dated 23.12.1993. Further, the third respondent was directed to examine the claims of the petitioners to the extent of land for which ex-gratia was to be paid. The entire exercise was directed to be completed within a period of three months from the date of receipt of a copy of the said order. Pending the above writ petitions, the petitioners received ex-gratia amount of Rs.6,00,000/- under protest; the lands were taken possession in the month of June, 2010 and the same were handed over to the fifth respondent, who inturn executed registered agreement of sale in favour of Pragathi Pick. India Private Limited. After receipt of the final orders in W.P.No.14271 of 2010, the petitioners made a representation to the third respondent on 05.05.2011 and also issued a legal notice dated 24.08.2011 requesting respondent No.3 to comply with the orders of this Court. His inaction lead to filing of Contempt Case No.1481 of 2011. At that point of time, the third respondent issued notice, dated 07.12.2011, calling upon the petitioners to attend the enquiry which was scheduled to be held on 15.12.2011 for fixing ex-gratia. Written submissions were filed claiming compensation of Rs.27,50,000/- per acre and 30% solatium as per the basic value register maintained by the Sub-Registrar Maheswaram Mandal as on the date of show cause notice dated 05.09.2009. In compliance with the orders of this Court, the third respondent issued the impugned proceedings enhancing the ex-gratia market value from Rs.6,00,000/- to Rs.15,00,000/- per acre. The said amount was also received by the petitioners under protest. Challenging the action of the third respondent in fixing the ex-gratia market value at Rs.15,00,000/- per acre, the present writ petition is filed.

Respondent Nos.1 to 4 filed their counter opposing the averments made in the writ petition. According to them, pursuant to an order of this Court, the market value of the lands in Sy.No.18 of Ravirala Village was re-determined by obtaining the sale particulars for the preceding three years ie. from 05.09.2006 to 04.09.2009 from the office of Sub-Registrar, Maheshwaram and accordingly P.V. proposals were submitted to the Collector, Ranga Reddy District, fixing the market value at Rs.15,00,000/- per acre + 30% solatium as per the guidelines issued in G.O.Ms.No.1307, dated 23.12.1993. The said amount was approved by the Collector and also released to the petitioners. In view of the above, it is strongly contended that the claim of the petitioners at Rs.27,50,000/- per acre is abnormal.

The fifth respondent ie. Telangana State Industrial Infrastructure Corporation Limited (TSIIC) also filed their counter formally opposing the claim made by the petitioners.

The main ground urged by the learned counsel for the petitioners is that the third respondent issued the impugned proceedings contrary to G.O.Ms.No.1307, dated 23.12.1993. The second ground urged by the learned counsel for the petitioners is that the petitioners are entitled for payment of compensation as per the provisions of the Land Acquisition Act though they are assignees. It is his case that the market value of the land in Sy.No.192 admeasuring Ac.197.17 gts., acquired by Hyderabad Urban Development Authority for development of township was fixed at Rs.25,00,000/- per acre in the year 2008 itself and since the land in question was taken in the year 2009, the compensation should have been morethan what has been awarded.

On the otherhand, the Government Pleader for Land Acquisition strenuously contends that the petitioners are only assignees and in spite of that they have already paid compensation @ Rs.15,00,000/- per acre. In any event it is contended by her that as the authorities have taken the market value prevailing as on the date of show cause notice from the office of the Sub-Registrar, the question of paying more than what has been awarded would not arise.

The first question that arises for consideration is whether the petitioners, who are assignees, are entitled for payment of compensation in terms of the provisions of the Land Acquisition Act. The issue is no more *res integra* in view of the judgment of this Court in ***Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others***[1] wherein a seven Judge Bench of this Court while dealing with the said aspect held that the assignees of the government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. The Apex Court further held that even in cases where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land. The same was confirmed by the Apex Court in Civil Appeal Nos. 7904-7912 of 2012, dated 04.08.2014. Hence the petitioners are entitled for payment of compensation. Even otherwise the question should not come in the way of adjudication of the dispute since the respondent has initially fixed payment of ex-gratia at Rs.6,00,000/- per acre and after enhanced the same to Rs.15,00,000/-.

The second question that falls for consideration is whether the third respondent has issued the impugned proceedings strictly in terms of G.O.Ms.No.1307, dated 23.12.1993 or not?

Before proceeding further, it would be appropriate to refer to the G.O.Ms.No.1307, dated 23.12.1993, which is as under:

> "The Government after careful examination of the matter in consultation with the Commissioner of Land

Revenue, Irrigation and Command Area Development Department and Finance Department hereby order payment of ex-gratia equivalent to the market value, to the assignees whose lands are resumed for the projects and other public purposes and equivalent to valuation for other private orchards and structures, wells etc. removing the distinction stipulated in para (3) of G.O.Ms.No.428, Revenue (Asn.I) Department, dated 25.04.1992 subject to the following conditions.

a) that the amount is to be treated as ex-gratia;

b) that the assignees would not be entitled for making references under Section 18 and Section 28-A of Land Acquisition Act to the Courts;

c) an amount equivalent to 15% for the lands resumed prior to 30.04.1982 and 30% after what date, on the market value payable under Section 23 (2) of Land Acquisition Act may be considered for being included the total ex-gratia payable to the assignees as solatium;

d) that the assignees will not be entitled for interest or additional market value under the Land Acquisition Act;

e) that the above conditions shall be made applicable to all the assigned lands resumed on or after 09.02.1984 (i.e. that date of issue of G.O.Ms.No.180, Revenue, dated 09.02.2004, in super session of G.O.Ms.No.43, Revenue (B) Department, dated 23.01.1988."

As seen from the above, G.O.Ms.No.1307, dated 23.12.1993 contemplates payment of ex-gratia equivalent to the market value as on the date of issuance of show cause notice. In the present case, the show cause notice was issued to the petitioners on 05.09.2009 intending to resume the land on payment of ex-gratia as per the guidelines issued in G.O.Ms.No.1307, dated 23.12.1993. The petitioners submitted reply on 15.09.2009 pleading the authorities to fix the market value at Rs.72,00,000/- per acre + 30% solatium as per the G.O.Ms.No.1307, dated 23.12.1993. They also placed on record the market value register of the Sub-Registrar, Maheswaram Mandal showing the market value at Rs.27,50,000/- per acre.

It is to be noted that since there is no notification as contemplated under Section 4 (1) of the Land Acquisition Act, the date of show cause notice has to be taken into consideration for fixing the market value of the land. The same is not disputed by the Government Pleader for Land Acquisition. Therefore, the date which has to be taken for fixing the market value is 05.09.2009.

A perusal of the impugned proceedings would show that for re-determining the market value as per G.O.Ms.No.1307, dated 23.12.1993, the sale particulars of three years ie. 06.09.2006 to 05.09.2009 has been obtained from the office of Sub-Registrar, Maheswaram Mandal. The proceedings dated 17.02.2012 gives a list of 111 transactions which took place during that period, but none of the transactions of the year 2009 are referred to in the said proceedings. The last transaction referred to was in the month of December, 2008. In the said proceedings it has been mentioned that the sales at Sl.Nos. 1,3,18 to 25, 27 to 29, 32, 37, 50, 54, 55 to 62, 66, 68, 70 to 83, 88, 89, 92, 95 to 110 (59 transactions) are covered by wet lands, where as the land under alienation are dry lands. Therefore, it was stated that the sales do not represent the market value of the land under alienation. It was further stated that the sales at Sl.Nos. 2, 47, 63, 64, 67, 86 and 87 are combined sales, as such the rates of individual lands involved cannot be ascertained and the sales at Sl.Nos. 17, 26, 30, 48, 49, 51, 52, 53, 65, 66, 84, 85, 90, 91, 91, 93, 94, 106, 111 were said to be far away to the lands under alienation. The sale at Sl.No.69 appears to be near to the lands under alienation but value of the land covered by the sale appears to be an eyesight of the market value as it was registered for meager extent ie. Ac.0.03 gts., hence, the said benefit cannot be extended to the petitioners. Coming to the remaining 26 sale transactions which took place in Sy.No.117, 14 out of 26 sales took place for a consideration of Rs.25,00,000/- per acre and that the lands covered therein are not similar to the land under alienation. Insofar as the sale at Sl.No.12 is concerned, it has been stated that the sale was for a consideration of Rs.15,00,000/- per acre which according to them is similar to the land under alienation. Hence, fixed the market value at Rs.15,00,000/-.

From a reading of the impugned proceedings, it is clear that the land in Sl.No.2 is covered wet lands and where as the lands which are subject matter of consideration in the writ petition are dry lands. Out of 26 transactions which took place in Sy.No.117, 14 transactions took place for consideration of Rs.25,00,000/- per acre and 12 transactions for a consideration of Rs.15,00,000/- per acre. Since the lands covered by these (12) sales appear to be similar to the land under alienation, the authorities fixed the same at Rs.15,00,000/- per acre. But it should also be noted that no reasons are given by the authorities as to how lands covered under 14 sale transactions in Sy.No.117, where the market value was fixed at Rs.25,00,000/- per acre, are different from the lands in issue. All the lands are dry lands. Without assigning any reasons, the authorities arbitrarily stated that the lands covered by 14 sales are not similar to the land under alienation.

The Government Pleader for Land Acquisition though took time to substantiate her plea that the value of the land even in the year 2009 was only Rs.15,00,000/- per acre, could not do so. On the other hand, she tried to impress upon the Court by referring to the averments in the counter, wherein it has been stated that the market value of the land prevailing in the month of September, 2009 was taken into consideration while fixing the quantum of compensation, which in my view appears to be incorrect, for the reason that in respect of sales pertaining to dry lands which took place in the year 2006, the market value was fixed at Rs.15,00,000/- per acre, whereas in respect of sales pertaining to dry lands which took place in the year 2007, the market value was fixed at Rs.25,00,000/- i.e. (Sl.No.26). Even in respect of sales pertaining to dry land admeasuring Ac.2.00 at Sl.No.84 which took place in the month of June, 2008 the market value was fixed at Rs.25,00,000/- per acre and in respect of sale pertaining to dry land admeasuring Ac.3.00 and Ac.1.19 gts., at Sl.Nos.87 and 88 which took place in the month of June, 2008 itself, the market value was fixed at Rs.20,00,000/- per acre. In respect of sale pertaining to dry land admeasuring Ac.3.38 gts., at Sl.No.90, which took place in the month of July, 2008, the market value was fixed at Rs.18,98,720/- per acre but however in respect of sale transaction which took place in the month of December, 2008 pertaining to dry land admeasuring Ac.0.05 gts., at Sl.No.111 the market value was fixed at Rs.27,52,000/-.

From the above, it is clear that the compensation paid was not with any mathematical precision. It has been paid by taking into consideration various circumstances namely; location, nature of land, extent of land and the value referred in the register etc.

In the instant case, the value of the land was fixed at Rs.15,00,000/- per acre by taking into consideration the sale transactions in Sy.No.117 which took place in 2006. It is to be noted that market value of certain transactions in Sy.No.117 which took place in the year 2006, was fixed at Rs.25,00,000/- per acre. Therefore, this Court is of the view that compensation of Rs.15,00,000/- per acre is definitely on a lower side and the same needs to be enhanced.

For the aforesaid reasons, the writ petition is disposed of by enhancing the compensation from Rs.15,00,000/- to Rs.26,50,000/- per acre plus 30% Solatium thereon. No order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.12.2015
gkv

[1] (2004) 2 ALT 546 (L.B.)