

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1471 of 2017

ORDER:

Heard the learned counsel for the petitioner and the learned Advocate General, appearing for respondents.

2. This Contempt Case is filed by the petitioner alleging willful disobedience of the order dt.09-03-2017 in W.P.No.20140 of 2011.

3. Petitioner was assigned DKT patta dt.08-07-1987 for an extent Ac.2.62 cts in Sy. No.88/2 of Thonduru village, Varadaiahpalem Mandal, Chittoor District. These lands were resumed on 29-09-2008 by the Government of Andhra Pradesh for establishing an Industrial Park as a Special Economic Zone along with other lands. However, the Joint Collector, Chittoor passed orders on 04-07-2009 holding that the petitioner is not entitled to any compensation on the ground that she had assigned her land to four others.

4. This was assailed by the petitioner in W.P.No.20140 of 2011.

5. In the order dt.09-03-2017 in W.P.No.20140 of 2011, this Court held that there is no material produced by the Joint Collector, Chittoor in support of his finding that the petitioner has alienated the land. It set aside the finding that petitioner is not entitled to

compensation and directed respondent Nos.1 to 5 therein to pay compensation to the petitioner as per the judgment in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**¹ at the prevailing market rate on 29-09-2008 within twelve weeks.

6. When this order was not complied with, on 24-07-2017, petitioner filed this Contempt case.

7. The order dt.09-03-2017 in W.P.No.20140 of 2011 was challenged by the respondents in W.A.No.941 of 2017 but it was dismissed on 22-08-2017.

8. After filing of the Contempt Case and after issuing 'notice before admission', on 24-10-2017, learned Government Pleader for Revenue sought two weeks' time to comply with the said order in the Writ Petition. So the matter was adjourned to 10-11-2017.

9. It was informed on 10-11-2017 that District Collector, Chittoor (2nd respondent) issued proceedings on 11-10-2000 fixing exgratia payable for the petitioner's land at Rs.2,50,000/- per acre. The matter was adjourned to 17-11-2017 directing the Government Pleader for Assignment to produce calculation memo on the basis of which compensation was computed and deposited in petitioner's bank account.

¹ 2004(2) ALD 451 (LB)

10. Thereafter, matter was listed on 19-01-2018 and 25-01-2018. But the calculation memo was not filed.

11. So on 25-01-2018 this Court issued notice in Form-I to 2nd respondent. The matter was again adjourned to 23-02-2018 and on that date, the 2nd respondent appeared and sought time and the matter was listed on 12-03-2018.

12. On 09-03-2018, a counter was filed by the 2nd respondent stating that he passed orders on 07-03-2018 fixing Rs.3.00 lakhs per acre as market value on 29-09-2018 for the subject land.

13. In the Contempt Case, the Court found fault with the said calculation of the respondents on the ground that the fact that the 2nd respondent, having noted in his order a sale transaction being document No.1409/2008 dt.28-08-2008 (wherein land was said to have been alienated at Rs.42,37,838/- per acre within one km distance from the petitioner's land), ignored it without any valid reason. So the Contempt Case was allowed on 03-04-2018 and a punishment of fine of Rs.2000/- was imposed on the 2nd respondent

14. This was questioned by the respondent in Contempt Appeal No.15 of 2018.

15. On 20.6.2018, the Division Bench allowed the Contempt Appeal no.15 of 2018, set aside the order passed in the Contempt Case and remitted the matter back with the following observations:

“The order under appeal is set aside, and C.C.No.1471 of 2017 is restored to file. The Learned Single Judge shall examine afresh whether failure, on the part of the appellant, to pay interest and solatium on the market value of Rs.3.00 lakhs per acre, would amount to willful and deliberate violation of the order passed in W.P.No.20140 of 2011 dt.09-03-2017; and, if so, the nature and extent of punishment to be imposed on the appellant herein.”

16. Therefore the said issue is being considered in the CC post remand.

17. After the Writ Petition was decided on 9-3-2017, a sum of Rs.6,55,000/- was paid to the petitioner by way of transfer to her bank account through RTGS on 16-11-2017. According to the respondents, this amount represents compensation at Rs.2,50,000/-per acre for Ac.2.62 cts of land belonging to petitioner in Sy. No.88/2 of Thonduru village of Yerpedu Mandal.

18. Subsequently, after the order dt.07-03-2018 was passed fixing the market value at Rs.3.00 lakhs per acre as on 29-09-2008, the respondents determined the amount payable to the petitioner for the above extent as Rs.10,21,800/- i.e Rs.7,86,000/- (taking Rs.3.00 lakhs per acre market value) plus 30% solatium amount of Rs.90,000/. After deducting Rs.6,55,000/- already paid to petitioner, balance amount of Rs.3,66,800/- was paid to her by cheque bearing No.655348 dt.07-03-2018 drawn on Indian Bank, Chittoor.

19. Petitioner however contends that petitioner is entitled to compensation including interest apart from solatium as per the decision in **Mekala Pandu** (1 supra); whatever compensation which

an owner of the land would get as per the law relating to acquisition, she, as an assignee is entitled to get; and that she is entitled to interest also. The following Memo was filed by petitioner's counsel claiming Rs.14,39,994/- more from the State towards interest.

Total extent Resumed	Ac.2.62 cts (Sy. No.88/2	Total
Market value as on 29-09-2008 fixed by 2 nd respondent	Rs.3,00,000 per acre	
30% solatium	Rs.90,000 per acre	3,90,000 per acre
Rs.3,90,000 x 2.62 (total extent)	Rs.10,21,800/-	
Interest for the first year (29-09-2008 to 28-09-2009) of non payment after resumption at 9%	91,962/-	
Interest from 29-09-2009 to 16-11-2017 at 15%.	12,47,447/-	
(16-11-2017 is considered as 2 nd respondent paid RS.6,55,000/-)		
Total (10,21,800 + 91,962 + 12,47,447)		Rs.23,61,209/-
Balance as on 16-11-2017 (23,61,209 – 6,55,000)		Rs.17,06,209
Interest at 15% from 17-11-2017 to 09-03-2018 on principal amount i.e. Rs.10,21,800/-	Rs.47,256/-	
(09-03-2018 is considered as 2 nd respondent paid Rs.3,66,800/-)		
Total (17,06,209 + 47,256 – 3,66,800)		13,86,665/-
Interest from 10-03-2018 to 15-07-2018 at 15% on principal amount i.e.10,21,800/-	Rs.53,329	
Total balance compensation due by 15-07-2018 to the petitioner as per the market value fixed by the 2 nd respondent is (13,86,665 + 53,329)		Rs.14,39,994/-

20. But learned Advocate General appearing for respondents contended that the petitioner is not entitled to solatium and interest on the market value, since the order dt.09-03-2017 in W.P.No.20140 of 2011, according to him, did not direct payment of the same.

21. This contention is without merit.

22. 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 ?”

23. 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.

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

25. Thus the petitioner, as assignee, whose land is resumed, is entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of land.

26. The decision in **Mekala Pandu** (1 supra) was relied on in the order dt.9.3.2017 in WP.No.20140 of 2011 and it was directed therein as under:

*“14. Also, respondent Nos.1 to 5 cannot contend that they will only pay ex-gratia as per G.O.Ms.No.1307 dt.23-12-1993 to the petitioner since as per the judgment of the Larger Bench of this Court in **Mekala Pandu** (1 supra), if assignee of land is deprived of the land by the State, such assignee is entitled to compensation at market rate.*

15. Therefore, the respondent Nos.1 to 5 are directed to pay compensation to the petitioner for the extent of Ac.2.62 cts in Sy. No.88/2 of Thonduru village at the prevailing market rate on 29-09-2008 instead of ex-gratia within a period of twelve (12) weeks from the date of receipt of a copy of this order.”

27. The 2nd respondent cannot take the plea that the petitioner is not entitled to solatium and interest since as per **Mekala Pandu** (1 supra), she is entitled to payment of compensation *equivalent to the full market value of the land and other benefits on par with full*

owners of land. The 2nd respondent cannot interpret the word 'compensation' in the order passed by this Court in W.P.No.20140 of 2011 to mean only 'market value of the land' which is resumed and exclude 'other benefits on par with full owners of the land'. The 'benefits' will include solatium at 30% of the market value under sub Section (2) of Section 23 as well as interest payable under Section 28 to the land owner, which an assignee is also entitled to get.

28. Therefore, 2nd respondent cannot avoid making these payments to petitioner. In fact, the 2nd respondent did pay solatium at 30% on the compensation amount. Therefore, obviously the 2nd respondent also understood the order of the Court in W.P.No.20140 of 2011 to mean that petitioner would get not just market value of the land resumed but also benefits such as solatium. He cannot now contend that the petitioner is not entitled to interest claimed as per the above Memo of petitioner's counsel. Therefore this contention of 2nd respondent is rejected.

29. The order dt.09-03-2017 in W.P.No.20140 of 2011 directed payment of compensation within 12 weeks to the petitioner. According to the counter of 2nd respondent filed on 20-02-2018, petitioner is entitled to market value of only Rs.1,20,000/- per acre with 30% solatium thereon. This comes to Rs.6,55,000/-. According to him, this was deposited under Section 30 of the Land Acquisition Act, 1894 but when this was done is not stated and no material is filed in support of the said statement. This amount was paid on 16-11-2017

to petitioner by RTGS. This is well beyond the period of 12 weeks fixed in the order dt.09-03-2017 in W.P.No.20140 of 2011 and the said amount also does not correctly represent the market value of the land. The exercise to determine market value was done by 2nd respondent only on 07-03-2018, almost one year after the order was passed in W.P.No.20140 of 2011 after the Contempt Case was filed and long after the Writ Appeal No.941 of 2017 was dismissed on 22-08-2017. After determining the market value at Rs.3.00 lakhs per acre, the difference amount of Rs.3,66,800/- was paid to the petitioner only on 09-03-2018.

30. As pointed out by the petitioner's counsel in the calculation memo filed on her behalf, the 2nd respondent had ignored the 'interest' payable to the petitioner as an assignee which a land owner would get under Section 28 of the Land Acquisition Act, 1894 if his land is acquired. This is the 'other benefit' which an assignee is entitled to get from the Government on the resumption of his land in addition to full market value of the land.

31. I agree with the calculation given by the counsel for the petitioner which is set out above and hold that the petitioner is still entitled to Rs.14,39,994/- from 2nd respondent towards compensation payable to her in respect of her assigned land which was resumed by the Government on 29-09-2008.

32. This Court is competent to give the above direction in view of the decision in **Delhi Development Authority Vs. Skipper**

Construction Company Private Limited², wherein it was held that power conferred on this Court under Article 215 of the Constitution of India to punish contemnors necessarily includes all powers incidental and consequently to such power and the Court is entitled to give appropriate directions for remedying and rectifying things done in violation of its orders.

33. I am also of the opinion that denial of the said amount to the petitioner appears to be on account of ignorance of the 2nd respondent about the law laid down in **Mekala Pandu** (1 supra) and it cannot be termed to be willful and deliberate warranting imposition of punishment.

34. In this view of the matter, the C.C. is allowed and 2nd respondent is directed to pay to the petitioner a sum of Rs.14,39,994/- within four weeks from today. The 2nd respondent shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) to the petitioner for the inordinate delay in complying with the order dt.09-03-2017 in W.P.No.20140 of 2011.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04 -10-2018
kvr

² (1996) 4 S.C.C. 622