

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

W.P.No.20573 of 2007

ORDER:

Heard Smt. Pendyala Sruthi, learned counsel for the petitioners, learned Government Pleader for Land Acquisition appearing for the respondent Nos.1 and 3, Sri V.Ajay Kumar, learned Standing Counsel for 2nd respondent and Sri C.Raghu, learned Standing Counsel for 4th respondent.

2. The 1st petitioner is a senior citizen, aged 81 years. The 1st petitioner's husband purchased an extent of Ac.5.07 cts out of Ac.17.60 cts in Sy. No.392/1 of Rajampet village and Mandal, Kadapa District under registered sale deed being document No.2241/1976 dt.01-09-1976. According to the 1st petitioner, this land contained an agricultural well and was developed and cultivated during her husband's lifetime. She also contends that this land was acquired by her husband's vendor under a registered sale deed being document No.1401/1951.

3. Out of this land, purchased by 1st petitioner's husband, Ac.0.50 cts was sold to the husband of 2nd petitioner under registered sale deed 10-04-1981 (document No.388/1981).

4. The respondents proposed to acquire Ac.2.00 cts of land in Sy. No.389/1 and Ac.5.07 cts in Sy. No.392/1 for the construction of 220/132 KV Sub-Station at Rajampet Mandal.

5. The petitioners state that the possession of the land in Sy. No.392/1 was taken by respondents in 1990.

6. In the counter affidavit filed by 1st respondent, it is stated that 1st petitioner's husband and 2nd petitioner's husband surrendered possession of the land on 03-03-1988 itself.

7. Admittedly, Notification under Section 4 (1) of the Land Acquisition Act, 1954 (for brevity 'the Act') was approved initially on 05-06-1990 in G.O.Rt.No.391 Energy, Forests,, Environment, Science & Technology (Power.II) Department dt.11-05-1990 and Draft Declaration under Section 6 of the Act was approved by the Government in Memo No.5908 Pr.II/2/90-2 dt.09-05-1990 and they were published in A.P. Gazette Nos.35 and 36 dt.05-06-1990 and 06-06-1990, respectively. Enquiry under Section 5-A of the Act was dispensed with invoking sub Section (4) of Section 17 of the Act.

8. Since two years from the date of Notification had elapsed by 04-06-1992, fresh proposals for issuance of Draft Notification and Draft Declaration were submitted to the District Collector, Kadapa on 26-02-1993 for acquisition of the above lands.

9. The District Collector, Kadapa in proceedings dt.22-08-1994 recommended the Draft Notification and Draft Declaration proposals to the Government.

10. The Government in G.O.Rt.No.42 Energy (Power-II) Department dt.22-02-1997, approved a fresh Draft Notification under

Section 4 (1) of the Act and in Government Memo No.1888/PR II-2/96-B dt.03-03-1997, it approved the Draft Declaration under Section 6 of the Act. They were published in A.P. Gazette on 13-03-1997 and 26-03-1997 and also in fact, in newspapers locally.

11. Though an award in Ref.H.5291/89 was passed on 30-10-1998 by the 1st respondent, it was mentioned therein that the extent of Ac.5.07 cts in Sy. No.392/1 was found to be DKT land i.e. assigned land; therefore proposals for withdrawal of acquisition were submitted to the Collector, Kadapa in Ref.H.5291/89 dt.22-09-1998 and that action was being taken separately for payment of development charges for this land as per conditions laid down in G.O.Ms.No.1307. Award was therefore passed only for the Ac.2.00 cts in Sy. No.389/1.

12. Subsequently, it is not in dispute that exercising power under Section 48 of the Act, the Government issued Memo No.8908/Pr-IV/98-1 Energy PR-IV/98-1 dt.06-11-1998 approving withdrawal of the 4 (1) Notification in respect of the land of Ac.5.07 cts in Sy. No.392/1 claimed by the petitioners.

13. Though it is stated in the counter affidavit filed by 1st respondent that the Government's decision approving withdrawal under Section 48 (1) was published in Gazette Issue No.134 dt.20-12-1998, such Gazette copy is not produced before this Court by

the respondents and therefore it has to be presumed that there is no such Gazette Notification.

14. Petitioners contend that they have been deprived of their land admeasuring Ac.5.07 cts in Sy. No.392/1 which was taken possession by respondents, that and no compensation has been paid in respect of the said land by the respondents till date, and that the action of the respondents in denying compensation to them violates Articles 14 and 300-A of the Constitution of India. They therefore filed the present Writ Petition.

15. The respondent Nos.1 and 3 in their counter affidavit, filed initially, admitted the fact that the land of the petitioners' spouses was initially notified and also possession was handed over by the husbands of the petitioners on 03-03-1988 to the A.P. TRANSCO. They however contend that the petitioners did not come to the office and inform about the death of their husbands and did not also claim any compensation for the land. They contend that while sending the approved property value statement in Collector's reference dt.04-06-1998, it was instructed to verify the respondent village accounts before passing award and at that time, the Revenue Divisional Officer, after verification of the RSR village which was available in the office of Assistant Director, Survey of Land Records, Kadapa, found that the extent of Ac.5.07 cts in Sy. No.392/1 is Government land and on that basis, withdrawal proposals for acquisition were submitted. In another paragraph, it is stated that the

land acquired by the petitioners is treated as DKT land for which only the petitioners are entitled for exgratia as per G.O.Ms.No.1307 dt.23-12-1993, and that to claim the same, the petitioners should produce proof of death of their respective husbands and produce Family Members' Certificates. It is stated that since acquisition proposals have since been withdrawn, no award can be passed and that petitioners are only entitled to exgratia as per G.O.Ms.No.1307 dt.23-12-1993.

16. The 2nd respondent-Executive Engineer, AP TRANSCO, Kadapa, filed counter affidavit stating that for providing land for construction of 220 KV/33KV sub station at Rajampet, an extent of Ac.2.00 of land was taken possession by the Mandal Revenue Officer and handed over to the AP TRANSCO for construction of a sub station. No mention is made about the land claimed by the petitioners in this counter affidavit filed by 2nd respondent.

17. An Additional counter affidavit is filed in June 2017 by the 1st respondent stating that the land of Ac.5.07 cts in Sy. No.392/1 at Rajampet village and Mandal, Kadapa District is originally classified as Dotted land (Assessed Waste Dry) as per the entries in the RSR of the village. It is stated that because of this, withdrawal proposals were submitted to the District Collector, Kadapa, on the basis of which, the Government had issued orders dt.06-11-1998 for withdrawal of the Notification under Section 48 of the Land Acquisition Act, 1894. In para-8 of the counter affidavit, it is stated

that no DKT pattas were issued to the petitioners or anybody as per the records available in Tahsildar's office and Revenue Divisional Officer's Office, Rajampet and that the petitioners should prove their right, title and possession over the land for claiming even development charges as per G.O.Ms.No.1307.

18. Having regard to the above pleadings, the question arises for consideration is "whether the petitioners are entitled to claim compensation for the extent of Ac.5.07 cts in Sy. No.392/1 of Rajampet village claimed by them?"

19. Admittedly their claim for compensation was not acceded to in the award Ref.No.10.98-99 dt.30-10-1998 passed by 1st respondent on the ground that it was found to be DKT land and that this view is based on the RSR available in Assistant Director's office.

20. Now a new plea is taken in the additional counter filed in June, 2017 by the 1st respondent that the RSR of the Rajampet village, procured from the office of the Assistant Director, Survey and Land Records, Kadapa, showed that the land in Sy. No.392/1 is classified as '.....' (i.e.) Dots in pattadar column.

21. The question is "Whether on the basis that the land is DKT land or on the basis of the land is shown '.....' (DOTS) in the pattadar column in RSR, can the State withdraw the 4 (1) Notification issued in the year 1997 invoking Section 48 of the Act?"

22. A Larger Bench of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others Vs. Mekala Pandu and others**¹, has held that even if the land is assigned land i.e. DKT land, if the State requires it for public purpose, it has to pay compensation to the assignee on market value basis and cannot simply pay exgratia or development charges as per G.O.Ms.No.1307 Revenue (Assignment-I) Department dt.23-12-1993. Therefore, on the basis that the land is DKT land or assigned land, the State cannot escape from its obligation to pay market value compensation to the petitioners.

23. Even assuming that the land is shown as ‘.....’ (DOTS) in the pattedar column in RSR (i.e.) still it cannot be treated as Government land or assigned land. It has been held in **G.Satyanarayana Vs. Governemnt of Andhra Pradsh and others**² that showing of dots in pattedar column in Revenue Records is only an indication that no information is forthcoming on the details of pattedar or the person in occupation; and that in a given case, even if patta was granted to the person in occupation and his name is not shown in the pattedar column, it cannot be treated as land belonging to the Government. The Court held that the State being the author and custodian of the RSRs, the burden lies on it to explain why the ‘pattedar’ column is not filled up and the reasons therefor are not indicated in the ‘remarks’ column.

¹ 2004 (2) ALD 451 (LB)

² 2014 (4) ALD 358

24. Therefore, merely because in the pattedar column DOTS are shown in the RSR, there is no presumption that the land is Government land.

25. Therefore, even on this ground, the State is not entitled to presume that the land claimed by the petitioners is Government land and that it is entitled to issue notification under Section 48 withdrawing the Notification for acquisition issued in 1997.

26. More importantly when it is admitted by the respondent Nos.1 and 3 that possession of the land was handed over by the husbands of the petitioners on 03-03-1988 to AP TRANSCO, the question of withdrawal from Notification cannot arise, since it is settled law that no power under Section 48 withdrawing acquisition proposals, can be exercised once possession is taken. This legal position is not disputed by the learned Government Pleader for Land Acquisition.

27. In **Tukaram Kana Joshi and others, Through Power-of-Attorney Holder Vs. Maharashtra Industrial Development Corporation and others**³, the Supreme Court has held that the doctrine of laches cannot be applied where a welfare State takes possession of the land of the citizens without any sanction of law. It held that there cannot be an absolute impediment for grant of relief to a party, particularly, when the whole thing shocks the judicial conscience and no third party interests are involved.

³ (2013) 1 S.C.C. 353

28. So the Government Pleader's contention that the Writ Petition, filed in the year 2007 challenging the award passed in 1998, is barred by laches, is rejected.

29. Also the cause of action accrued to the petitioners not only when in the impugned award, no compensation was granted to the petitioners, but also when the very Notification for acquisition of the petitioners' land was withdrawn in the year 2006.

30. It is clear that the State has deprived the petitioners of the land belonging to their respective husbands in gross violation of Articles 14 and 300 of the Constitution of India.

31. It is pertinent to note that after coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since no compensation at all has been paid to the petitioners at all, the Notifications issued in 1997 lapsed under Section 24 (2) of the said Act.

32. For all the aforesaid reasons, I hold that the action of the respondents in depriving the petitioners of compensation for the extent of Ac.5.07 cts in Sy. No.392/1 of Rajampet village and Mandal, Kadapa District, is illegal, arbitrary and violation of Articles 14 and 300-A of the Constitution of India. The respondents are directed to initiate proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of the land of the petitioners and pay them

market value as per the said Act within four months from the date of receipt of a copy of this order.

33. Accordingly, the Writ Petition is allowed. The 4th respondent shall also pay costs of Rs.5,000/- to the petitioners.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-08-2017

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