

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.43836 of 2016

ORDER:

In this Writ Petition, the petitioners, who are assignees of the Government land in Rekhalakunta, Harijanawada and Arundhathiwada, and who have been deprived of the same by the respondents vide proceedings Rc.BN.No.243/99 dt.22-12-2003 on account of foreshore submersion under Somasila Project on river Penna, and who were paid only exgratia by the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, Unit-II, Kadapa, seek payment of market value compensation 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 others¹**.

2. They contend that the exgratia sanctioned vide preliminary valuations statement proceedings in Rc.D2/585/2003 dt.27-12-2003 is inadequate and ignoring their demand to pay market value compensation as per the above Larger Bench judgment, the respondents resumed their lands with structures and have only paid exgratia for the structures. They also contend that the said judgment of the Larger Bench was confirmed by the Supreme Court in Civil Appeal Nos.7904-7912 of 2012 on 04-08-2014; and coming to know of the same, the petitioners made a representation dt.01-09-2016 to the

¹ 2004(2) ALD 451 (LB)

respondents to pay market value compensation; and since the respondents have not responded by paying market value compensation as per the said decision, petitioners have filed this Writ Petition.

3. Counter affidavit has been filed by 4th respondent stating that DKT Pattas were issued to 24 householders of Rekalakunta, Harijanawada of Ac.0.05 cts each on 12-06-1972 in Sy. No.84 of extent Ac.3.63 cts and that classification of the same was changed from “assessed waste” to “village site poramboke” on 11-02-1994.

4. It is further stated that DKT Pattas were issued to 40 householders of Rekalakunta, Arundhathiwada of Ac.0.05 cts each on 22-06-1972 and 14-11-1977 in Sy. Nos.94 and 351.

5. It is contended that DKT pattas were issued only to pay compensation to unauthorized structures on Government land. It is stated that as per policy of Government, compensation is paid by granting formal DKT pattas to encroachers on Government land.

6. It is stated that the above referred villages are among the submerged villages under foreshore submersion of Somasila Project on Penna river, that for the structures of petitioners, exgratia was determined and paid in the year 2004 as per G.O.Ms.No.1307 dt.23-12-1993 and G.O.Rt.No.192 dt.02-12-1998 and they received it without any protest.

7. Reliance is placed on order dt.01-11-2001 in W.P.No.17825 of 2001 and order dt.07-06-2016 in W.P.No.18879 of

2008 wherein learned Single Judges of this Court had opined that if lands belong to Government, there is no question of acquiring the same under the Land Acquisition Act, but for structures erected, exgratia alone is to be paid as per G.O.Ms.No.1307 dt.23-12-1993.

8. It is stated that judgment in **Mekala Pandu** (1 supra) has no retrospective effect as the structures of the petitioners were taken over prior to the date of the judgment therein. It is also stated that petitioners received the exgratia without protest and cannot claim any enhancement on the basis of the above decision 12 years later.

9. I have noted the contentions of both sides.

10. The petitioners had specifically pleaded that they are assignees of Government land in Sy. No.84, 94 and 351 of Rekalakunta village and Rekalakunta Arundhathiwada of Gopavaram Mandal and have erected structures therein which got submerged in the Somasila Project Back Waters.

11. Having admitted in the counter affidavit that there was assignment of land to 64 persons on 12-06-1972, 22-06-1972 and 14-11-1977 in Sy. Nos.84, 94 and 351 of Rekulakunta, Harijanawada, Rekulakunta Arundhathiwada, and without disputing that the petitioners are amongst them, and without also disputing that the said lands are submerged under the Somasila Project *after such assignment*, the respondents cannot contend that the assignment itself

is for enabling the petitioners to get exgratia, and therefore they are not entitled to claim anything more.

12. It is nowhere stated by the respondents that the submersion of the land and structures in the said survey numbers occurred prior to the assignment. On the contrary in para-5, it is stated that the land and the structures therein were *liable for submersion* under Somasila Project Back Waters and so they were transferred to the said project vide proceedings Reference No.B5/1999 dt.22-12-2003. Thus obviously the submersion was long after the assignment and occurred after December 2003.

13. Therefore, the ratio of the judgment dt.07-06-2016 in W.P.No.18879 of 2008 or order dt.01-11-2001 in W.P.No.17825 of 2001 has no application. In those cases, there was a plea raised that petitioners are encroachers of Government land and raised structures therein and only to enable them to get exgratia, pattas were granted to them. Such is not the case here.

14. It is not in dispute that the State Government issued G.O.Ms.no.1397 dt.23-12-1993 containing instructions directing payment of lumpsum exgratia equivalent to the market value to the assignees whose lands are resumed for the projects and other public purposes and equivalent to value of other private orchards and structures, wells etc. subject to the following conditions:

- a) That the amount is to be treated as exgratia.

- b) That the assignees would not be entitled for making references under Section 18 and Section 28-A of Land Acquisition Act to the Courts.
- c) An amount equivalent to 15% for the lands resumed prior to 30-04-1982 and 30% after that date, on the market value payable under Section 23 (1) of Land Acquisition Act may be considered for being included in the total exgratia payable to the assignees as solatium.
- d) That the assignees will not be entitled for interest or additional market value under the Land Acquisition Act.
- e) That the above conditions shall be made applicable to all the assigned lands resumed on or after 09-02-1984 (i.e. the date of issue of G.O.Ms.No.180, Revenue dt.09-02-1984, in supersession of G.O.Ms.No.43, Revenue (S) Department, dt.23-01-1988).

15. In the proceedings Rc.B.No.243/99 dt.22-12-2003 of the 4th respondent, only the value of the structures and not that of the land underneath the structure, was calculated and paid to them.

16. Petitioners however seek compensation under the provisions of the Land Acquisition Act, 1894 for both lands and structures as per the decision in **Mekala Pandu** (1 supra).

17. Why the petitioners had been denied any amount towards the value of the land occupied by the structures erected by them is not

explained in the said orders. The said orders also do not show that any notice was issued to the petitioners before passing them.

18. 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 ?”

19. 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.

20. Thus as per the above decision in **Mekala Pandu** (1 supra), which has admittedly been confirmed by the Supreme Court in its order dt.04-08-2014 in Civil Appeal Nos.7904-7912 of 2012 and batch, petitioners who are assignees of Government lands are entitled to payment of compensation equivalent to full market value of the land and other benefits on par with full owners of the land even where such lands are taken possession of by the State in accordance with the terms of the patta and even though the resumption is for the public purpose. The Court also considered G.O.Ms.No.1307 dt.23-12-1993 and arrived at the said decision.

21. I am therefore of the opinion that the respondents cannot simply pay compensation on some arbitrary basis to the petitioners who lost their assigned land and structures thereon relying on

G.O.Ms.No.1307 dt.23-12-1993 by ignoring the decision in **Mekala Pandu** (1 supra) which is binding on them.

22. I also do not agree with the contention of the learned Government Pleader for Land Acquisition that laches on the part of the petitioners disentitle them to seek compensation as per the decision in **Mekala Pandu** (1 supra).

23. This issue has been considered 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.

24. 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

² 2013(2) ALD 7 (SC)

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.

25. The principle laid down in the said decision squarely applies to the instant case and poor and illiterate persons like the petitioners cannot be allowed to be deprived of the compensation to which they are entitled under law on the basis of such technical pleas particularly since the action of the respondents shocks the conscience of the Court.

26. The other plea of the respondents that the decision in **Mekala Pandu** (1 supra) having been rendered on 09-03-2004 is inapplicable to lands resumed prior thereto cannot be countenanced since the said decision is declaratory of the law and principle laid down therein is to be treated as the law even to prior resumptions of assigned lands. The judgment therein cannot be said to be having only prospective operation.

27. Though the respondents raised the plea that petitioners received the exgratia without protest and cannot now claim more compensation, I am unable to agree with the said contention for the reason that petitioners have not given up their right to claim more compensation explicitly. The amount paid was not under the Land Acquisition Act, 1894 and Sec. 18 of the said Act, which requires the recipient to make protest when he received compensation in order to seek further enhancement, has no application.

28. Therefore, the Writ Petition is allowed; the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, Unit-II, Kadapa (4th respondent) is directed to fix the market value of the lands as well as structures of the petitioners as on the respective dates of resumption of their lands with structures for the Somasila Project on Penna river as per the provisions of the Land Acquisition Act, 1894, after giving notice to the petitioners; after determining the same, within three months from the date of receipt of a copy of this order, he shall communicate the same to 1st respondent and to the petitioners; and the respondents shall within one month after the decision of the 4th respondent, make the amounts available and pay the same to the petitioners by deducting the amounts which they have already received from the respondents. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-08-2018

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