

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

WRIT PETITION No.14209 of 2011

ORDER:

Heard counsel for petitioners, the Government Pleader for Revenue appearing for respondents 1 & 3, and Sri P.Jagdish Chandra Prasad, Standing Counsel for 4th respondent

2. Admittedly petitioners have been assigned in the year 1970 various extents of lands as indicated below, by issuing D-Form pattas.

Sl.No.	Name of Assignee	Survey No.	Extent	Date of patta
1	Budumuri Appal Swamy	353/4	2-00 acres	Year 1970
2	Kolli Chitti	353/2	2-00 acres	Year 1970
3	Doddi Veeraswamy	350/1	1-00 acres	Year 1970
4	Kolli Chinnaiah	127/6	2-86 acres	Year 1970
5	Kuditi Appaiah	127/17	0-98 acres	Year 1970
6	Smt.Alladi Laxmi Devi	127/1	1-96 acres	Year 1970
7	Alladi Appa Rao	129/2	2-00 acres	Year 1970
8	Pukkarla Masain	332/P	2-27 acres	Year 1970

3. Petitioners contend that they were dispossessed of the lands in the year 2006 by the Tahsildar, Visakhapatnam Rural on the instructions of the District Collector to handover the same to the 4th respondent-Visakhapatnam Urban Development Authority(for short 'VUDA') for development of comprehensive layout at Madhurawada. They contend that this was done forcibly and that they had not violated the conditions of patta;

that when they protested, they were promised that they would be adequately compensated for the same, but till date no compensation was paid.

4. Petitioners contend that assignees such as petitioners, whose lands are taken over by the respondents without following due process of law, are entitled to compensation as per the Larger Bench decision of this Court in ***Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others(LB)***¹.

5. Counsel for petitioners also relied on the letter No.11723/H2/2008 dt.28.05.2009 addressed by the 2nd respondent to the 4th respondent wherein the 2nd respondent had accepted the proposal of the 4th respondent to explore the possibility of allotting alternative extents of land of 750 sq.yards per acre to the petitioners and states that no further action has been initiated thereafter.

6. He also states that petitioners had made application under the Right to Information Act, 2005 for furnishing of information regarding any show cause notices issued to the petitioners for cancellation of D-Form pattas, acknowledgment of receipt of such notices by the petitioners, explanation, if any, submitted by the petitioners, and cancellation orders of the D-Form pattas passed by the competent authority; and that in reply thereto, on 03.08.2016, the office of the Tahsildar, Visakhapatnam Rural

¹ 2004(2) ALD 451

Mandal has informed that only show cause notices were allegedly issued to the petitioners 1 to 3 & 5 to 7, that copies thereof were available and were furnished; and that there is no evidence of service of said show cause notices on the said petitioners or as regards other information as sought by the petitioner. It is therefore contended that the respondents have acted illegally, arbitrarily and violated Articles 14 and 300A of the Constitution of India in denying petitioners compensation on market value basis as per the decision in **Mekala Pandu's** case(1 supra).

7. Counter affidavit is filed on behalf of respondents 1 and 3 by the 3rd respondent/District Collector, Visakhapatnam not only admitting the assignment of land referred to above free of cost to the petitioners in the year 1970, but admitting that their names were mentioned in the revenue records and also in Adangals as Pattadars and Possessors. However, in para 4 of the counter, it is stated that the petitioners were found to be not in possession and therefore the land was resumed and handed over to the 4th respondent in 2006. He also admitted that the State Government issued proceedings dt.28.05.2009 according proposals submitted by the 4th respondent with regard to allotment of 750 sq. yards of land, instead of payment of compensation to the assignees whose land was given to the 4th respondent and it is for the 4th respondent to allot the said land to the petitioners.

8. The 2nd respondent through Joint Director, Municipal Administration and Urban Development Department filed a separate counter stating that the 3rd respondent identified the petitioners' land for handing over to the 4th respondent for development and to mobilise funds and that the 4th respondent had not acquired the land and the 3rd respondent had handed them over to the 4th respondent. It is stated that when the lands were handed over to the 4th respondent, they were free from all the encumbrances and assignments. It is stated that the compensation has to be paid by the Revenue Department for the lands acquired by them and there is no agreement between the 4th respondent and petitioners regarding payment of compensation or for allotment of alternative land.

9. I have noted the contentions of both sides.

10. The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 provides for cancellation of assignment made to landless poor persons if they alienate the assigned land. It contemplates giving of notice if there is violation of conditions of assignment and service of such notice on the assignee concerned. An enquiry also has to be conducted by the Tahsildar concerned and he should pass an order cancelling the assignment on a finding being given that the assignee violated the conditions of assignment. Similar provisions are provided in Board Standing Order 15.

11. The material on record indicates that except preparing

show cause notices to the petitioners for cancelling the lands assigned to them, there is no evidence of service of such notices to the petitioners or passing of any order cancelling the assignment of lands assigned to them on any grounds.

12. Once it is admitted by respondents 1 and 3 that there is assignment of specific extents of lands to the petitioners, that they were in possession and their possession is also reflected in the revenue record, such as Adangal, on what basis the respondents came to the conclusion that petitioners are not in possession of the land, is not disclosed. No material is disclosed by them in this regard. Therefore, this plea on part of respondents is rejected.

13. In ***Vajja Shantamma and others v. State of Andhra Pradesh and others***² this Court has held that if an assignee is not in possession of the land, the State has a right to resume the same by duly cancelling the assignment and if any third parties are found to be in possession on the basis of any transfer from the assignees, the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 can be invoked. In the absence of any such proceedings, the Revenue Department cannot be permitted to plead that the petitioners were not in possession of the assigned land.

14. This legal position is not disputed by the respondents.

15. Though the petitioners have prayed that they be given

² 2012(03) ALD 322

alternative plots of 750 sq. yards per acre, since there is no agreement between the respondents and the petitioners in that regard, such a relief cannot be granted.

16. However, the Larger Bench in **Mekala Pandu's** case(*1 supra*) has held that assignees of government land 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 wherein 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. It held that even in cases wherein 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.

17. This legal position is also not disputed by the respondents.

18. Having deprived the petitioners of land assigned to them without following any procedure in gross violation of principles of natural justice, the respondents have clearly violated Articles 14 and 300-A of the Constitution of India.

19. Therefore, this Writ Petition is allowed; the respondents are directed to pay compensation equivalent to full market value of the lands assigned to the petitioners which has been handed over to the 4th respondent by respondents 1 and 3, and also grant all other benefits as if they are full owners of the land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of four (04) months from the date of receipt of a copy of this order. The 1st respondent shall also pay costs of Rs.5,000/- to each of the petitioners for illegally depriving them of their lands.

20. Consequently, miscellaneous petitions pending if any shall stand closed.

24.08.2017.
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M.S.RAMACHANDRA RAO, J

