HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.27046 of 2006

ORDER:

Heard Sri P.Gangarami Reddy, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition appearing for the respondents.

2. This Writ Petition has been filed by the 1st petitioner to declare the action of the respondents in paying exgratia to her in respect of an extent of Acs.5-54 cents in survey No.340/1B2 of Penubarthi Village, Rapur Mandal of Nellore District without acquiring the same under the provisions of the Land Acquisition Act, 1894 (for short 'the Act') and for a direction to the respondents to initiate acquisition proceedings under the said Act and pass award and pay compensation to the 1st petitioner.

3. Pending Writ Petition, the 1st petitioner died and the 2nd petitioner was brought on record as her legal representative.

4. The 1st petitioner claims to be the owner and pattadar of Acs.5-54 cents in survey No.340/1B2 of Penubarthi Village, Rapur Mandal of Nellore District. This land of the petitioner as well as other lands were acquired for Foreshore Submersion of Kandaleru Reservoir under Telugu Ganga Project. No compensation has been paid to her under the provisions of the Act, though a sum of

Rs.2,16,060/- was paid to the 1st petitioner by cheque bearing No.185378 dt.23.10.2006 by the 2nd respondent.

5. According to the 1st petitioner, this land was originally assigned to one Amancherla Kanakamma prior to 1954 without any conditions. One A.Venkata Rao, who is her son, on the death of the original assignee, sold the same to Bandi Ramarkishan Reddy under an unregistered sale deed dt.19.11.1958, and the 1st petitioner claimed that it was given to her at the time of her marriage as Pasupukumkuma. She also filed pattadar passbook and title deeds issued to her by the Mandal Revenue Officer of Penubarthi village. She contended that even if the land is an assigned land, if it is required for public purpose, as per the decision of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others Vs. Mekala Pandu and others**[1], she is entitled to market value compensation under the Land Acquisition Act, 1894 and without following the said procedure, she could not have been dispossessed from the said land.

6. Counsel for the petitioners not only relied on pattadar passbook and title deed issued to the 1st petitioner under the A.P. Rights in Land and Pattadar Passbook Act, 1971, but also on 10(1) Account of 1977 where the name of Amancherla Kanakamma was rounded off and 1st petitioner's name was incorporated in the Settlement Register in respect of the subject land.

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[1] 2004 (2) ALD 451 (LB)

7. Apart from these documents, he also placed reliance on letter dt.20.08.1998 addressed by the Special Deputy Collector (LA) Telugu Ganga Project, Rapur at Nellore to the Special Collector of the said project stating that the subject land claimed by the petitioner is ryotwari patta dry land and that this has to be adopted in draft note proposals for acquisition, since the land was required for Foreshore Submersion of Kandaleru Reservoir under Telugu Ganga Project.

8. Reliance is also placed on letter dt.30.11.1998 of the Special Collector, Telugu Ganga Project addressed to the Special Deputy Collector (LA), Telugu Ganga Project, Rapur at Nellore stating that the RSR extract shows that pattadar column was kept blank, that the land was government land assigned prior to 1954, that as per instructions of the Government in force, land assigned prior to 1954 can be treated as patta land, provided pattas are unconditional, that the power of resumption is not vested with the Government, and sought clarification, whether the lands, assigned prior to 1954 with condition or without condition, can be notified for acquisition under the Act.

9. Apart from the above documents, he also relied upon the proceedings dt.18.10.2004 of the Special Deputy Collector (LA), Telugu Ganga Project, Rapur at Nellore addressed to the Special Collector of the said project recommending grant of exgratia to the 1st petitioner. A subsequent letter dt.15.07.2005 of the Mandal Revenue Officer, Rapur to the Special Collector, Telugu Ganga Project, Nellore

also states that in the RSR of Penubarthi Village no name is printed against column No.11 of Pattadar, that the land is in possession of the 1st petitioner and her name was noted in 10(1) Account by rounding off the name of Amanacherla Kanakamma and though the said land was government land prior to assignment in 1954, it is in her possession and pattadar passbook and title deeds are genuine.

10. Counsel for petitioners also produced copy of the RSR which indicated that in Column 13, which dealt with the name of pattadar, dots are mentioned and in column 12 land of Acs.211.65 cents in survey No.340/1 was assessed to land revenue of Rs.105.13 paisa. He relied on the judgment of this Court in **G.Satyanarayana and others Vs. Government of Andhra Pradesh, rep. by its Secretary, Revenue Department and others**[2] that if pattadar column is kept blank in the RSR or shows dots, this indicates that no information was forthcoming about the details of pattadar or the person in occupation, and the said land cannot be treated as Government land.

11. The Government Pleader for Revenue referred to the counter affidavit filed on 18.12.2007 by 2nd respondent. In the said counter affidavit, the 2nd respondent admitted that the Executive Engineer, Telugu Ganga project, Division-I, Nellore, placed requisition for acquisition of patta land along with Sy. No.340 of Penubarthi village, Rapur Mandal as the lands are submerged in

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[2] 2014 (3) ALT 473

Kandelaru Reservoir, that the Land Acquisition Officer inspected the land, that there was no assignment made to Smt. Amancherla Kanakamma as per information furnished by the Mandal Revenue Officer, Rapur and so they or the 1st petitioner are not owners of the subject land. He also denied that the land was assigned to the said Kanakamma prior to 1954 and was sold by her son to one B.Rama Krishna, father-in-law of 1st petitioner in 1958. He stated that by misrepresentation, 1st petitioner received exgratia and the Mandal Revenue Officer erroneously issued pattadar pass book and title deeds issued to the 1st petitioner.

12. However, as of date, it is not the case of the respondents that the pattadar pass book and title deed issued to the 1st petitioner was cancelled.

13. An additional counter affidavit was filed in August, 2017 by 2nd respondent. A plea was raised in the additional counter doubting the validity of the assignment of Ac.5.54 cents to Kanakamma in 1923 stating that as per the policy of the Government introduced on18-06-1954 in G.O.Ms.No.1142, either Ac.2.50 cts of wet land or Ac.5.00 cts of dry land can be assigned and that the land assignment of Ac.5.54 cts was contrary to the ceiling limit of Ac.5.00 cts of dry land.

14. How this Government Order issued in 1954 can be applied to the assignment made in 1923 is not explained by 2nd respondent.

15. It is also contended that in May 1988, the Mandal Revenue Officer, Rapur submitted a report to the 2nd respondent's office showing that there was an assignment of Acs.4.00 cts to Kanakamma in Sy. No.340/1B1B and stating that in view of this assignment made to her in 1971, there could not have been assignment in 1923 to her. However, he also referred to the proceedings dt.15-07-2005 of the Mandal Revenue Officer, Rapur about the assignment to Kanakamma in 1923 of the subject land and the entry of her name as per the 10-1 Account of the village. It is stated that the petitioner did not file the original assignment made in 1923 and so there cannot be said to be assigned land at all.

16. However, why the 2nd respondent is doubting the 10-1 Account copy produced by the petitioner or the pattadar pass book and title deed issued under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 to the 1st petitioner, is not explained.

17. Learned Government Pleader for Land Acquisition reiterated the contents in both the counter affidavits.

18. From the facts narrated above, it is clear that as on the date when the subject land was taken for the purpose of the Telugu Ganga Project, the 1st petitioner was in possession thereof. She also possessed pattadar pass books and title deeds.

19. The pattadar passbooks and title deeds were issued to the 1st petitioner by the Mandal Revenue Officer, Rapur under the power

vested in him under sub-Section (1) of Section 6-A of the Act. Sub Section (5) of Section 6-A states as under:

> ***"Section 6-A. Pass Book holder to have entries of alienation etc. recorded in Pass Book:-***
>
> *(1) to (4).........*
>
> *(5) the title deed issued under sub-section (1) and duly certified by the Mandal Revenue Officer, or such other authority as may be prescribed, shall be the title deed in respect of an owner-pattadar and it shall have the same evidentiary value with regard to the title for the purpose of creation of equitable mortgage under the provisions of the Transfer of Property Act, 1882 as a document registered in accordance with the provisions of the Registration ct, 1908 has under the law."*

20. In view of the above provision of law, the title deed issued to the 1st petitioner ought to be treated as her document of title in respect of the subject land. Apart from this, the 10-1 Account filed by the petitioner as well as the respondents shows that the name of Kanakamma was rounded and the name of the 1st petitioner was entered in the Settlement Register of Rapur village in 1977. Therefore, the revenue records categorically show that the 1st petitioner was the owner of the property.

21. To contend that the land belongs to the Government, the only document, on which reliance is placed by the respondent, is RSR.

22. The learned counsel for the petitioner has produced copy of the same, which is not disputed by the Government Pleader, which

clearly shows that the land in Sy.No.340/1 was shown therein as having been assessed to the Land Revenue in column No.12 and in column No.13 'dots' are shown as against the name of pattadar.

23. In **G.Satyanarayana and others** (2 supra), learned Single Judge of this Court considered the evidentiary value of "dots" in Pattadar column in the RSR and the question 'whether they would indicate that the land is Government land' and held that if the Pattadar column in the RSR is kept blank or shown 'dots', it is an indication that no information was forthcoming on the details of Pattadar or person in occupation at the time of its preparation and such land cannot be treated as Government land. He also observed that an RSR is not a document of title and is not conclusive proof of ownership.

24. This legal position is not disputed by the learned Government Pleader for Land Acquisition.

25. Therefore, the State cannot take the plea that the subject land is Government land and on that basis deny compensation to the petitioner at market value basis.

26. Having already paid exgratia to the petitioner by a cheque No.185378 dt.23-10-2006 of Rs.2,16,060/-, it is not open to the respondents, now to take the stand that the 1st petitioner is not the owner of the property, particularly, when they failed to show that the subject land is Government land.

27. Even in the letter dt.18-10-2004 passed by the Special Deputy Collector (LA), Telugu Ganga Project, to the Special Collector of the said Project, it was observed that the 1st petitioner was entitled to exgratia.

28. Having regard to all the above material, I am of the opinion that the respondents cannot deny compensation to the 1st petitioner for deprivation of her land.

29. In view of the same, the Writ Petition is allowed and the respondents are directed to initiate proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for payment of compensation to the petitioner on market value basis, determine the amount of compensation payable to the petitioner from the date of issuance of notification under the said Act and pay the said compensation to the petitioner, after deducting Rs.2,16,600/- already paid to him, within six months from the date of receipt of a copy of this order. No costs.

30. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-10-2017
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