

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos.3431,3442 AND 3443 OF 2013

COMMON ORDER:

The writ prayers are substantially same and similar. The fact situation and the grievance canvassed by the petitioners is same in these writ petitions.

The writ petitions are disposed of through the common order.

The petitioners pray for Mandamus declaring the action of respondents in not paying *ex gratia* to petitioners in accordance with G.O. Rt.No.6 dated 31.01.2007, as illegal and unconstitutional.

The petitioners claim to be in possession and enjoyment of small extents of land in Survey No.109, Jogannapalem, Chippada Panchayat of Atchutapuram Mandal, Visakhapatnam District.

The grievance of petitioners is that the subject land has been resumed by the respondent for establishing Special Economic Zone (SEZ) by APIIC Limited, Visakhapatnam. The petitioners claim to be in possession of small extents of land for over two decades and that the Government orders provide for payment of *ex gratia* on resumption of land by the Government. The respondents without paying *ex gratia* and without examining the revenue records for deciding the possession and enjoyment of the petitioners and contrary to the list of beneficiaries prepared by the respondents, have taken possession of land from them. The resumption of land amounts

to arbitrary and unconstitutional exercise of power.

The respondents filed counter affidavit and through the counter affidavit it is contended that the petitioners are not encroachers of any extent of land under the subject resumption and the petitioners are not entitled for payment of *ex gratia*.

The learned counsel for the petitioners in the opinion of this Court rightly contends that the observation in the counter affidavit cannot be put against petitioners to deprive them payment of *ex gratia* in terms of G.O.Rt.No.6 dated 31.01.2007. It is the case of the petitioners that if the respondents have afforded reasonable opportunity to the petitioners to prove the enjoyment of petitioners of subject land as encroachers and the petitioners fail in the enquiry, the *ex gratia* can be denied. On the contrary, if individual case is taken up for consideration and a claim is proved warranting payment of *ex gratia* by reference to the *ipse dixit* stand taken in the counter affidavit, the lis between the parties ought not to be decided by this Court or the claim rejected by respondents.

On the other hand, learned Government Pleader opposes issuance of any positive direction to the respondents for payment of *ex gratia* for resuming the subject land.

Heard the learned counsel and perused the material available on record.

Prima facie, it appears the petitioners in proof of their

enjoyment of small parcels of land in Survey No.109, have placed material in these writ petitions. The counter affidavit filed by the respondents is silent on this crucial aspect of the matter. Either to grant *ex gratia* or to refuse *ex gratia* there ought to be enquiry, consideration of material and application of mind by respondents 2, 3 and 5. In the case on hand, there was no occasion to independently consider the claims of petitioners. Therefore, the conclusions arrived by the respondents cannot be put against petitioners. To meet the ends of justice, the petitioners are given eight weeks time from today to file individual representations along with supporting evidence for grant of *ex gratia* before the 5th respondent. The 5th respondent is directed to receive reply on the said representations from 3rd respondent, decide each one of the claims individually and communicate the orders to the applicants. This Court while disposing of the writ petitions in the above terms, is not expressing any view on the entitlement of petitioners or accepting the stand taken by the respondents. It is for the 5th respondent to pass orders in accordance with law and according to the material available in this behalf. The said exercise shall be completed within a period of two months from the date of receipt of representations.

The writ petitions are disposed of as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petitions shall stand closed.

S.V. BHATT,

J

Date: 18.02.2015

Stp