

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

WRIT PETITION No.42342 of 2015

ORDER:

Petitioners were residents of Obulum, Ravalakollu, Boddacharla, Rekalakunta, Settivaripalli, Gajulavaripalli and Varikuntavaripalli villages, H/o.Obulam village of Gopavaram Mandal, Y.S.R. Kadapa District.

2. The then Tahsildar, Siddavaram (Tq) assigned small extent of agricultural lands to the petitioners/their ancestors in the above villages and issued DKT pattas to them. Details of the lands owned by petitioners as well as DKT patta numbers and date of assignment are mentioned in para-2 of the affidavit filed in support of the Writ Petition.

3. Petitioners contend that the Tahsildar, Gopavaram Mandal, Y.S.R. Kadapa District (4th respondent) prepared a list of DKT holders/assignees/enjoyers of the lands in the above villages on 15-07-2004 and submitted it to the Special Collector (LA) Galetu Nagari Sujala Sravanthi, Shankarapuram, Y.S.R. Kadapa District (2nd respondent) and Special Deputy Collector (LA), Somasila Project Unit-II, Mamillapalli Kadapa Town, Y.S.R. Kadapa District (3rd respondent); thereafter, 3rd respondent issued notice dt.12-08-2004 to all the petitioners stating that the lands which had been assigned to

them or their ancestors are required for Somasila Project, that they are entitled to resume them for such public purpose, and they are invoking the Government Order No.180(B) Department dt.09-02-1985 to resume the land; and if the petitioners or predecessors intend to submit something, within 7 days they should do so.

4. Petitioners claim that they had replied to the said notice informing that they have to be paid compensation by the State for resuming their assigned lands, but the respondents did not take any action for payment of compensation.

5. Petitioners contend that they gave representations to respondent Nos.2 and 3 on 04-05-2006, 20-01-2007, 18-09-2011 and 09-12-2014 seeking payment of compensation as per the judgment in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**¹; that the 4th respondent had informed them that they would be paid compensation in accordance with the said judgment; that it was later informed that the said judgment was challenged in the Supreme Court and on that pretext, payment of compensation was postponed; that the Supreme Court dismissed the appeal of the State in Civil Appeal Nos.7904-7912 of 2012 on 05-08-2014; thereafter they gave another representation on 09-12-2014 to pay compensation, but the respondents have not passed any orders thereon.

¹ AIR 2004 (AP) 250

6. Petitioners contend that the failure of the respondents to pay them compensation as per the above decision on market value basis is violative of Articles 14, 21 and 300-A of the Constitution of India.

7. Counter-affidavit is filed by 3rd respondent on behalf of all respondents. According to respondents, certain agricultural lands with structures in the villages of Boddecherla, Settivaripalli and Gajulapalli which had come under submersion of Somasila Project were acquired under the provisions of the Land Acquisition Act, 1979 and these acquisitions were dealt with by the 3rd respondent, but in respect of the villages of Obulam, Rakalakunta, Varikuntivaripalli and Rajupalem, Special Deputy Collector, Somasila Project Office, Unit-IV, Rajampet and Special Deputy Collector (L.A.), Telugu Ganga Project, Unit-I, Mamillapalli, Kadapa had dealt and they had not been impleaded.

8. This contention is without any merit because firstly the State of Andhra Pradesh represented by its Principal Secretary, Irrigation and CAD Department has been impleaded as the 1st respondent and since the State is liable to pay compensation, non-impleadment of other Special Deputy Collectors is irrelevant, particularly when there was no acquisition under the Land Acquisition Act, 1894 of the assigned lands of the petitioners and their predecessors-in-title.

9. Another plea is raised by respondents that according to Right to Fair Compensation and Transparency in Rehabilitation and

Resettlement Act, 2013 (for short “Act 30 of 2013”), a requisition is needed to initiate land acquisition process for all the petitioners’ DKT lands also from the Engineering officials of the Irrigation Department of the Somasila Project, and that the Special Collector was requested to obtain such requisition by the 3rd respondent vide proceedings dt.06-01-2016, and the 2nd respondent on 18-01-2016 had addressed a letter to the Superintending Engineer, Somasila Project, Nellore to send requisitions.

10. In **Mekala Pandu** (1 supra), this Court 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 ?” 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.

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

12. As per the above decision, the entitlement of the assignees is only to *compensation* equivalent to *market value and other benefits on par with full owners* even in case of assigned lands taken by the State in terms of the grant or pattas and though such resumption is for a public purpose. There is no necessity to issue any fresh requisition for

initiating acquisition proceedings as is contended by respondents. All that the respondents need to is to compute the compensation payable to petitioners as on the date of resumption of lands of the petitioners in 2004 in accordance with the principles laid down in Land Acquisition Act, 1894 and pay compensation and other benefits thereunder to the petitioners, who are admittedly assignees of lands which have been resumed by the respondents for the purpose of Somasila Project in 2004.

13. It is also contended by respondents that after lapse of 30 years of passing awards for patta lands in the above referred villages in 1979, petitioners have approached this Court.

14. It may be that the patta lands had been acquired in 1979 under the Land Acquisition Act, 1894 but petitioners' lands have been resumed only in the year 2004. The judgment in **Mekala Pandu** (1 supra) had given in the year 2000 and has been confirmed by the Supreme Court in 2014. The petitioners had been continuously agitating their claim for compensation as can be seen from the representations given by them.

15. The Supreme Court in **Tukaram Kana Joshi and others Vs. M.I.D.C. and others**² dealt with the case where the land was notified for acquisition on 06-06-1964 for establishment of a project for industrial development in the district of Thane in Maharashtra State,

² 2013(2) ALD 7 (SC)

but compensation was not paid by the Maharashtra Industrial Development Corporation. A Writ Petition was filed in 2009 in the High Court of Bombay, which was dismissed on the ground of laches.

16. The Supreme Court reversed the said decision and observed that while there are some decisions stating that delay or laches extinguish the right to put forth a claim, most of these pertain to service jurisprudence, grant of compensation for a wrong done to a party decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases; yet where functionaries of the State who took over possession of the land belonging to land holders without any sanction of law and without complying with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode, they have to be held to have acted in exercise of absolute power which in common parlance is also called 'abuse of power' or 'use of muscle power'. It observed that the appellants had asked repeatedly for payment of compensation, but the same was not considered treating the land owners as a subject of medieval India, but not as a citizen under the Constitution. It declared that the State, especially, a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond the Constitution, and though delay and laches may be one of the facets to deny exercise of discretion, it is not an absolute impediment. It held that if whole thing shocks the judicial conscience, then the Court

should exercise discretion more so when no third party interest is involved. It held that petition is not hit by doctrine of delay and laches as the same is not a constitutional limitation, since the cause of action is continuous, and further, the situation certainly shocks judicial conscience. It noted that no period of limitation is prescribed for the exercise of jurisdiction by Courts under Article 226 of the Constitution of India and there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling that the Court would be inclined to interfere with in spite of delay. In the event that the claim made by an applicant is legally sustainable, delay should be condoned; where the circumstances justifying the conduct exist and the illegality, which is manifest, cannot be sustained on the sole ground of laches. It held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay.

17. The State cannot deprive the petitioners of compensation which they are entitled to as per law particularly when petitioners are belonging to the marginalized sections of Society who had been assigned the land for their sustenance particularly when they were also

agitating their rights to get compensation from time to time. Therefore the contention on laches is also rejected.

18. The further contention of the respondents that there is no provision in Act 30 of 2013 for payment of compensation to DKT lands is without any merit because the definition of 'land owner' in Section 3(r) includes an assignee of land also. In any event since the lands were resumed before Act 30 of 2013, petitioners would be entitled to compensation under the Land Acquisition Act, 1894.

19. No doubt the respondents state that after receiving permission from the Government to acquire the DKT lands of the petitioners and after receiving requisition from the acquisition authorities, the land acquisition process would be initiated as per Act 30 of 2013, but as already pointed out by me, such a requirement of issuing a notification for acquisition is not necessary in view of the decision **Mekala Pandu** (1 supra).

20. Accordingly, the Writ Petition is allowed and respondents are directed to forthwith take steps, after issuing notice to petitioners, for determination of compensation payable to petitioners as on the date of resumption of their lands as if petitioners were full owners of the lands in accordance with principles laid down in Land Acquisition Act, 1894 in view of the decision in **Mekala Pandu** (1 supra). The determination and payment of compensation to petitioners for

resumption of their assigned lands shall be completed within three (03) months from the date of receipt of copy of this order. No costs.

21. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-10-2018

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