

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

W.P.M.P.Nos.10839, 11071 and 10852 of 2017
IN/AND
WRIT PETITION Nos.35981, 39983 and 40002 of 2015

COMMON ORDER :

These Writ Petitions are filed under Article 226 of the Constitution of India, seeking the following relief:

W.P.Nos.35981, 39983 and 40002 of 2017:

“..to issue an order, direction or Writ more particularly in the nature of Writ of Mandamus declaring the action of the 3rd respondent in granting only exgratia for the lands and structures held by petitioners as illegal, void, arbitrary and against the principles laid down in LAO cum Revenue Divisional officer Vs. Mekalapandu and others (AIR 2004(AP) 250) as confirmed by the Hon’ble Supreme Court of India in Civil Appeal Nos.7904-7912 of 2012 dt.04-08-2014 and against the provisions of Act 30/ 2013 and to direct the 5th respondent to increase and submit correct measurements of the structures held by petitioner Nos. 15 to 25 and accordingly value the same to pay compensation to the petitioners in accordance with law, in the interest of justice and to pass such other order or orders as this Hon’ble Court may deems fit just and proper in the circumstances of the case.”

Heard learned counsel for the petitioners and learned Government Pleader for Land Acquisition appearing for respondents 1 to 5 and from oral instructions Sri P.Bhaskar, learned Standing Counsel appearing for respondent No.6-The Chief Project Manager, Rail Vikas Nigam Limited, Mezzanine Floor, Thirumalai Railway Station, Mylapore, Chennai, who is impleaded as respondent No.6 by allowing the petitions in W.P.M.P.Nos.10839, 11071 and 10852 of 2017 from hearing as a necessary party and by holding respondent No.5-The Deputy Executive Engineer, A.P.State Housing Corporation Ltd., Rapu, SPSR Nellore District, is no way a necessary party to the

same by striking out from the array of respondents and perused the prayers in the writ petitions with supporting affidavits, counter-affidavits filed on behalf of the Land Acquisition Officer in question and other material on record.

It is the submission of the learned counsel for the petitioners with reference to the prayers and from the supporting affidavits that most of their lands are patta lands covered by D.K.Pattas in their favour or in favour of their ancestors and they are cultivating with possession and right till forcible dispossession of them and without initiation of proceedings and they are entitled to compensation and the respondent Authorities are bound to acquire by initiating proceedings under the Act 30 of 2013.

It is the submission of the learned Government Pleader for Land Acquisition that the lands in question are the Government lands and some of the writ petitioners are not even patta holders and some are cultivating with permission of the Revenue Divisional Officer under the group cultivation for their sustenance if any and they cannot be treated at par with D.K.Patta holders apart from the lands resumed long back by the Government by cancelling pattas and thereby, there is no requirement of initiation of proceedings under the Land Acquisition Act 30 of 2013 apart from the fact that the lands in question were taken possession long back. In fact,

the law is fairly settled from the Larger Bench expression of this Court in Land Acquisition Officer-cum-Revenue Divisional officer Vs. Mekalapandu and others¹ holding that the assignees of the assigned lands under 1977 Act are to be treated as absolute owners for the purpose of entitlement of compensation of their lands in question acquired and even any prohibition in the patta while assigning from alienation will not operate as clog on their right of ownership of their right to claim just compensation. Same is undisputedly confirmed by the three Judge Bench of the Apex Court in Civil Appeal Nos.7904-7912 of 2012 on 04-08-2014 and the operative portion of which reads that 'having regard to the peculiar facts and circumstances of the case noted in the impugned judgment(s), we are satisfied that these are not fit cases for exercise of our jurisdiction under Article 136 of the Constitution of India. Civil Appeals and Special Leave Petition are accordingly, dismissed. No costs. Certain observations made in the impugned order (s) about the status of claimants as constitutional claimants are kept open to be considered in appropriate cases, if necessary'. Apart from it, the Division Bench of this Court in W.A.No.1604 of 2005 by judgment dated 06.02.2017 by relying on the Larger Bench expression in Mekalapandu (supra) dismissed the writ petition, impugning

¹ (AIR 2004(AP) 250)

the entitlement of compensation as owners by the assignees confirming their entitlement as per the order of the learned Single Judge. Hence, the law is fairly settled in this regard. No doubt, once the award is passed by the Land Acquisition Officer he is *functo officio*. However, in the case on hand, undisputedly, there is no proceeding initiated for acquisition and no award passed under the premise that the Government is owner of land, as the patta holders are only assignees and the Government is having right as per condition in the pattas that the Government is entitled to resume. In view of the expressions, the land to be taken from the assignees is by initiation of proceedings for acquisition which is mandatory from their entitlement to just compensation.

Having regard to the above, all the three writ petitions are disposed of, to consider by giving Notification under Section 11 of the Act 30 of 2013 and consider any requirement of rehabilitation and resettlement with infrastructure facilities, including to consider of those who were earlier cultivating under group cultivation for being persons affected before acquisition if any as on the date the possession was resumed by the Government under the premise the Government is the owner. Needless to say, the acquisition is on behalf of Rail Vikas Nigam Limited, thus leave about, any amount so far deposited the details of which

even stated by the learned Standing Counsel now no way required to detail herein for the purpose of disposal of the writ petitions, but for to pay further amount required to meet the payment of just compensation to be arrived.

Consequently, miscellaneous petitions, if any, pending shall stand closed. No costs.

Dr. B.SIVA SANKARA RAO J,

Date:24.07.2017

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