

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.33312 OF 2012

ORDER :

Petitioners' father was assigned an extent of Acres 4-86 cents in survey No.547-1 of B.K.Palli Village, Madanapalle Mandal, Chittoor District by the State Government vide proceedings AM No.238/4/1366 in the year 1956 under normal Darkhast rules. After the petitioners' father died, petitioners started cultivating the said land and Pattadar Passbook and Title Deeds were issued to the petitioners under Section 4 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971.

2. Petitioners allege that without issuing any notice to them, the assignment granted to them was cancelled by the 3rd respondent on 14.02.2003; that even the order canceling the assignment was not served on them; and they were deprived of an opportunity to file appeal before the competent appellate authority against the said order. They therefore sought payment of ex-gratia vide G.O.Ms.No.1307, dt.23.12.1993. Petitioners contend that they have been dispossessed by the respondents by dubious means by use of force and their land had been allotted to beneficiaries of Indiramma III Phase and even the A.P. Housing Corporation constructed houses to the poor and therefore they are entitled to compensation.

3. Counsel for the petitioner contends that since the land was admittedly assigned to the petitioners' father and it was taken from the petitioners without following due process of law, petitioners ought to be paid compensation as if the land has been acquired by the 1st respondent under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He placed reliance on the judgment of the Larger Bench of this Court in *Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others*

(LB)^[1].

4. Counter affidavit has been filed by the 3rd respondent admitting that the petitioners' father was assigned the above land, but contending that the petitioner had not cultivated the same. It is stated that a note in reference No.A/111/2012, dt.01.10.2002 was issued to the petitioner asking for his explanation as to why the lands were not brought into cultivation, and since the petitioner had not responded to the said notice, it is alleged that the assignment made to the petitioners' father was cancelled in proceedings No.A/111/2012 dt.14.02.2003 and the land was resumed to the Government. It is contended that the petitioners were not residing in the town and therefore substituted service was made and the fact of cancellation was made known to all the concerned. It is denied that there is any impropriety or illegality involved in the cancellation proceedings. It was contended that the petitioners should have challenged the cancellation of the patta before the Sub-Collector, Madanapalle, if they were aggrieved by the orders of the then Mandal Revenue Officer. It was denied that the petitioners were entitled to compensation. It is pointed out that ex-gratia under G.O.Ms.No.1307, dt.11.11.1993 would be paid only to such assignees, whose lands were resumed under Section 17 of the Darkast Rules i.e., if the land was resumed for public purpose. It is stated that the suit land was resumed to the Government and already used for providing pucca houses to the weaker sections under Indiramma III Phase and that a notification under Section 4(1)(c) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 was issued vide G.O.Ms.No.286 dt.05.03.2008 and the same was published in the Gazette vide No.123 dt.05.03.2008.

5. The Government Pleader for Revenue contended that the petitioners are not entitled to any compensation since they did not cultivate the land and the land was validly resumed.

6. From the above facts, it is clear that there was assignment of the subject land to the petitioners' father in 1956. The counter affidavit filed by the 3rd respondent does not state that the notice dt.01.10.2002 allegedly issued by the 3rd respondent was served on the petitioners. It merely states that a notice was issued to the petitioners. It also does not state whether the order dt.14.02.2003 canceling the assignment of the above land was served on the petitioners. It is stated that the petitioners were not residing in the town and so substituted service was made. How this substituted service was made is not stated in the counter. However, the material papers placed on record show that the order dt.14.02.2003 was scribbled on a white paper and it records that since the petitioners whereabouts were not known, notices were not served.

7. The petitioners categorically asserted that they had been issued pattadar Passbook and Title Deed in recognition of their possession and enjoyment over the property by the 3rd respondent; that they have not violated any conditions of the grant, and that even though the 3rd respondent is aware of the petitioners' residential address, which is disclosed in ROR records, no notice was served on the petitioners at that address.

8. The material documents placed on record indicate that the alleged substitute service was done by affixing the notice on a placard and planting it allegedly on the land of the petitioners. This Court in several cases has deprecated this method of serving notices. (***Dodda Narasimhaiah v. District Collector***^[2] and ***I.Ramalingam v. Govt. of Tamilnadu***^[3])

9. Since, the respondents have committed gross violation of the provisions of the Andhra Pradesh Assigned Lands (Prohibition of

Transfers) Act, 1977, which provides for cancellation of the assignment in favour of a person, only after service of notice in the manner provided in Rule 3 of the Rules framed under the said Act and since the said rule does not sanction service of notice by affixture of notice on a placard fixed on the land, it has to be held that the petitioners' assignment was cancelled in violation of the provisions of the Act. Such cancellation is non-est in the eye of law.

10. However, the petitioners at this point of time do not seek restoration of the land, since admittedly the land had been utilized for weaker section housing and they are seeking only compensation.

11. A Larger Bench of this Court in **Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad**'s case(1 supra) held that assignees of government lands are entitled to payment of compensation equivalent to 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. Admittedly the land of the petitioners has been utilized for public purpose by the respondents.

12. Therefore, in view of the judgment of the Larger Bench of this Court in **Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad**'s case(1 supra), it has to be held that the petitioners are entitled to compensation equivalent to full market value of the land, which they have been deprived of by the respondents. The said compensation is liable to be paid to the petitioners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This exercise shall be completed by the respondents within a period of four (04) months from the date of receipt of a copy of this order. Respondents shall also pay costs of Rs.10,000/- to the petitioners.

13. Accordingly, the Writ Petition is allowed with costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

22nd June, 2016.

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[\[1\]](#) 2004(2) ALT 546

[\[2\]](#) MANU/AP/0405/2007

[\[3\]](#) 1999(1) LACC 596)