

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

WRIT PETITION No.39983 of 2015

ORDER:

Petitioners have filed this Writ Petition challenging the action of the Land Acquisition Officer-cum-Revenue Divisional Officer, Nellore, SPSR Nellore District (3rd respondent) in granting only *ex gratia* for the lands and structures belonging to them in Nawabpet village, Rapur Mandal, SPSR Nellore District, which had been resumed by respondent Nos.1 to 4 for the purpose of Rail Vikas Nigam Limited, impleaded as 6th respondent in the Writ Petition.

2. Admittedly, the following lands of the petitioners were resumed by the respondents :

<i>Sl. No. of the Writ Petitioner</i>	<i>Name of the Petitioner</i>	<i>Sy.No.</i>	<i>Extent alienated to Railway Department</i>
1	Nagasala Venkataiah, S/o.Bhupaiah	1049/2	1.24
2	Nagasala Venkateswarlu S/o.Bhupaiah	1049/2	1.24
3	Nagasala Venkata Subbaiah (CJFS) S/o.Subbaiah	1291/4	0.51
4	Nagasala Ramanamma W/o.Venkataiah (CJFS)	1291/4	0.51
5	Mattem Muniswamy, S/o.Guravaiah	940/2	2.35
6	Mattem Markendeyulu, S/o.China Munuswamy	940/2	2.54
7	Mattem Jayamma, W/o.Munuswami	940/2	2.54
8	Smt.Mattem Prameelamma, W/o.Srinivasulu Reddy (As per records, the name is Manuru Prameelamma, W/o.Srinivasulu Reddy	206/A	2.97

9	<i>Bulagakula Muni Swamy Reddy, S/o.Pullu Reddy</i>	1049/2	2.02
10.	<i>Bandi Bujjamma, W/o.Srinivasulu Reddy</i>	1049/2	2.03
11	<i>Revooru Haraiah, S/o.Subbaramaiah</i>	1049/2	1.62
12	<i>Bandi Umadevi, W/o.Gopal Reddy</i>	1049/2	1.15
13.	<i>Bandi Gopal Reddy,S/o.Pullu Reddy</i>	1049/2	1.00

3. Petitioners allege that the lands had been assigned to some of them and some of them were holding the lands of Community Joint Farming Society (CJFS) for cultivation and they had been taken away by the State for formation of new Broad Gauge railway line from Obulavaripalle of Kadapa District to Krishnapatnam port of SPSR Nellore District.

4. They contend that 3rd respondent had granted them only *ex gratia* vide proceedings Rc.B.(LA) 4574/2012 dt.30-05-2015 as per the guidelines contained in G.O.Ms.No.1307 Revenue (Assignment) Department dt.23-12-1993 and that petitioners are entitled to market value on par with full owners of land as per the decision in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others¹**, which was confirmed by the Supreme Court vide order dt.04-08-2014 in Civil Appeal No.7904-7912 of 2012.

5. They also contend that the *ex gratia* granted is very meager and is not equivalent to just compensation, that no notification under

¹ AIR 2004 (AP) 250

Section 4(1) of the Land Acquisition Act, 1894 was published, that no individual notice was given to any of the petitioners, that even the order dt.30-05-2015 was supplied by 3rd respondent under Right to Information Act to Smt.Thummala Leelavathamma, one of the beneficiaries only on 07-11-2015 and they ought to have been paid compensation invoking the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

6. The Tahsildar, Rapur, who is 4th respondent in the Writ Petition, has filed a counter-affidavit taking a stand that petitioners have not established the actual extent of their lands alienated to the Railway Department along with survey numbers wherein they were given Community Joint Farming Society (CJFS) lands; that out of 13 petitioners only 2 petitioners have got CJFS lease pattas and the remaining persons were claiming as assignees; in fact the lands in occupation of the petitioners were "Dotted Lands" i.e. Government lands and were assigned lands; the 3rd respondent had fixed market rate of these lands at Rs.5,50,000/- per acre and paid *ex gratia*/compensation on par with patta lands as per proceedings dt.27-08-2015 of the 3rd respondent; and petitioner No.5 was paid for his land of Ac.2.35 cents in Sy.No.940/2 a sum of Rs.12,92,500/-, petitioner No.6 was paid Rs.13,97,000/- for his extent of Ac.2.54 cents in Sy.No.940/2 and petitioner No.7 was paid Rs.13,97,000/- for

her extent of Ac.2.54 cents; and if they feel that the compensation granted to them is inadequate, they have to approach the appropriate Court under Section 18 of the Land Acquisition Act,1894 for enhancement of compensation, and without doing so, they have filed the present Writ Petition.

It is contended that the above persons were paid market value fixed on par with patta lands and solatium of 30% on market value has been added and paid as per G.O.Ms.No.1307 Revenue (Assignment) Department dt.23-12-1993. It is further contended that Act 30 of 2013 is inapplicable to the petitioners and they are not entitled to claim compensation as per the said statute.

7. It is stated that since lands of most of the petitioners were Government lands, there was no draft notification under Section 4(1) of the Land Acquisition Act, 1894 or draft declaration under Section 6 of the said Act and the lands were resumed for public purpose after issuing notice to all the persons whose lands were resumed and later they were alienated to the Railway Department.

8. It is stated that the lands of the petitioners were already handed over to the Government prior to the Act 30 of 2013 announcement i.e. in December, 2012 .It is denied that the compensation awarded to the petitioners is meager. It is stated that lands of the petitioners were

given by the Revenue Department to the Railway Department on 22-12-2014 under a panchanama.

9. Importantly, no actual date of dispossession of the petitioners was mentioned in the counter-affidavit.

10. From the facts narrated above, it is clear that there is an admission in para-5 of the counter-affidavit that lands belonging to petitioners of various extents were resumed and alienated to the 6th respondent for construction of Broad Gauge railway line from Obulavaripalle of Kadapa District to Krishnapatnam Port and that the petitioners are either assignees or members of the Community Joint Farming Society and were holding leases of Government lands. So they have to be treated also as assignees.

11. The petitioners have filed proceedings Rc.B (LA) 4574/2012 dt.27-02-2015 of the Revenue Divisional Officer, Nellore addressed to the Divisional Forest Officer, Nellore, the District Manager, A.P. State Housing Corporation, Nellore, the Asst. Director of Horticulture-I, Nellore and Executive Engineer, R.W.S, Nellore for inspection of the trees/structures in survey number wise and farmer-wise and furnish details in consultation with the Tahsildar, Rapur and furnish statements of values urgently for payment of *ex gratia*.

12. Thereafter, the 4th respondent vide proceedings Rc.B(LA).497/2012 dt.23-02-2015 noted the trees and structures in

the lands of the petitioners and forwarded the same to the 3rd respondent. The 3rd respondent then issued impugned proceedings Rc.B(L.A)4574/2012 dt.30-05-2015 computing the compensation payable for the assigned lands, CJFS lands and house structures as Rs.79,60,508/- in Gilakapadu village of Rapur Mandal, but cases of none of the petitioners are referred to therein.

13. Be that as it may, the fact that the lands of the petitioners referred to in para 2 were required for the purpose of laying Broad Gauge railway line is not disputed. However, on which date petitioners' lands were actually taken possession of or resumed, is not specifically stated, though it is vaguely stated that it was prior to Act 30 of 2013 in December, 2012.

14. If according to 4th respondent, the orders of resumption were passed after notices were issued to each of the petitioners as stated in para-6 of the counter-affidavit, the respondents ought to have filed orders of resumption of lands of each of the petitioners and the panchanamas under which possession of their lands was taken. Why they are not filed is not explained by the learned Government Pleader for Land Acquisition. The fact that such material available with the respondents is not disclosed by respondents and is suppressed indicates that respondents feel that production of the same is not to their advantage. Therefore their plea that the possession of lands was taken prior to the Act 30 of 2013, in the absence of any evidence

produced in that regard, is not accepted and it is held that possession was taken from the petitioners after 01-01-2014, the date on which Act 30 of 2013 came into operation.

15. Admittedly, lands in question had been handed over to the Railway Department by 4th respondent vide proceedings Rc.B. (L.A) 497/2012 dt.22-12-2014 as per proceedings of the Collector and District Magistrate, SPSR Nellore District in Rc.E2.396/13 dt.17-12-2014 filed along with the counter-affidavit filed by 4th respondent.

16. The present Writ Petition had been filed in December, 2015, but the respondents have only stated in the counter-affidavit filed in support of the Writ Petition that compensation which was paid to petitioner Nos.5, 6 and 7, but not what was paid to the other petitioners. Even this fact is within their knowledge and they ought to have disclosed it.

17. The Larger Bench of this Court in **Mekala Pandu** (1 supra) considered the issue “where the assigned land is taken possession of by the State in accordance with the terms of the grant or patta the right of the assignee to any compensation will have to be determined in accordance with the conditions in patta itself and where the State does not resort to the covenant of the grant and resorts to the Land Acquisition Act the assignee shall be entitled to compensation in

terms of the Land Acquisition Act not as an owner but as an interested person for the interest he held in the property ?”

18. The Bench answered the issue holding that the assignees of Government land are entitled to payment of compensation equivalent to the full market value of 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 of patta and though such resumption is for a public purpose. It further held 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. It further held that the condition incorporated in the patta denying compensation or restricting the right of the assignees to claim full compensation is unconstitutional and infringes the fundamental rights guaranteed by Articles 14 and 31-A of the Constitution and where deprivation of property leads to deprivation of life or liberty or livelihood, Article 21 would spring into action and any such deprivation without just payment of compensation amounts to infringement of the said Article also. It declared that no such 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.

19. This view has been confirmed by the Supreme Court in its order dt.04.08.2014 in Civil Appeal No.7904-7912 of 2012.

20. In view of the above decisions, the petitioners, who are either assignees or lessees of CJFS lands and who have also to be treated as assignees, on resumption of the lands in their occupation by the State for the public purpose of laying Broad Gauge railway line by the 6th respondent, are thus entitled to full market value of the lands and other benefits on par with the full owners of the land even though the land is resumed for a public purpose.

21. The contention of the respondents that Act 30 of 2013 is not applicable to the petitioners, cannot be accepted since they failed to produce evidence to show that petitioners had been dispossessed from the land or that the land was resumed from the petitioners prior to 01-01-2014 and since the possession of the land had been handed over to the Railway Department only on 22-12-2014, an inference has to be drawn that the possession of the land or resumption thereof also took place just prior thereto. Consequently, petitioners would be entitled to compensation as per Act 30 of 2013.

22. Since the respondents have not placed on record any material to show on what basis compensation was calculated to each of the

petitioners (other than petitioner Nos.5, 6 and 7) and have deliberately suppressed the same, an adverse inference is drawn against them and it is held that respondents did so on the basis of criteria *other than* market value.

23. In the proceedings dt.27-08-2015 of the 3rd respondent in Rc.B(L.A) 4574/2012, it is shown as if the land value of the petitioner Nos.5, 6 and 7 is taken at Rs.5,50,000/- per acre, and it is stated therein that the enjoyers of the land had agreed to give their lands at that rate, but no consent letter of any of the petitioners agreeing to the said rate, have been filed.

24. It was incumbent on the part of 3rd respondent to collect details of sale transactions just prior to 22-12-2014 of the nearby lands after obtaining the details of the same from the Sub-Registrar., take into account the potentiality of the land, and applying other principles for determination of compensation, determine the compensation by applying Act 30 of 2013.

25. Sri Poluri Bhaskar, learned Standing Counsel appearing for 6th respondent states that whatever compensation is found payable by 6th respondent, the 6th respondent would make the amount available after such determination by the 3rd respondent, for payment to the petitioners.

26. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid to each of the petitioners by 1st respondent within four (04) weeks from today; the 3rd respondent shall re-determine the compensation for lands of each of the petitioners which were resumed for the benefit of 6th respondent as per Act 30 of 2013 by taking the date of dispossession as 22-12-2014; and then apply the principles of determination of compensation under the said statute and determine the same within three (03) months from the date of receipt of the copy of the order. After such determination is made by 3rd respondent, the same shall be communicated by him to the petitioners as well as 6th respondent, and the 6th respondent shall make available the funds to the 3rd respondent for disbursement to each of the petitioners after deducting the amounts already received by each of the petitioners.

27. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-07-2018

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