

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.20953 of 2015

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue, appearing for the respondents.

2. The petitioner was an assignee of an extent of Ac.1.00 cts of land in Sy.No.382-6 of Ramachandrapuram village, Mallavaripalem East Panchayat, Satyavedu Mandal, Chittoor District and the assignment was made through DKT Patta No.19/4/1411 dt.30-10-2001. This assignment was granted on the ground that she was landless poor person and belongs to the Schedule Caste.

3. The Government of Andhra Pradesh decided to acquire this land for the purpose of establishing an IIIT College in Ramachandrapuram of Mallavaripalem East Panchayat.

PLEA OF PETITIONER

4. Petitioner alleges that the then Mandal Revenue Officer, Satyavedu Mandal (6th respondent) came to the village and collected the assignment patta granted to the petitioner as well others assuring compensation @ Rs.4.00 lakhs per acre to the assignees for deprivation of their land; and that she came to know that 6th respondent colluded with her late estranged husband-5th respondent and paid ex-gratia which she was entitled to get, to 5th respondent. Petitioner contends that this is arbitrary and illegal.

5. Proceedings dt.30-03-2015 prepared by 6th respondent have been filed which clearly indicate that the ex-gratia of Rs.4.00 lakhs for the land assigned to petitioner was paid to her husband, 5th respondent, treating the petitioner as having died.

6. Petitioner contends that the said proceedings dt.30-03-2015 is the result of a fraud played by 6th respondent in collusion with the 5th respondent (who is presently not alive) and that the respondents should be directed to pay her compensation for the land; that when she was alive, the respondents cannot treat her as having died and give ex-gratia payable to her to her estranged husband.

7. She impleaded the then officials of the Revenue department eo-nomine as Respondent Nos.6 to 9 in the Writ Petition.

8. The respondent no.6 worked as Tahsildar, Satyaveedu (in the 4th respondent post) from 12.7.2013 to 22.4.2015. He had recommended payment of ex-gratia to petitioner's husband, the 5th respondent.

9. The respondent no.7 was the person who succeeded the respondent no.6 as Tahsildar, Satyaveedu. He disbursed the ex-gratia to 5th respondent.

10. The respondent no.8 was the Election Deputy Tahsildar in the Office of the Tahsiladr, Satyaveedu and respondent no.9 is the Village Revenue Officer, Mallavaripalem who claimed that they

attended a Gramsabha at Ramachandrapuram Village allegedly conducted on 31.3.2015, which will be dealt with in the later part of this order.

11. She also alleged that bribes had been received by respondent Nos.6,7, 8 and 9 from the deceased 5th respondent and they colluded with him to deprive her of the ex-gratia.

12. Counsel for petitioner further contended that as per the decision in **LAO-cum-Revenue Divisional Officer, Chevella Division and Others Vs. Mekala Pandu and Others**¹, the petitioner is entitled to compensation at market rate, and not mere ex-gratia, and that her husband, who was not living with her, ought not to have been paid the ex-gratia by treating her as a dead person.

THE W.P.M.P.No.26990/2015

13. Petitioner had given a representation to Respondent No.s 1 and 2 complaining of the action of 6th respondent in making payment of ex-gratia payable to her, to the 5th respondent treating her as a dead person.

14. She filed W.P.M.P.No.26990/2015 seeking disposal of the same by them.

15. On 26.4.2016, this Court granted an interim direction to Respondent No.s 1 and 2 to dispose of her representation dt.20.5.2015 within 3 weeks.

¹ 2004 (2) ALT 546

THE ENDORSEMENT DT. 15.9.2016 vide Roc.G2/1944/2014 OF 2ND RESPONDENT

16. On 15.9.2016 vide Roc.G2/1944/2014, the 2nd respondent issued an endorsement rejecting her representation and justifying payment of compensation to 5th respondent.

17. In this endorsement, 2nd respondent takes the stand that there was a report from the Sub Collector that her name was not found in the ration card issued to the family of 5th respondent on 22-11-2006, that only the names of her estranged husband and two daughters were found therein and this proved that petitioner was not residing in the village. He stated that this was confirmed by villagers in Gramasabha on 31-03-2015 and the Gramasabha it recommended payment of ex-gratia to the husband of the petitioner i.e. 5th respondent, as legal heir of the petitioner. He stated that the petitioner's daughters attended the enquiry before him on 07-07-2016, and stated that on suggestions of villagers, it was reported to the enquiry officer that their mother left the village long back and that she died, though they were aware that she was alive; and that they have stated to the officials that their mother had died in order to enable their father to receive their ex-gratia. After referring to certain statements of respondent Nos.6 to 9, 2nd respondent states that there is no provision for payment of ex-gratia twice for a particular land and that since ex-gratia was paid to the immediate legal heir of the

petitioner i.e her estranged husband, and since he died on 15-11-2015, there cannot be any further payment of ex-gratia for the same land.

THE AMENDMENT APPLICATION: W.P.M.P.No.52130 of 2016

18. The petitioner had filed W.P.M.P.No.52130 of 2016 questioning the endorsement dt.15-09-2016 in Roc.G2/1944/2014 issued by the 2nd respondent rejecting her representation dt.20-05-2015.

19. This application was allowed on 27.1.2017.

THE COUNTER AFFIDAVIT OF 4TH RESPONDENT

20. The 4th respondent filed a counter not only on behalf of respondent Nos.2, 3 and 4 but also on behalf of respondent Nos.7 to 9.

21. He did not dispute that the petitioner was assigned Ac.1.00 cts of land in Sy. No.382/6 of Ramachandrapuram village by proceedings dt.30-10-2001 and that this is also reflected in the 10 (1) account of the village.

22. He contended that the land assigned to petitioner was resumed in 2008 for the setting up of an Industrial Park (SEZ) by the APIIC invoking clause 17 of the D Form Patta.

23. He states that the petitioner herself admitted that she was living separately from husband; that the petitioner was living in a different village of Santaveluru with her brother which is 48 kilometers away, that she could not have cultivated the above land,

that she gave a false statement before this Court as if she was living in Appayyapalem village and the land was under her possession and enjoyment for obtaining ex-gratia for the 'resumed' land.

24. It is stated that the petitioner did not approach the respondents, that at the time of enquiry in February 2015 or March 2015, certain villagers and her husband had given a statement that she had left her husband and her two children 12 years back and her whereabouts were not known. It is also stated that petitioner's husband gave a sworn affidavit that the land is under his possession and that since no complaint was received from the petitioner, the then Tahsildar (ie) 6th respondent recommended payment of ex-gratia to 5th respondent, proposals were made for payment of compensation of Rs.4.00 lakhs per acre in his favour on 23-04-2015 and the amounts were credited to his bank account by 7th respondent.

25. It is stated that only thereafter, on 27-05-2015, the petitioner made representation to 2nd respondent seeking compensation. It is stated that the children of the petitioner gave a statement that the statement of 5th respondent was correct, that Sarpanch of Mallavaripalem and other villagers also stated that the residential address of the petitioner was not known, and ex-gratia amount be paid only to the husband of the petitioner.

26. It is also stated that the allegations levelled by the petitioner against respondent Nos.7 to 9 were not true and correct.

THE REPLY AFFIDAVIT OF PETITIONER

27. Petitioner filed a reply affidavit objecting to 4th respondent filing a sworn counter affidavit on behalf of the respondent Nos.6 to 9 also. She pointed out that it was highly improper for the 4th respondent to file a counter affidavit on behalf of private parties who were facing serious allegations and who were impleaded erroneously in the Writ Petition.

28. She deplored the action of 4th respondent for treating her as having died and disbursing ex-gratia to 5th respondent. She contended that once it had come to the notice of the respondents that she, the original assignee was alive, the respondents should have stopped the disbursement of compensation to 5th respondent or they should have paid it to her and taken steps to recover the amount from 5th respondent. After assigning the land to the petitioner and without alleging any violation of patta conditions, respondents cannot deny compensation to her on the ground that she was allegedly living in a different village.

29. She stated that though she was estranged from her husband, she continued to stay at Appayyapalem and occasionally travelled to Satyavedu to spend time with her brother. She stated that 4th/6th respondent in fact recorded her statement at Appayyapalem village only. She contended that on the ground that she was not residing there, she cannot be denied compensation.

30. She stated that the assignment made to her was never cancelled and no material in support of this plea has been placed before the Court. She also stated that if the land was resumed in 2008 as alleged in the counter affidavit of the respondents, no explanation is forthcoming as to why the alleged enquiry for paying ex-gratia was done long afterwards in February and March 2015 at a time when the petitioner was not there in the village. She denied that the land was in the possession of her estranged husband and contended that the sworn affidavit of her estranged husband, in the absence of production of any death certificate or other document confirming her death, could not have been treated as evidence of her death. She stated that no notice had been served on her to attend any enquiry being conducted by 4th/6th respondent and the false statement of her estranged husband and villagers of her death, could not have been relied upon.

31. While the Counsel for the petitioner reiterated the stand of the petitioner, the learned Government Pleader for Revenue appearing for respondents reiterated the submissions in the counter affidavit as well as endorsement of 2nd respondent.

THE UNDISPUTED FACTS

32. There is no dispute that petitioner was assigned an extent of Ac.1.00 in Sy.No.382/6 on 30.10.2001 in Ramachandrapuram Village, Mallavaripalem East Panchayat, Satyavedu Mandal, Chittoor District.

33. She was married to 5th respondent who died on 15.11.2015. But she was estranged from her husband and was living away from him and their two daughters for considerable time.

34. It is admitted by the 4th respondent that this land was requisitioned by the APIIC for setting up an Industrial park (SEZ) in 2006 and alienation proposals were submitted to the State Government by 2nd respondent vide. Roc.E1/10932/2008 dt.24.8.2008.

35. As per proceedings dt.30.3.2015 of the 4th respondent (issued by 6th respondent who held that post at that time) filed by the petitioner, an amount of Rs.4,00,000/- was recommended by to be paid to petitioner's husband, the 5th respondent on the ground that the petitioner is dead (though she was very much alive).The 2nd respondent sanctioned payment of this amount to 5th respondent on 23.4.2015 and this amount was deposited in his Bank account. The disbursement was admittedly done by 7th respondent who succeeded the 6th respondent in the 4th respondent post of M.R.O.

THE CONSIDERATION BY THE COURT

36. The stand of 4th respondent in para 3 of the counter affidavit that the petitioner was not having possession and enjoyment of the assigned land cannot be accepted because no material such as adangals are placed on record by the 4th respondent to support the said

plea. In fact it is not the case of the respondents that at any point of time they had given any notice to the petitioner for not bringing the land into cultivation or proposing to cancel the assignment made to her on the said ground. If this fact were to be true, no ex-gratia for the land assigned to her would have been paid to 5th respondent. Merely because she was not living with her husband and her children, no such conclusion that she was not cultivating the land can be drawn.

37. According to para 4 of the counter affidavit of 4th respondent the possession of the land was taken in 2008. No material in support of the said plea has been placed before this Court. This plea is therefore disbelieved.

38. On the basis of an enquiry alleged to have been done by the 4th respondent after the receipt of notice in the Writ Petition and a statement allegedly made by the petitioner therein, the 4th respondent cannot contend that the petitioner has made a false statement that she was living in Appaiahpalem Village. There is no record of this enquiry by 4th respondent placed on record nor is any statement in writing of the petitioner recorded therein produced before this Court. Therefore this plea of 4th respondent also cannot be believed.

39. In para 4 of the Counter it is stated that the petitioner did not approach any respondent between February, 2015 and March, 2015, but no notice of any such enquiry issued to the petitioner has

been placed on record by the 4th respondent. Petitioner therefore cannot be found fault with.

40. The 4th respondent has offered no explanation why if possession of the land was taken in 2008, no compensation to the petitioner was paid at that time and why the enquiry regarding payment of ex-gratia was done in February, 2015 and March, 2015 at a time when the petitioner was not available in the village. There is no evidence placed on record by the 4th respondent even with regard to the alleged enquiry conducted at that time. The sworn affidavit allegedly given by the 5th respondent has not been produced before the Court. How such affidavit could have been relied upon by the respondents without verifying the revenue record as to possession of the assigned land is not explained by 4th respondent.

41. In the counter affidavit of 4th respondent, nowhere did the 4th respondent say that 5th respondent told him that petitioner died. He also did not say that in the sworn affidavit given by 5th respondent, he mentioned that petitioner died. If so, on what basis the 4th respondent/6th respondent concluded that petitioner died and paid compensation to 5th respondent, is not explained.

42. According to 4th respondent, the Sarpanch of Mallavaripalem and villagers stated that the residential address of petitioner was not known. From the said statements, it cannot be concluded that the petitioner was dead.

43. When no Death Certificate of the petitioner was produced by 5th respondent, the respondent Nos.6 to 9 ought to have asked petitioner's husband to obtain declaration that she was dead from a competent Civil Court or obtain a Succession Certificate and till he produced such evidence, refrained from making payment of ex-gratia to 5th respondent. Stangely they did not do so.

44. Merely because petitioner separated from 5th respondent, on the basis of statement of 5th respondent that she left him, which statement was obviously made out of malice towards her to knock away the ex-gratia, the petitioner cannot be made to suffer.

45. There is no mention in the counter affidavit of 4th respondent about any Gramasabha being conducted or the said Gramasabha recommending payment of ex-gratia to 5th respondent, but in the impugned endorsement dt.15-09-2016 issued by 2nd respondent, a new stand is taken that there was a Gramasabha held on 31-03-2015 and that the said Gramasabha recommended payment of ex-gratia to 5th respondent and on that basis, the 4th /6th respondent recommended payment of ex-gratia to 5th respondent.

46. The story of the Gramasabha is patently false since the proceedings were issued by 4th/6th respondent on 30-03-2015 itself i.e. one day before the alleged Gramasabha stating that the petitioner died and recommending payment of ex-gratia to 5th respondent. Thus before the date of the alleged Gramasabha itself, the 4th/6th respondent

had recommended payment of ex-gratia to 5th respondent. That apart the respondents have not explained under what law or jurisdiction any Gramasabha can recommend payment of ex-gratia to an assignee's husband for taking away the land from the assignee. Any such recommendation of Gramasabha could not have been relied by respondent Nos.4/6 to 9 to pay ex-gratia to 5th respondent.

47. In the impugned endorsement, the petitioner's daughters are sought to be implicated on the basis of a statement allegedly obtained in an enquiry conducted on 07-07-2016 by 2nd respondent and blame is sought to be put on them for lying about the petitioner's death on the suggestion of villagers at the time of enquiry conducted by 4th respondent in February/March 2015 to facilitate the 5th respondent to get the ex-gratia. But the 4th respondent in his sworn counter affidavit has not mentioned that the daughters of the petitioner had informed him about her death. Obviously to obviate any enquiry into the conduct of respondent Nos.6 to 9 and to compel the petitioner to protect her daughters and give up her claim for compensation, such statement appears to have been obtained from the petitioner's daughters probably under threat, inducement or promise.

48. The statements of the respondent Nos.6 and 7 recorded by the 2nd respondent in the impugned endorsement also do not mention that there was any statement made about the death of the petitioner to them. They stated that they were only told that petitioner deserted 5th respondent. Yet the 6th respondent recommended

payment of ex-gratia to 5th respondent stating petitioner died and 7th respondent paid it to 5th respondent. The 8th and 9th respondents allegedly attended the Gramasabha conducted on 31-03-2015 after the 6th respondent recommended payment of ex-gratia to 5th respondent. But it is stated in the impugned endorsement of 2nd respondent that after the Gram Sabha recommended payment of ex-gratia to 5th respondent, 4th respondent/6th respondent sent his recommendation. I had already discussed this point earlier.

49. Merely because respondent Nos.6 to 9 stated that petitioner's name was not found in the ration card of 5th respondent, they could not have concluded that she is dead. One V.Veera Brahmaiah, a former Revenue Divisional Officer, Tirupathi also enquired by the 2nd respondent, went to the extent of stating that at the time of disbursal of compensation, he came to know that petitioner was mentally ill and her whereabouts are not known. This indicates the extent to which the respondents could stoop to cover their misdeeds and deprive the petitioner of compensation due to her.

50. Thus whatever lacuna was there in the action of the respondent Nos.4, 7 to 9 in payment of ex-gratia to 5th respondent, they sought to cover it up in the enquiry allegedly conducted by 2nd respondent and the 2nd respondent blindly accepted their story and caused grave injustice to the petitioner instead of doing justice to her.

51. The fact that 4th respondent filed a counter on behalf of respondent No.s 6-9 also shows the extent of collusion among them.

52. The stand of 2nd respondent that ex-gratia cannot be paid twice for the same land is perverse and absurd. It is the duty of the State to pay compensation at market rate to the assignee of the land for being deprived of the land as per the decision in **Mekala Pandu** (1 supra). It is not the case of the respondents that the petitioner had received compensation earlier and is asking for compensation again. Atleast when the respondents were made aware that the petitioner was alive and they had paid ex-gratia to the wrong person, they should have opened their eyes and taken steps to pay compensation to petitioner. Not only did they not do it, they seek to blame the petitioner and to punish her for their illegal action.

53. The facts in the instant case thus reveal the shocking attitude and inaction of the respondents in paying compensation to petitioner, an assignee, whose land was taken by the State allegedly in 2008, on the pretext that she died, when she was very much alive.

54. In these circumstances, the Court places its strong disapproval for the attitude exhibited by the respondents in the manner in which they treated the claim of the petitioner for payment of compensation for deprivation of the land assigned to her for use by the APIIC. The facts on record also suggest collusion/conspiracy between the estranged husband of the petitioner i.e. 5th respondent and

the respondent Nos.7 to 9 who were involved in payment of compensation to 5th respondent.

55. Accordingly, the Writ Petition is allowed with costs of Rs.20,000/- (Rupees Twenty Thousand only) payable by 1st respondent to petitioner; the order dt.30-03-2015 of 4th respondent as well as the Endorsement in Roc.G2/1944/2014 dt.15-09-2016 of 2nd respondent are declared illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India; they are accordingly set aside; and a direction is given to the respondents to pay to the petitioner within 12 weeks from today market value for the land of Ac.1.00 cts. in Sy. No.382/6 of Ramachandrapuram village, Satyavedu Mandal, Chittoor District assigned to her taking the date of acquisition as 30-03-2015 as per the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in the light of the judgment in **Mekala Pandu** (1 supra). The 1st respondent shall also cause an enquiry into the conduct of respondent Nos.6 to 9 for their collusion with 5th respondent in the matter of disbursement of compensation of the subject land to the petitioner and initiate disciplinary proceedings against them if they are in service or initiate proceedings under the A.P. Revised Pension Rules,1980, if they retired, for their misconduct in dealing with the claim of the petitioner for payment of compensation.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-02-2017
Kvr

