

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.No.17359 of 2012

ORDER:

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This writ petition is filed stating that the 2nd petitioner was assigned agricultural land to an extent of Ac.02-00 guntas in Sy.No.350/3 in Gudipet Sivar of Mulkala Village, Mancheriyal Mandal, Adilabad District. Similarly, the 1st petitioner was assigned Ac.02-20 guntas of land in Sy.No.350/5 in Gudipet Sivar of Mulkala Village, Mancheriyal Mandal, Adilabad District and they have been cultivating the same by raising paddy crop by digging bore wells. While so, the Government wanted to acquire the said land to provide house sites to the displaced farmers of Sripadasagar Project, Mancheriyal. In that process, proceeding dated 22-08-2011 was issued seeking to acquire Ac.40-19 guntas of land in Sy.No.350 of Gudipet Sivar of Mulkala Village, Mancheriyal Mandal. On knowing the same, the petitioners approached the 2nd respondent stating that they have been cultivating the said lands for more than 3 ½ decades by digging bore wells by spending huge amounts and if the same is acquired, they will be deprived of their livelihood. It is also stated that the said land is not suitable for construction of houses and from their land the water canals are flowing. If their lands are acquired for the purpose of allotment of house sites, 200 acres of agricultural land in Mulkala Village render barren and the farmers, who are relying on it remain without any source of water. It is also stated that agricultural land cannot be acquired for providing house sites. The petitioners also assert that adjacent land in Sy.Nos.300 and 204 to an extent of 60 acres belonging to the Horticulture Department is vacant and the same can be acquired. Though several representations including the representation dated 20-01-2012 is made, the 5th respondent vide proceedings dated 07-05-2012 directed the petitioners to appear in person for approval of exgratia payment. On receipt of the same, the petitioners made representation dated 12-05-2012 reiterating the submissions. Without considering the same, the respondents are proceeding to allot the land belonging to the petitioners for providing house sites to the displaced persons of Sripadasagar Project, Mancheriyal. Aggrieved by the action of respondents, the present writ petition is filed.

Counter is filed by the 5th respondent stating that due to construction of Sripadasagar Project across river Godavari at Yellampally village of Karimnagar

District, the Gudipet and other villages of Mancherial and Luxettipet Mandal of Adilabad District are being affected due to sub-mergence. Gudipet, Namnoor, Chandanapur, Rapally, Karnamamidi, Padthanpally, Kondapally, Suraram and Gullakota villages are completely coming under submergence, for which villages Rehabilitation and Resettlement is to be implemented as per guidelines from the Government. For Rehabilitation to the Project affected families of Gudipet, Namnoor and Chandanapur villages, the patta land in Survey Nos.297, 298 to an extent of Ac.5-36 guntas and assigned land at about to an extent of 170.00 acres out of Sy.Nos 296, 299 and 300 situated at Gudipet village of Mancherial Mandal have been identified, acquired and resumed in terms of G.O.Ms.No.1307, Revenue (V) Department, dated 23-12-1993 for implementing Rehabilitation and Resettlement. At the time of distribution of plots to the above villagers, the villagers of Chandanapur village Sripadasagar (Yellampally) Project affected village have submitted a representation for allotment of house site in land bearing Sy.No.350 to an extent of

Ac.33-00 guntas situated at Gudipet village of Mancherial Mandal instead of Sy.No.300. The Executive Engineer, Sripada Yellampally Project, Division No.4, Mancherial vide his letter dated 23-06-2011 has filed requisition for acquisition of alternative land in Sy.No.350 measuring to an extent of 27.00 acres situated in the limits of Gudipet village of Mancherial Mandal for accommodating 288 project displaced families of Chandanapur Village. It is stated that the lands situated in Sy.No.300 of Chandanapur village is in low lying area and faraway from the National High way and hence project displaced families filed requisition for providing alternative sites in Sy.No.350, which is located adjacent to National Highway. The Collector vide proceedings Rc.No.G1/1112/2011, dated 16-03-2011 accorded permission for acquisition of land in Sy.No.350 measuring to an extent of Ac.27.00 guntas situated at Gudipet village for the purpose of accommodating 288 project displaced families of Chandanapur village, instead of Sy.No.300 of Gudipet village. Accordingly, the Tahsildar, Mancherial has resumed the assigned land to an extent of Ac.27-00 guntas vide Proceedings No.B/1445/2011, dated 16-01-2012 for public purpose and the possession was taken on 17-11-2012. It is stated that the petitioners were assigned lands as stated in the writ petition subject to the condition laid down in G.O.Ms.No.1406, dated 25-07-1958. The condition at item No.12 in the said G.O. and in G.O.Ms.No.1562, dated 13-09-1969 provides for resumption of land for any public purpose. By virtue of special power contained in the condition, land was resumed and handed over to Executive Engineer under the cover of panchanama. It is inclusive of land

belonging to the petitioners. No government land is available and therefore, lands admeasuring 27.00 acres in Sy.No.350 at Gudipet village inclusive of land of petitioners is acquired by passing resumption orders for providing house sites to the displaced persons of Chandanapur village. After receiving notices by the petitioners for enquiry to finalize the payment of exgratia in terms of G.O.Ms.No.1307, dated 23-12-1993, the petitioners have approached this Court and obtained stay. It is also stated that resumption orders dated 16-01-2012 have become final and they were not challenged and the possession of the land has already been taken over.

Additional counter affidavit is also filed stating that by virtue of condition 12 in G.O.Ms.No.1406 and in G.O.Ms.No.1562, dated 13-09-1969, the land can be resumed in the event of land being required for a project or any other public purpose. As such, by invoking such power the land has been resumed. The 2nd petitioner is working in the Singareni Collieries Limited and as such, his livelihood will not be affected, if his land is used for rehabilitation purposes.

That land in Sy.No.294 is far away from Sy.No.350, which is low lying and is not suitable for construction of houses. The villagers of Chandanapur village have identified the land in Sy.No.350 instead of land initially earmarked for them in Sy.No.300 of Gudipeta village and Namnoor villages. Though the land in Sy.No.300 is initially earmarked for Rehabilitation, lay out was approved in Sy.Nos.350 and 352 of Gudipeta village. The land initially earmarked in Sy.No.300 for Chandanapur will be utilized for accommodating the additional project displaced families of Gudipeta and Namnoor villages. The land will be utilized for further needs and for provision of community needs like Dhobi Ghat, Smashan Ghat, Cattle grazing land etc., and sought for dismissal of the writ petition.

Learned counsel for the petitioners submits that though alternative land is available in Sy.No.300 and 294 belongs to Horticulture Department, the Government has acquired land in Sy.No.350 alone. He submits that the agricultural lands cannot be acquired for the construction of houses. He also submits that though the petitioners made representations without considering the same, resumption orders dated 22-08-2011 have been passed. He also submits that lands of small farmers cannot be acquired, when the alternative sites are available. The lands in Sy.No.300 and 294 can be acquired for providing house sites to the displaced persons of Yellampally project. Without considering the applications in proper perspective, the resumption orders have been passed.

On the other hand, learned Government Pleader for Land Acquisition submits that the petitioners are assignees of lands, by invoking condition No.12 and also by invoking the powers under G.O.Ms.No.1562, the lands have been resumed and orders were passed on 22-08-2011. The petitioners have not questioned the same. She further submits that when once the assignment is subject to condition of resumption of land for public purpose or for any project, the petitioners cannot question the same.

In this case, the short question that arises for consideration whether the assignments were made subject to the condition laid down in G.O.Ms.No.1406, dated 25-07-1958 and in G.O.Ms.No.1562, dated 13-09-1969 and as mentioned in the patta certificates given to the assignees is that in the event of land being required for project or for any other public purpose, the land can be resumed and the compensation shall be granted to the assignees. By invoking said powers, the proceedings No.B/1445/2011, dated 22-08-2011 were passed. The petitioners have not questioned the same. The only grievance of the petitioners is that when alternative land is available for acquisition, the respondents should not have acquired the land belonging to the petitioners. In the counter, it is clearly explained that there is no suitable land available for accommodating displaced persons, as such it cannot be said that there is another suitable land. When once the assignments are granted in favour of the petitioners by imposing condition that the land can be resumed for public purpose or any other purpose and such power is conferred on the authorities, it cannot be said that the land assigned to the petitioners cannot be resumed. Full Bench of this Court in **LAO-cum-Revenue**

Divisional Officer v. Mekala Pandu and others^[1], it was held as follows:

“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 purposes 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, 189. 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 above judgment was confirmed by Apex Court by its order dated 04-08-2014 in Civil Appeal Nos.7904-7912 of 2012. In the said case, the Government

invoked the power of resumption and passed orders. As such, it cannot be said that action of respondents is illegal. The Full Bench held that the assignees of land are entitled for compensation on par with owners of the land and all other consequential benefits under the provisions of Land Acquisition Act. It is also held that 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. It was also held that the State can resume the lands. Learned Government Pleader also stated that the petitioners were paid exgratia equivalent to the market value and 30% of solatium and the authorities are willing to pay additional market value from the date of resumption. Hence, I do not see any merit in the writ petition.

Accordingly, the writ petition is dismissed. However, the petitioners can make application for additional market value and all other benefits under the Land Acquisition Act as owners, if they are not already paid and on such application the respondents are directed to consider the same in accordance with law laid down in **Mekala Pandu's** case referred supra and pass orders. As a sequel to the disposal of this writ petition, miscellaneous petitions, if any, pending shall stand closed.

23-03-2016
Nvl

A.RAJASHEKER REDDY,J

^[1] 2004(2) ALT 546