

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

WP.No.39234 of 2014

ORDER:

Heard Sri A. Sudarsan Reddy, learned Senior Counsel appearing for Sri D. Kondanda Rami Reddy, and the learned Government Pleader for Irrigation and learned Government Pleader for Land Acquisition, for respondents.

2. It is not in dispute that petitioners were assigned lands under DKT pattas in Sy.No.74/1 to 1485/2A of Obulam Village, Gopavaram Mandal, Y.S.R. Kadapa District, and they were resumed by 1st respondent for the Somasila Irrigation Project.

3. According to the respondents, the subject lands had got submerged in the fore-shore waters of Somasila Project in 1983-84 itself.

4. Petitioners contend that they gave representations along with others to Special Deputy Collector (Land Acquisition), Somasila Project requesting for payment of compensation for their assigned lands, that the said Officer issued proceedings A.252/95 dt.10-05-1995 to the Mandal Revenue Officer, Gopavaram stating that as per G.O.Ms.No.1307 Revenue (Assignment-I) Department dt.23-12-1993, Government ordered for payment of compensation/exgratia equivalent to market value of the land to the

assignees whose lands were resumed for project purpose and these cases be settled and asking for abstract of Dharakasth Register relating to Obulam village and Rekulakunta village; later the then Special Dy. Collector (L.A.), S.S.P., Unit-IV, Rajampet had submitted a report to the Special Collector, Telugu Ganga Project, Nellore, vide office Ref.No.A/252/95, dt.15.06.1995, regarding D.K.T. lands stating that these lands were not mentioned either in Draft Notification (DN) and Draft Declaration (DD) issued under the Land Acquisition Act,1894, award or inspection notes presuming that they belong to the Government and it need not pay any compensation for their resumption to the assignees; that G.O.Ms.No.1307 dt.23-12-1993 was issued by the Government directing to pay compensation + 30% solatium to the assignees whose lands were taken over by the Government; number of petitions were received from Obulam village to pay compensation to the assigned lands which were acquired long back; that in order villages when assigned lands were taken away they were included in the Draft Notification and Draft Declaration and award and he was unable to understand what he should do when their lands are not mentioned in the Draft Notification and Draft Declaration and appropriate orders be issued to him and whether he should send the property valuation statement or not; on 12-07-1995, in proceedings L.Dis.2657/95, the Special Collector (FAC), Telugu Ganga Project, Nellore wrote to the Special Deputy Collector (LA),

Somasila Project, Rajampet asking him to obtain details of DKT lands in Obulam village from the concerned Mandal Revenue Officer basing on the information available in Dharakasth Register and Village accounts and verify whether all the DKT lands in the village are submerged with reference to the details furnished in the requisition and submit proposals for payment of compensation. However, nothing happened and thereafter some petitioners again gave representations on 28-06-2006, 27-07-2007, 05-12-2008, 10-04-2012 and 09-12-2014 seeking payment of market value compensation for their assigned lands which were resumed.

5. Petitioners contend that no compensation based on market value of their lands has been paid to them along with other benefits as per the decision of the Larger Bench of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**¹, which was also confirmed by the Apex Court by order dt.04-08-2014 in Civil Appeal No.7904-7912 of 2012, and the action of respondents in not doing so violates Article 14 and 300-A of the Constitution of India and the above decision of this Court.

6. Counter-affidavit has been filed by respondents stating that Obulam village, Gopavaram Mandal is one of the submerged villages under foreshore waters of Somasila project; that for lands which were

¹ 2004(2) ALD 451 (LB)

acquired, compensation was also awarded and paid; but in respect of DKT lands, it was stated in the proceedings Ref.No.A/252/95 dt.15-06-1995 that they were not mentioned either in the Draft Notification, Draft Declaration or inspection notes or award; and as and when award is passed in respect of any reaches, it should be mentioned in Draft Notification and Draft Declaration and award that DKT lands were also acquired along with patta lands for the said project and the DKT lands might not have been included in the Draft Notification and Draft Declaration since the lands belonged to the Government and Government may not pay any compensation for the same.

7. It is also stated that the then Special Deputy Collector (LA), SSP Unit-IV, Rajampet did not issue any resumption orders regarding DKT lands of Obulam village; however, it is contended that petitioners are not entitled to compensation as per the above decision in **Mekala Pandu** (1 supra) since resumption orders were issued in 1983-84 prior to the said decision. In para no.5 of the counter, it is stated that it is not correct to say that compensation has not been paid to any D.K.T. land holders and it is contended that such persons are entitled to payment of *ex gratia* as per G.O.Ms.No.1307 Rev. (Assignment-I) Dt.23.12.1993. It is stated that the question of payment of compensation to the D.K.T lands did not arise.

8. A further plea is raised that there is an inordinate delay of more than 30 years from the date of resumption of land in seeking compensation there for by filing instant Writ Petitions and therefore they should be dismissed on the ground of delay and laches.

9. As regards the first contention raised by the respondents, 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 ?” 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.

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

11. Though the Government Pleader sought to contend that the decision in **Mekala Pandu** (1 supra) has no application since in the instant case, resumption orders were issued in 1985 prior to the said decision, the said contention is untenable. The said decision in my opinion is declaratory of the law, and the law is always deemed to be as per the said decision, since the High Court while rendering the said decision, cannot and did not give it prospective operation to it, and only the Supreme Court can do so.

12. Coming to the second contention of laches, this issue has been considered by the Supreme Court in **Tukaram Kana Joshi and others Vs. M.I.D.C. and others**². In that case, 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, 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.

13. 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

² 2013(2) ALD 7 (SC)

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.

14. In the instant cases also, though petitioners' lands were resumed on 15-10-1985, they have not been paid any compensation. The petitioners have been continuously agitating for compensation, as is set out in para-4. Thus, the issue of payment of compensation has been alive all through without any corresponding response from respondents thereto.

15. When the decision of **Mekala Pandu** (1 supra) obligates even the assignees of Government land to be paid compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where assigned lands are taken possession of by the State in accordance with the terms of grant or patta for a public purpose as in the present case, the benefits of said decision cannot be denied to petitioners on the ground of only laches since no third party interests have intervened.

16. In my considered opinion, the plea of delay and laches raised by the respondents cannot be any impediment to grant relief when the action of the State in denying compensation totally to petitioners shocks the judicial conscience. Petitioners are illiterate and inarticulate and so they cannot be deprived of compensation to which they are entitled to in a Welfare State, and technical considerations

such as the plea on the laches cannot come in the way of doing substantial justice to them.

17. Accordingly, the Writ Petition is allowed. The respondents are directed to compute compensation payable to petitioners as on the respective dates of their resumption, with all other benefits as per the provisions of the Land Acquisition Act, 1894, within four (04) months from the date of receipt of copy of the order after giving opportunity to petitioners to submit material in support of the market value of their respective lands at the time of such resumption. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-07-2018
Ndr/*

