

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

W.P.NO.28539 OF 2016

ORDER

The case of the petitioners, who are 70 in number, is that they are all landless poor persons. The subject land is an extent of Acs.63-02 guntas in Sy.Nos.529, 535, 536, 537 and 538 situated at Chincholi (B), Sarangapur Mandal, Adilabad District. The said land is ceiling surplus land. The 1st respondent – Government assigned the subject land to the petitioners in the year 1978 and their names were mutated in the revenue records and pattadar pass books and title deeds were also issued to them as per the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1972 (for short 'the ROR Act'). Since the date of assignment, the petitioners have been irrigating the subject land by open and bore wells, raising various commercial crops such as turmeric, maize, paddy and other cereal crops and eking out their livelihood. While so, vide proceedings No.A/4745/2007 dated 13.09.2008 the 1st respondent- Government resumed the subject land for the purpose of construction of houses under Rajiv Swagruha Scheme.

2. The grievance of the petitioners is that though possession has been taken in the year 2008, no land acquisition proceedings were initiated for payment of compensation. The 2nd respondent – District

Collector directed the 3rd respondent - Revenue Divisional Officer to initiate ex-gratia proposals as the subject lands are ceiling surplus assigned lands vide letter No.E1/3206/32011 dated 31.7.2012 and 9.9.2012. The petitioners objected for *ex-gratia* proposals and made representation, dated 28.6.2016 for initiating the land acquisition proceedings for payment of compensation. Aggrieved by the inaction of the respondents in initiating the land acquisition proceedings, the present writ petition has been filed.

3. On behalf of the respondents, the 2nd respondent – District Collector, Adilabad District, filed counter affidavit and stated *inter alia* that the subject land is ceiling surplus land and was allotted to the landless poor people during the year 1978 under Section 14(1) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 vide proceedings of the Tahsildar No.B5/1376/1975, subject to remittance of amount. The petitioners never cultivated the land and the same had fallen vacant from the date of allotment and, therefore, recorded as Padith in revenue records. Since the petitioners failed to pay the amount to the Government as prescribed in allotment orders and also failed to cultivate the land from the date of allotment, the rights on the land are not confirmed. The said lands have been resumed by the 4th respondent – Tahsildar vide proceedings No.A/4745/2007 dated

13.09.2008 and were taken into Government custody under panchanama and the same was also communicated to the allottees on 6.9.2008 calling for objections. It is further stated that since the petitioners have violated the terms and conditions as specified under Rule 14 of Land Reforms Rules – 1973 and have not brought the allotted land to use within two years from the date of allotment, the question of payment of *ex gratia* also does not arise. With these averments, the writ petition is sought to be dismissed.

4. The petitioners filed reply affidavit and denied the averments made in the counter affidavit.

5. The learned counsel appearing for petitioners reiterating the writ averments stated that the subject land has been assigned to the petitioners in the year 1978, as they are landless poor and their names were mutated in the revenue records and pattadar pass books and title deeds were also issued to them under the provisions of ROR Act and since the date of allotment, they have been cultivating the land by raising different crops and eking out their livelihood.

6. The learned counsel has drawn the attention of this court to the material papers relating to the revenue entries and the pattadar pass books in the names of the petitioners'. He stated that as per the

counter affidavit, the subject land has been resumed by the Government under the proceedings of the 4th respondent – Tahsildar vide proceedings No.A/4745/2007 dated 13.9.2008. The said proceedings also does not indicate that the land has been resumed due to violation of the allotment conditions under Section 14(1) of the A.P. Land Reforms (Ceiling of Agricultural Holdings) Act, 1973 and Rule 14 of Land Reforms Rules, 1973. Therefore, he contended that the averments made in the counter affidavit are without any basis. He stated that as the petitioners were assigned the land and their names were also mutated in the revenue records and as they have been in continuous possession and enjoyment of the same, and if the said assigned land is sought to be acquired for any public purpose, they are entitled for compensation on par with patta lands. In support of this contention, the learned counsel relied on the judgment of the Larger Bench of this court reported in **LAO-CUM-RDO, CHEVELLA DIVISION, DOMALAGUDA, HYD. V. M.PANDU¹**. In view of these circumstances he sought for a direction to the respondents to initiate land acquisition proceedings for payment of compensation.

7. On the other hand, the leaned Government Pleader for Revenue, on instructions, submitted that the petitioners failed to bring

¹ 2004(2) ALD 451 (LB)

the allotted land, which is ceiling surplus land, to use and thus violated the terms and conditions of allotment and, therefore, the land has been resumed by the Government and the petitioners have no right to seek for initiation of land acquisition proceedings and sought for dismissal of writ petition.

8. From the above the undisputed facts are that the petitioners are landless poor people and they were assigned the subject land and their names were mutated in the revenue records and pattadar pass books and title deeds were issued to them. The Government resumed the land under proceedings of 4th respondent –Tahsildar No.A/4745/2007 dated 13.9.2008. The learned counsel for the petitioners has produced copy of the said resumption proceedings in respect of petitioner No.58. The same is not disputed. As per the averments made in the counter affidavit, which are noted above, the grounds for resumption proceedings are violation of allotment conditions by not paying the amount and in keeping the land vacant without putting the same to use for more than two years from the date of allotment. To see whether the said grounds are reflected in the resumption proceedings, the relevant portion of the said proceedings issued in respect of petitioner No.58, is extracted as under for better appreciation:

“Smt. Chatla Laxmi w/o Narsimulu R/o Chincholi (B) village of Sarangapur mandal, who is assignee / patteder of ceiling surplus land in Sy.No.538/11 extent 1-00 acres situated at Chincholi (B) village of Sarangapur Mandal, Legal heirs of pattedar’s has filed a petition dated :--- for issue of his/her (they) assigned land for house site under Revised purchase scheme as the assignee has willfully come forward to give his/her assignment / ceiling surplus land for house site.

In terms of the Government orders under reference 3rd and 5th cited it is hereby ordered to resume the above assigned /ceiling surplus land in Sy.No.538/11 extent 1-00 acres situated at Chincholi (B) village from the above assignee as the above land being required for public purpose for house site to Rajeev Swagruha and issued instructions to the MRI & Surveyor Sarangapur mandal and taken into Government custody.

Accordingly the Mandal Revenue Inspector & Surveyor Sarangapur have taken the above assigned land from the concerned above pattadar assignee into Government custody under proper panchanama vide reference 7th cited.

Therefore, the assigned land in Sy.No.538/11 extent 1-00 acres situated at Chincholi (B) village is resumed from the above pattadar assignee as the land is proposed for house site for public purpose.”

9. From a reading of the above proceedings it is clear that the assigned land has been resumed from the pattadar/assignee as the same is required for public purpose i.e., to provide house site under Rajeev Swagruha Scheme. The grounds taken by the respondents in the counter affidavit filed by the 2nd respondent – District Collector, that resumption proceedings were initiated as the petitioners violated the terms and conditions of allotment, are not forthcoming in the above proceedings. Thus the said allegations are contrary to the resumption proceedings and without any basis. Therefore, as the lands are assigned lands and the petitioners have been in possession of the same and if the same are required for any public purpose, the same can be acquired by the Government by initiating the land acquisition proceedings and paying the compensation as per law.

10. Before a Larger Bench, consisting of seven judges of this court, in the decision reported in M.Pandu's case (supra) the following issue fell for consideration:

“Whether the claimants are entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894 (for short ‘the Act’) when the assigned lands are resumed by the Government for a public purpose?”

11. While answering the above issue, His Lordships held that the condition imposed in the patta that assignees are not entitled to compensation in case the Government resumes the land for a public purpose is unconstitutional and therefore, not valid and the assignees have to be treated as full owners of the land and they are entitled to compensation based on market value along with other benefits on par with full owners. The relevant portion of the judgment is as under:

108. In the result, we hold that ‘no compensation’ clause restricting the right of the assignees to claim full compensation in respect of the land resumed equivalent to the market value of the land, is unconstitutional. The ‘no compensation clause’ infringes the fundamental rights guaranteed by Articles 14 and 31-A of the Constitution. We are conscious that Article 21 essentially deals with personal liberty. But in cases where deprivation of property would lead to deprivation of life or liberty or livelihood, Article 21 springs into action and any such deprivation without just payment of compensation amounts to infringement of the right guaranteed thereunder. The doctrine of ‘unconstitutional conditions’ applies in all its force.

109. In the circumstances, we hold 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 of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold 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,

1894. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restricting on the right of the assignee to claim full compensation as owner of the land.”

12. Thus in view of the above judgment of the Larger Bench of this court, the issue of payment of compensation to the assignees of the Government land on the acquisition of the said land for public purpose, is no longer *res integra* and claimants are entitled to compensation on par with patta lands.

13. Coming to the case on hand, at the cost of repetition, the petitioners were assigned the land during the year 1978 and they have been in possession of the assigned land by irrigating the same and their names were also mutated in the revenue records. The Government resumed the land for public purpose for house site under Rajiv Swagruha Scheme under proceedings of the 4th respondent – Tahsildar No.A/4745/2007 dated 13.9.2008. Though the respondents sought to contend that the petitioners have violated the conditions of allotment, failed to produce any tangible material in the form of any notice or some proceedings, intimating the petitioners with regard to the said allegations and the action taken in that behalf. Therefore, it has to be taken that the averments made in the counter affidavit are without any basis. In the facts and circumstances of the case, and also in view of the law laid down by the Larger Bench, as mentioned above, the action on the part

of the respondents in not initiating the land acquisition proceedings, cannot be countenanced.

14. Before parting with the case, I would like to make certain observations. It cannot be disputed that the Government has power to acquire any land for public purpose, including the assigned land. In the present case, the Government has brought a scheme to construct houses for poor and marginalized section of people under Rajiv Swagruha Scheme. I have no hesitation to say that on the one side, the Government with good intention has brought a scheme for helping poor and marginalized section of people for construction of houses and other hand, for carrying out the said purpose, snatched away the land which has been assigned to similar section of people in the year 1978. In other words, in my view, this type of generosity on the one hand to provide houses to poor and marginalized people, and on the other hand, policy, to resume the assigned land for the said purpose from the people of similar economic status, without either paying compensation or providing alternate land, cannot be appreciated in any sense.

15. If the Government intends to bring a policy or scheme for poor and marginalized people, there is huge Government land lying vacant, which can be utilized for the said purpose or if no such Government land is available, can acquire the land from other farmers, who have huge

holdings or from other persons, who have sufficient land. But it is not desirable to snatch the assigned land from the poor, as they would be depending on the land for their livelihood and such an act of the Government is nothing short of taking away the bread from the poor. This needs to be deprecated.

16. By this judgment, I only can suggested to the Government that in future if such a policy is sought to be implemented for the benefit of poor and marginalized people, the same shall not be designed in such a way, that it brings similarly situated persons to a virtual stage of starvation.

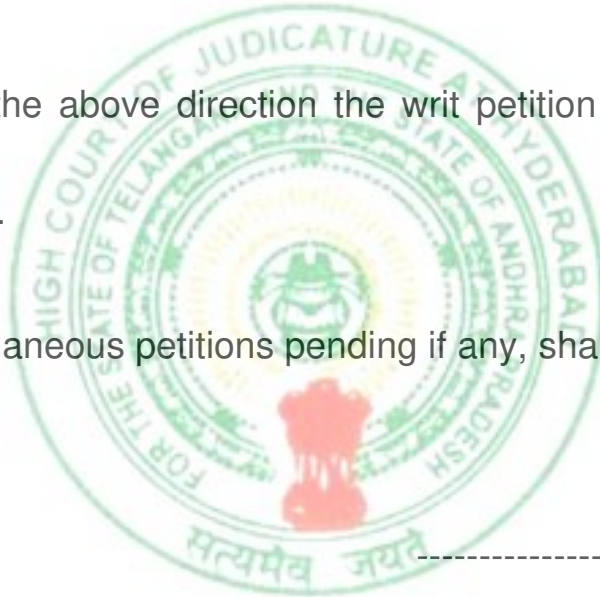
17. In the case in hand, the land was assigned in the year 1978 to the petitioners, who are landless poor and they have been surviving from the yield of such small pockets of land and the same has been snatched away from them in the year 2008 for public purpose. Since then, they have been eagerly seeking to initiate land acquisition proceedings for payment of compensation, however, till date no action has been initiated. If it is the compulsion of the Government to acquire only that particular land, then the Government should have either immediately allotted them any other alternate land or paid compensation in accordance with law and till such time, they ought not have been displaced from the land.

18. For the foregoing reasons, the inaction on the part of the respondents in initiating the land acquisition proceedings, is found fault with. They are accordingly directed to initiate the land acquisition proceedings under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) and pay compensation in accordance with law. This exercise shall be completed as expeditiously as possible, positively within a period of three months from the date of receipt of a copy of this order.

19. With the above direction the writ petition is allowed with no order as to costs.

20. Miscellaneous petitions pending if any, shall stand closed.

AVS



20—10 —2016