

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

WRIT PETITION Nos.35981 of 2015 and 40002 of 2015

COMMON ORDER:

Petitioners have filed these Writ Petitions 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. Some of the petitioners in both the Writ Petitions are admittedly assignees of Government land/their legal heirs, while the rest of them are holding the lands of Community Joint Farming Society (CJFS) for cultivation in Gilakapadu village of Rapur Mandal, SPSR Nellore District and Duggunta village of Podalakur Mandal, SPSR Nellore District respectively.

3. It is not in dispute that the lands under their occupation as well as structures therein were 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.

PETITIONERS' CONTENTIONS

4. The petitioners contend that 3rd respondent had granted them only *ex gratia* vide proceedings Rc.No.B (LA) 4574/2012 dt.30-05-2015 and Rc.B.(LA) 2558/2011 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 others**¹, 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 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 in Rc.B.(LA) 2558/2011 dt.30-05-2015 was supplied by 3rd respondent under Right to Information Act,2005 to one K.Janardhan, one of the beneficiaries, only on 07-11-2015, and they ought to have been paid compensation and benefits as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

¹ AIR 2004 (AP) 250

COUNTER OF 4TH RESPONDENT IN W.P.No.35981 OF 2015

6. The Tahsildar, Rapur, who is 4th respondent in W.P.No.35981 of 2015, has filed a counter-affidavit taking a stand that assigned lands and CJFS lands in the occupation of the petitioners were resumed to the Government and handed over to the Railway Department for formation of a new Broad Gauge railway line and petitioners were paid *ex gratia* through separate orders dt.30-05-2015.

7. It is contended that the lands in their occupation were classified as Government lands and the petitioners were not entitled to compensation and were only entitled to *ex gratia* as per G.O.Ms.No.1307 dt.23-12-1998.

8. He contends in para-6 in W.P.No.35981 of 2015 that possession of the land was taken from the petitioners on 17-12-2014 but in para-7 states that the land was handed over to the Railway Department in 2012 and so the provisions of Act 30 of 2013 are not attracted. It is also contended that the decision of this Court in **Mekala Pandu** (1 supra) does not apply and procedures that were prevalent at the time of acquisition of the land had been followed.

COUNTER OF 4TH RESPONDENT IN W.P.No.40002 of 2015

9. The Tahsildar, Rapur, who is 4th respondent in W.P.No.40002 of 2015, has also filed a counter-affidavit in that W.P taking a similar stand. It is stated that proposals for acquisition of land for the said B.G. railway line were initiated in 2011 before Act 30 of 2013 came

into force and so petitioners cannot claim any benefit on the basis of the said Act.

10. 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 06-01-2015 respectively under a panchanama.

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

ORDER IN W.Ps. ON 24-7-2017 AND IN W.A.Nos. 1903 and 1904 of 2017

12. Initially, the Writ Petitions were allowed by a learned Single Judge by a common order dt.24-07-2017 and a direction was given to consider giving notification under Section 11 of Act 30 of 2013 and consider any requirement of rehabilitation and resettlement with infrastructure facilities, including to consider for 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 that the Government was the owner. It was further directed that further amounts required shall be made available by the 6th respondent.

13. The State of Andhra Pradesh preferred W.A.No.1903 of 2017 and W.A.No.1904 of 2017 against the said order contending that the learned Single Judge erred in directing issuance of a notification under

Section 11 of Act 30 of 2013. This contention was upheld by the Division Bench in its order dt.08-02-2018, the order passed by the learned Single Judge on 24-07-2017 was set aside, and the matter was remanded back for fresh consideration. The Bench also observed that the entitlement of the petitioners to get benefit under Act 30 of 2013 was not considered by the learned Single Judge and on remand, the said issue is also required to be considered.

14. Thereafter the matter was heard by me on 10-07-2018 and orders were reserved.

THE CONSIDERATION BY THE COURT

15. From the facts narrated above, it is clear that there is an admission in para-5 of the counter-affidavit in WP.No.35981 of 2015 and para 2 of Counter affidavit in WP.No.40002 of 2015 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.

16. The CJFS lands are infact also Government lands managed by the jurisdictional Revenue Divisional Officer by grant of leases of specific extents to landless or poor farmers. So such persons are also in the nature of assignees.

17. The petitioners have filed proceedings Rc.B (LA) 4574/2012 dt.30-05-2015 and proceedings Rc.B.(LA) 2558/2011 dt.30-05-2015 of the 3rd respondent wherein *ex gratia* payable to the petitioners for the land, trees and structures along with 30% solatium for the land value is calculated for both assigned lands and CJFS land as per G.O.Ms.No.1307 dt.23-12-1993.

18. In para-6 of the counter-affidavit filed in W.P. No.35981 of 2015, the possession of the lands of the petitioners is mentioned therein as having been taken on 17-12-2014. But in para-7 it is stated that possession was handed over to the Railway Department in 2012. No panchanama evidencing taking over of possession of lands from the petitioners is filed by the respondents. Therefore it has to be held that possession of the lands was taken from the petitioners in the said Writ Petition only on 17-12-2014 after Act 30 of 2013 came into force on 01-01-2014 and not prior thereto.

19. Coming to the petitioners in W.P.No.40002 of 2015, respondents have filed proceedings of the Tahsildar, Podalakur in Rc.B.(LA) 1288/2012 dt.06-01-2015 recording that possession of the lands of the petitioners were handed over by him to the Deputy Chief Engineer, Construction, Tirupati, South Central Railway on that day. When the panchanamas under which possession was taken from the petitioners are available with respondent Nos.1 to 4, they ought to have filed them to show that petitioners were dispossessed prior to coming into

force of Act 30 of 2013 on 01-01-2014. Failure on their part to do so warrants an adverse inference to be drawn that if they were produced they would not support the case of the respondents that possession was taken prior to 01-01-2014.

20. 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.

21. 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 ?”

22. 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.

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

24. In view of the above decisions, the petitioners, 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 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.

25. I have already held that in W.P.No.35981 of 2015 had been dispossessed on 17-12-2014 and the petitioners in W.P.No.40002 of 2015 had been dispossessed after 01-01-2014. Therefore the contention of the respondents that Act 30 of 2013 is not applicable to the petitioners, cannot be accepted. Consequently, petitioners would be entitled to compensation as per Act 30 of 2013.

26. In the impugned orders dt.30-05-2015 in both cases, it is stated that patta lands in the same village for the same purpose were acquired for which market value was fixed at Rs.3 lakhs per acre and that the same rate is adopted even for the petitioners.

27. It was incumbent on the part of 3rd respondent to collect details of sale transactions of neighboring lands just prior to respective dates of dispossession of the petitioners after obtaining the details of the same from the Sub-Registrar, take into account the potentiality of the land, and applying settled principles for determination of compensation, determine the compensation by applying Act 30 of 2013.

28. Since the respondents have not placed on record any material to show on what basis such market rate was arrived at, it is held that value fixed by respondents for the resumed lands does not represent the market value. Also all benefits under the Act 30 of 2013 have to be paid to them as per **Mekala Pandu** (1 supra).

29. 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.

30. Accordingly, these Writ Petitions are allowed with costs of Rs.2,000/- (Rupees Two 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 17-12-2014 for the petitioners in W.P.No.35981 of 2015 and taking the date of dispossession as 01-01-2014 for the petitioners in W.P.No.40002 of 2015; and then apply the principles of determination of compensation and fix the same and other benefits under the said statute 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 forthwith to the petitioners as well as 6th respondent, and the 6th respondent shall make available within 4 weeks of receipt of such communication from the 3rd respondent, funds for disbursement to each of the petitioners after deducting the amounts already received by each of the petitioners.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-08-2018
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