

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WP No. 18879 OF 2008

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ORDER :
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This writ petition is filed seeking to issue a writ of mandamus directing the respondents to fix the compensation as per market value along with all statutory benefits, by applying the provisions of the Land Acquisition Act, on par with other full owners in respect of 117 structure belonging to the petitioners situated at Sy.No.69/2 at Chukkyapelli Village, Nandalur Mandal, Kadapa District, following the *Larger Bench* decision of this Court in ***LAO-cum-REVENUE DIVISIONAL OFFICER, CHEVELLA DIVISION, HYDERABAD vs. MEKALA PANDU^[1]***'s case by setting aside the order dated 25-01-2008 in proceedings Ref.B/494/05 of the 3rd respondent-Special Collector, Somasila Project, Kadapa, in fixing the compensation payable to the petitioners towards ex-gratia by adopting old SSR Rates 2002-03.

2. On behalf of all the petitioners, 23rd petitioner Chukka Krishnaiah filed affidavit stating that the petitioners are landless poor persons living below the poverty line. That they have been residing in Sy.No.69/3 of Chukkayapalli Village, Nandaloor Mandal, Kadapa District, for the last more than three decades by constructing houses

therein in the Government land. That the petitioners' house properties along with other properties numbering 490 were identified as submergible in the foreshore area of Somasila Project and, therefore, the Executive Engineer, Somasila Project submitted requisition for acquisition of the said 490 houses to respondents 2 and 3 to initiate land acquisition proceedings. An award was passed in Award No.1/97-98 awarding compensation only in respect of 373 houses and leaving 117 houses belonging to the petitioners. That on representation, the 2nd respondent-District Collector and the Chairman of the District Empowered Committee had appointed a Special Team vide proceedings No.G2/3606/03, dated 31-07-2003 to take steps for payment of compensation to the petitioners. That based on the report of the Special Team, the Mandal Revenue Officer, Nandalur, by following the procedure, issued D-Form pattas to the petitioners on 17-07-2004 for the lands in their occupation. That thereafter, the 2nd respondent submitted proposals vide proceedings dated 13-08-2007 to the Government for payment of compensation to the petitioners.

3. That on account of administrative delay, the compensation was not paid to the petitioners within a time frame and in the meanwhile,

new SSR rates were fixed during the year 2005-06. That the petitioners made representations to the respondents to adopt new SSR Rates of 2005-06. But, the Executive Engineer, Somasila Project submitted estimates adopting old SSR Rates 2002-03 purportedly on the directions of the 3rd respondent-Special Collector, Somasila Project, Kadapa. 3rd respondent by the impugned order dated 25-01-2008 fixed compensation payable to the petitioners towards ex-gratia by adopting the old SSR Rates 2002-03. Action of the respondents in adopting 2002-03 SSR Rates is inequitable and unjust, petitioners after receiving the compensation under protest sought for reference under Section 18 of the Land Acquisition Act to the Civil Court for determination of just market value but, the same was rejected by the 4th respondent-Special Deputy Collector, Land Acquisition, Somasila Project, Kadapa District, by order dated 12-05-2008. Petitioners have been denied opportunity to substantiate their case in the Award enquiry and, therefore, the order of the 4th respondent in rejecting the reference sought to civil Court under Section 18 of the Land Acquisition Act is illegal and arbitrary the same is liable to be set aside. Hence, the writ petition.

4. The 4th respondent-Special Deputy Collector, Land Acquisition,

Somasila Project, Kadapa District, filed counter affidavit stating that the Executive Engineer, Somasila Project, has requisitioned for acquisition of subject house properties which are liable for submersion under Somasila Project, which is classified as tope Poramboke land. The subject house properties vested with the Grampanchayat were encroached by the petitioners and, therefore, such of the properties in possession of the petitioners were not included in the draft notification along with other submersible properties. When the petitioners made representations to consider payment of compensation to the structures existing in Government Poramboke land as per GO Ms.No.192, dated 02-12-1998, the 4th respondent addressed the Government to issue certain guidelines to which it was clarified that the amount that is to be paid to the petitioners towards the acquisition of subject house properties is to be treated as ex-gratia in terms of GO Ms.No.1308, dated 23-12-1993, and that the petitioners are not entitled to seek reference under Sections 18 and 28-A of the Land Acquisition Act and also not entitled for interest or additional market value under the provisions of Land Acquisition Act. That it was further clarified that the occupants/encroachers who are otherwise eligible landless poor persons shall be regularized by issuing D-Form pattas, so as to make

them eligible for payment of exgratia as per GO Ms.No.192, dated 2-12-1998. That compensation/ex-gratia on par with other 373 structures could not be paid to the petitioners as there is no policy for payment of any compensation for the unauthorized structures existing in tope-Poramboke lands. But the petitioners represented for adopting GO Ms.No.192, dated 02-12-1998 to their case as per the consent value given by the District Empowered Committee, Kadapa, in terms of GO Rt.No.802, dated 30-10-2003 and after petitioners executed consent agreements to the Land Acquisition Officer to that effect, an amount of Rs.4,38,18,387/- was paid as exgratia and the petitioners accepted the same.

5. Though the estimates were prepared on 15-09-2003, the Superintending Engineer, S.S.P Nellore, has submitted revised estimates subject to approval of District Empowered Committee with SSR Rates 2004-05 on 07-02-2005 and when again petitioners requested to adopt SSR Rates 2005-06, the Deputy Executive Engineer, SSP refused to adopt SSR Rates of 2005-06 unless specific directions are received from District Empowered Committee. Subject village is not among the list of 23 villages for which District Empowered Committee was appointed under Chairmanship of District Collector, Kadapa. GO Ms.No.802, dated 30-10-2003 makes it clear

that SSR Rates to be adopted shall be of the year 2002-03 and that the request of the petitioners for considering current SSR Rates does not arise on the ground that encroachers cannot be paid more compensation than the regular cases covered by Award No.1/97-98.

On 03-10-2007, the Government authorized the District Empowered Committee to take a decision in the matter of the lands of the petitioners to which D-Form pattas were issued. Accordingly, the District Empowered Committee offered package with enhancement of 25% over and above the Market Value of the structures with SSR Rates 2002-03. The Land Acquisition Officer informed the same to the villagers including the petitioners by holding Gramasabha and after executing consent agreement in Form-III and IV, ex-gratia amount of Rs.4,38,18,387 was disbursed to the petitioners. It is stated that D-Form pattas were issued to encroachers to extend the benefit of GO Ms.No.192, dated 02-12-1998 and to enable the petitioners to get exgratia and hence, the petitioners are not assignees of the land but unauthorized encroachers and the ratio laid down by the Larger Bench of this Court in ***Mekala Pandu's case*** (1 supra) is not applicable to the facts of this case. That the petitioners are not entitled to SSR Rates of 2005-06 as the Award for other structures in

the village passed vide Award No.1/97-98, dated 02-12-1997 adopted the SSR Rates of 1996-97, the petitioners are estopped from claiming higher compensation over and above the compensation paid to absolute owners covered under Award No.1/97-98, after receiving ex-gratia on consent basis and, therefore, sought for dismissal of the writ petition.

6. Reply affidavit is filed by petitioners denying the averments in the counter affidavit filed by the respondents and reiterated the averments in the writ affidavit stating that there is no justification for fixing ex-gratia based on 2002-2003 SSR Rates. It is stated that the petitioners specifically claimed SSR Rates 2004-05 but not 2002-03 before the District Empowered Committee, as house structures on the lands were resumed only after grant of D-Form pattas in the year 2004, as such, they are entitled for ex-gratia based on SSR Rates 2004-2005 or 2005-2006 but not 2002-2003 as fixed by respondents. It is stated that when once D-form pattas have been issued to the petitioners, they become assignees, they cannot be termed as encroachers and they are entitled to claim compensation on par with absolute owners as held by Larger Bench of this Court in **Mekala Pandu's case** (1 supra).

7. Heard learned counsel for the petitioners and the learned Asst.

Government Pleader for Land Acquisition. Perused the material placed on record.

8. Learned counsel for the petitioners strenuously contended that the petitioners are assignees of the lands in question and when once they have been granted D-Form pattas, they are entitled for compensation as per the judgment of the Larger Bench of this Court in ***Mekala Pandus's case*** (1 supra). It is also contended that even otherwise, they are entitled for compensation as per the SSR Rates of 2004-05, but the respondents have adopted the SSR Rates of 2003-04 rates, which is erroneous.

9. On the other hand, learned Asst. Government Pleader submits that the petitioners are encroachers of the poramboke land belonging to the Government and they raised the structures in question at their own risk. It is further stated that the Government has taken a decision to grant ex-gratia and only to enable them to get ex-gratia, D-Form pattas were granted in terms of GO Ms.No.1308, dated 23-12-1993, and as such, they are not entitled for compensation on par with the land owners of other house properties which were acquired as the said land is submersible under the Somasila Project and the decision in ***Mekala Pandu's case*** (1 supra) is not applicable to the facts of the case. In support of his contentions, learned counsel has

relied on the decision of this Court which was rendered in similar fact situation, wherein this Court negated the contention of the petitioners therein to adopt the SSR Rates of 2003-04 as against the SSR Rates of 1997-98, which was also confirmed in WA No.799 of 2007 by Division Bench of this Court.

10. It is seen that admittedly the petitioners are encroachers of the Government land which the petitioners themselves have stated that they have occupied the subject lands belonging Government being landless poor persons and grant of assignment of house site pattas was postponed by the authorities though they have been residing there for the last more than two decades. The Government vide GO Ms.No.192, dated 02-12-1998 provided for payment of compensation in respect of the structures in the lands acquired for irrigation projects. It was also provided for payment of compensation in respect of structures constructed on poramboke lands belonging to landless poor persons which are existing on ground for more than ten years should be treated as eligible for payment of ex-gratia on lines of GO Ms.No.1308, dated 23-12-1993 and the encroachers are otherwise eligible landless poor persons shall be regularized by issuing D-Form pattas so as to make payment of ex-gratia to them.

A close scrutiny of the GO Ms.No.192, dated 02-12-1998, two things

emerge, firstly, to be eligible for issuance of D-Form pattas, the occupant/encroacher shall be a landless poor person and; secondly, the structure which he has raised on the poramboke land belonging to the Government, should be existing on ground for more than 10 years. Admittedly, the Special Team appointed by the 2nd respondent-District Collector found that the petitioners have raised the structures and they are more than two decades old. Thus, the petitioners have met the twin tests to claim exgratia.

11. Now coming to the question of claiming SSR Rates of 2005-06 by the petitioners is concerned, the estimates with regard to the house structures of the petitioners were prepared in the year 2003. GO Ms.No.802, dated 30-12-2003 stipulates that SSR Rates to be adopted shall be of the year 2002-03. The Merely because of administrative delay in payment of exgratia, the petitioners cannot seek to adopt SSR Rates of 2004-05. It is stated that in a high level review meeting of the cases of acquisition of lands for irrigation purpose, the Government authorized the District Empowered Committee to review the cases of the petitioners and accordingly the District Empowered Committee offered package with enhancement of 25% over and above the market value of the structures with SSR

Rates 2002-03, which is accepted by the petitioners by giving consent agreements and received ex-gratia, now they cannot contend that adopting SSR Rates 2002-03 is bad. Once the petitioners have accepted the package offered with 25% enhancement over and above the market value, they cannot be permitted to approbate and reprobate. This Court in similar fact situation rejected the relief sought for by the petitioners therein to adopt the SSR Rates of 2003-04 as against the SSR Rates of 1997-98, which was also confirmed in WA No.799 of 2007 by Division Bench of this Court. It was also observed that since the structures raised on the land belonged to Government and the petitioners therein raised structures unauthorizedly, there was no occasion for the respondents to have notified the same under Section 4 (1) of the Land Acquisition Act.

12. Similar is the situation available in this case also. The petitioners being landless poor persons occupied the Government lands and raised structures therein. Hence, no exception can be taken to the action of the respondents in not notifying the said house structures under Section 4 (1) of the Land Acquisition Act. When once the land is not notified under the provisions of the Land Acquisition Act, the question of making further reference to a civil Court under Section 18 or 28-A of the Land Acquisition Act does not

arise.

13. The ratio laid down by the Larger Bench of this Court in ***Mekala Pandu's case*** is not applicable to the facts of this case as assignment of lands was granted to the petitioners in order to enable them to get ex-gratia. It is not the case that the petitioners were assigned house site pattas in respect of the subject lands prior to the acquisition proceedings to claim compensation on par with the other absolute owners of the other acquired lands or to claim the benefit under the directives issued in ***Makala Pandu's case*** (1 supra). As observed by the Larger Bench of this Court in ***Mekala Pandu's case*** (1 supra), the assignees are constitutional claimants, but in that case the issue that was considered was '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 as unconstitutional and it infringes the fundamental rights guaranteed by Articles 14 and 31-A of the Constitution. But in the instant case, the issue relates to payment of ex-gratia to the unauthorized structures raised by the petitioners in the lands belonging to the Government and there was no assignment prior to the acquisition proposals, but it is only to make the petitioners eligible for payment of

ex-gratia as per GO Ms.No.192, dated 2-12-1998, D-Form pattas were issued to them and a package was offered with 25% enhancement over and above the market value, which the petitioners have accepted the received the ex-gratia amount and now they now cannot claim for application of the ratio laid in the ***Makala Pandu's case*** (1 supra) which in fact is not applicable to the facts of the instant case.

14. In the circumstances, I do not find any merit in the writ petition and it is accordingly dismissed. Miscellaneous petitions if any pending also stand dismissed.

REDDY, J

A. RAJASHEKER

Dated: 07th June, 2016
NRG

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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Pre-delivered judgment in W.P. No.18879 OF 2008
Submitted for kind perusal of His Lordship.
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Dated 07-06-2016

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