

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

[Special Original Jurisdiction]

TUESDAY THE TWENTIETH DAY OF SEPTEMBER, 2016

PRESENT

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION NO. 18198 OF 2015

AND

WRIT PETITION NO. 26380 OF 2015

Between:

Nallu Venkatesu & Ors.

... Petitioners

V/s.

The State of Andhra Pradesh
Rep. by its Principal Secretary
Irrigation & CAD Department
Secretariat, Hyderabad & Ors.

... Respondents

WRIT PETITION NO. 26380 OF 2015

Between:

Chukka Penchalaiah & Ors.

... Petitioners

V/s.

The State of Andhra Pradesh
Rep. by its Principal Secretary
Irrigation & CAD Department
Secretariat, Hyderabad & Ors.

... Respondents

Counsel for the Petitioners:

Sri D.Kodandarami Reddy

Counsel for the Respondents:

GP for Land Acquisition [AP]
GP for Irrigation [AP]

The court made the following:

[common order follows]

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION NO. 18198 OF 2015

AND

WRIT PETITION NO. 26380 OF 2015

COMMON ORDER :

As common question of facts and law are involved in both the writ petitions and the issue raised in the petitions are one and the same, therefore, the writ petitions are heard together and are being disposed of by this common judgment and order.

2. WP.No. 18198 of 2015, the petitioners seeking mandamus to declare the action of the respondents in not awarding compensation to the petitioners as per their entitlement and in passing the proceedings No.B/29/2014 dated 21/01/2015 by the third respondent, Special Deputy Collector [Land Acquisition] as illegal, void, arbitrary, being contrary to the provisions of Act No.30 of 2013 and against Article 21 and 300-A of the Constitution of India and also not in consonance with the principles laid down in *LAO-cum-Revenue Divisional Officer V/s. Mekala Pandu and Others* as confirmed by the Hon'ble Supreme Court of India in Civil Appeal

Nos. 7904-7912 of 2012 dated 04/8/2014. Consequently, set aside the same and direct the respondents to pay compensation as per market value to the lands/houses of the petitioners as per the provisions of Act No.30 of 2013.

3. WP.No. 26380 of 2015 is filed by the petitioners seeking mandamus to declare the proceedings of the Special Deputy Collector [Land Acquisition] SSP Unit-IV, Rajampet, third respondent herein, vide proceedings reference No. B/29/2014 dated 25/6/2014 and consequent GO.Ms.No.68, dated 27/11/2014 Irrigation & CAD [LA] Department, issued by the Government of Andhra Pradesh, the first respondent herein, in rejecting the payment of compensation to the petitioners as illegal, void, arbitrary, being contrary to the provisions of Act No.30/2013 and also not in consonance with the principles laid down in Mekala Pandu (supra) as confirmed by the Hon'ble Supreme Court of India in Civil Appeal noted above. Consequently, set aside the same and direct the respondents to pay

compensation as per market value to the lands/houses of the petitioners as per the provisions of Act No.30 of 2013.

4. It is stated in the affidavit filed in support of the petitions that the petitioners are landless poor persons living below the poverty line and residing in survey No.69/2 of Chukkayapalle village [ST colony], Sapulavaripalle Gram Panchayat, Nandaluru Mandal, Kadapa district by constructing houses for over three decades. All of them were allotted 'D' form house site pattas on 17/4/2004 by Mandal Revenue Officer, Nandaluru, the fourth respondent herein.

5. Chukkayapalle [ST colony] is one among several villages, which were identified as submergible under fore-shore submersion of Somasila Project. The Land Acquisition authorities acquired patta lands and paid compensation as per the Land Acquisition Act. In respect of the assigned land the Government has paid exgratia to assignees in the affected area to several persons. However, no amount has been paid to the petitioners, who were residing in ST colony of Chukkayapalle village, Sapulavaripalle Gram Panchayat,

hamlet of Thimmarajupalle. Inspite of several requests, the Land Acquisition authorities and the District Empowered Committee did not respond.

6. Learned counsel appearing on behalf of the petitioners submits that pursuant to the order dated 28/11/2014 passed by this Court in CC.687 of 2014, the Government of Andhra Pradesh, has issued GO.Ms.No.68, dated 27/11/2014 instructing the Special Collector [Land Acquisition], GNSS Kadapa to take necessary action for payment of ex-gratia for the structures/house sites situated to the twenty petitioners only covered in WP.No. 21919 of 2012 out of 36 petitioners. Pursuant to issuance of G.O. 68 mentioned above, the Special Deputy Collector [Land Acquisition] [FAC], SSP Unit-IV, Rajampet submitted preliminary proposals on 03/1/2015 to the Special Collector, GNSS, Kadapa, second respondent whereunder he has requested that the PV statement for an amount of Rs. 2,57,59,800/- including Income-tax amount of Rs.25,75,979/- be approved and released for payment of ex-gratia to the twenty

structures as ordered by this Court. The PV statement contains valuation amount payable to the petitioners plus 30% solatium plus consent value 25% minus the Income-tax deducted. Therefore, as per the proceedings dated 03/1/2015 the Government is prepared to pay the solatium @ 30% and consent value of 25% over the valuation amount for the structures. Thus, the petitioners are entitled to the amount mentioned therein as per the tabular format annexed to the proceedings.

7. Learned counsel for the petitioners further submitted that the Special Deputy Collector [Land Acquisition] [FAC] SSP Unit-IV, Rajampet, third respondent herein in its reference No. B/29/2014, dated 21/1/2015 has not included 30% solatium and 25% consent value while making payment to the petitioners. In its proceedings the Special Deputy Collector has mentioned as follows:

“As per GO.Ms.No. 243, dated 27/3/2010, the Government has ordered that as regards the land covered in category-B i.e., un-objectionable land under enjoyment of eligible encroachers for a long period without ‘D’ form pattas and whose possession

is confirmed by entries in 10 [1] adangal 'accounts, they may be paid ex gratia which is equivalent to market value without solatium”.

8. Learned counsel submits that the proceedings of the second respondent, not paying solatium at 30% and consent rate @ 25% has been challenged in the said writ petition on various grounds.

9. Learned counsel further submits that ex-gratia has been paid to the petitioners, however, no compensation as per Land Acquisition Act, 1894 or under Act No.30 of 2013 has been paid, though the petitioners are entitled for full compensation. To strengthen his arguments, learned counsel for the petitioners has relied upon a case of Mekala Pandu (supra), wherein the Larger Bench [7 Judges] of this Court on 09/3/2004 in WA.No. 170 of 2002 and batch held at Para Nos.102, 108, 109 and 110 are as under:

102. Therefore, notwithstanding the fact that the recipients had accepted the assignment subject to 'no compensation clause' and that they will not object to the resumption of the assigned lands for a "public purpose, they are entitled to assert that any such action on the part of the authorities will be in violation of their guaranteed fundamental rights. How far the argument regarding the

existence and scope of the right claimed by the recipients is well-founded is another matter. But, the argument has to be examined despite the concession.

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 restriction on the right of the assignee to claim full compensation as owner of the land.

110. In such view of ours, the view taken by this Court in Bondapalli Sanyasi (supra) that whenever the land is taken possession of by the State invoking the terms of the grant, the right of an assignee to any compensation may have to be determined in accordance with the conditions in patta itself is unsustainable. With due respect, we are unable to agree with the view taken in this regard. We are also unable to agree with the view taken that the assignee shall be entitled to compensation in terms of the [Land Acquisition Act](#) not as owner but as an interested person for the interest he held in the property.

10. In the counter-affidavit filed by respondent No.3 it is stated that while the enquiry was under process, the petitioners filed WP.No.21919 of 2012 with a request to issue directions to the respondents to pay compensation/exgratia to their structures. In the meanwhile, the-then Special Collector, G.N.S.S. Kadapa has visited the village and inspected each and every house along with Engineering Department and pursuant thereto filed a detailed report on 04/2/2014 to the Government seeking further instructions in this case.

11. It is further stated that the Government has issued G.O.Rt.No. 221, I & CAD Department, dated 14/5/2014 whereby has sanctioned permission to initiate Land Acquisition process pertaining

to Chukkayapalli ST Colony of Nandalur Mandal. Accordingly, the-then Special Collector, G.N.S.S. Kadapa has initiated Land Acquisition process and personally inspected the village and conducted enquiry in the village. The enquiry revealed that all the “D” form house site pattas are bogus, forged and manipulated. In this regard, the-then Special Collector, G.N.S.S. Kadapa personally attended at Mandal Revenue Officer’s Office, Nandalur and verified the connected records and found that no records are available in the MRO Office pertaining to the house site pattas issued to the petitioners. In this regard, the Tahsildar, Nandalur has issued a certificate stating that these house site pattas are bogus and manipulated records. Further the Revenue Divisional Officer, Rajampet has also furnished a report stating that she has verified all the records and found that these house site pattas are bogus and manipulated records. As per the directions of the District Collector, Kadapa, a police case was also registered against the house site patta holders/petitioners and the case is still pending in the Station House Office, Nandalur.

12. Further out of 36 houses, 16 house holders have already received compensation amount for their own houses at Venkatarajugaripet village in the year 1986, however, again they have constructed houses at Chukkayapalli village ST colony with a malafide intention to get compensation/exgratia in wrongful way. It is specifically stated that pursuant to the direction passed in CC.No. 687 of 2014 in WP.No.21919 of 2012 ex-gratia was also paid to the 20 persons excluding 16 persons to whom compensation has already paid vide Proceedings Ref.No. B/29/2014, dated 25/6/2014.

13. I note vide order dated 26/4/2016 passed in WPMP.No. 24277 of 2015, this Court recorded as under:

Having regard to the statement of Sri C.Narasimhulu, Tahsildar, Obulavaripalli, who had worked as Tahsildar, Nandalur from 13/06/2014 to 16/06/2015, before the Judicial Magistrate of First Class, Nandalur in Crime No. 73 of 2015 of Nandalur Police Station, where the petitioners are arrayed as accused to the effect that the house-site pattas given to the petitioners are genuine and that he had given the police complaint against the petitioners on account of mistake of fact, the respondents shall not dispossess the petitioners from the lands in their occupation until further orders.

14. In view of the statement made by the Tahsildar, Nandalur, before this Court, it is an admitted fact that the petitioners are possessing the lands mentioned above and they are the assignees of the lands. Therefore, in view of the judgment rendered by 7 Judges bench of this Court noted above, the petitioners are also entitled for compensation under the Land Acquisition Act.

15. Since the petitioners in WP No.18198 of 2015 have received ex-gratia, the ex-gratia amount shall be adjusted in passing the award and the same shall be deducted in the award.

WRIT PETITION NO. 26380 OF 2015

The present writ petition and WP.No. 18198 of 2015 which has been disposed as mentioned above, the only difference is that the petitioners in the present writ petition have not received ex-gratia/compensation amount. Originally the petitioners in this writ petition are assignees of the land in survey No.69/2 of Chukkayapalle village [ST colony] Sapulavaripalle Gram Panchayat, Nandaluru Mandal, Kadapa district. They have been residing in the

said survey number by constructing houses for over three decades and all of them were allotted “D” form house site pattas on 17/4/2004 by the fourth respondent herein, Mandal Revenue Officer, Nandaluru, Kadapa district and the possession of the petitioners is not disputed by the respondents. Chukkayapalle [ST colony] is one among several villages, which were identified as submergible under foreshore submersion of Somasila Project. The Land Acquisition Authorities acquired patta lands and paid compensation as per the Land Acquisition Act. In respect of the assigned land the Government has paid ex-gratia to assignees in the effected area to several persons. However, no amount has been paid to the petitioners. In spite of several requests, the Land Acquisition Authorities and the District Empowered Committee did not respond.

2. Accordingly, in view of the order passed by this Court in WP.No.18198 of 2015 supra, the respondents are directed to complete the process by attending all formalities and pay

compensation to the petitioners within six weeks from the date of receipt of a copy of this order.

3. The petitions are disposed of accordingly. No costs.

4. As a sequel, miscellaneous petitions if any, pending in these writ petitions shall stand closed.

JUSTICE SURESH KUMAR KATT.



20/09/2016
I s L

NB: CC tomorrow

B/o: I s L

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT



Date: 20/09/2016
Circulation No.
Court Master: I s L