

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

WRIT PETITION No.31003 of 2017

O R D E R:

Petitioner has filed this Writ Petition challenging the action of the respondents in depriving the petitioner of an extent of Ac.2.00 guntas in survey No.370/1 & 2 of Someswarapuram Village, Tamballgondi Mazara, Atluru Mandal, YSR Kadapa District, which has been assigned to the petitioner through patta No.367 in the year 1979.

2. Petitioner contends that after the assignment in 1979, his name was also mutated in the revenue records, pattadar pass book and title deeds were issued to him, and he raised a sweet orange garden with teak trees apart from digging a well.

3. Petitioner contends that the 3rd respondent issued notice dt.19.03.2018 informing that they were going to acquire his land and other lands for the purpose of formation of water canal under Telugu Ganga Project and for maintaining a park for Kalivikodi protection and development, and asked him to appear before the 3rd respondent and submit objections; that he appeared before the 3rd respondent, who promised payment of ex-gratia, but did not do so and handed over the subject land to respondents 5 & 7 leaving the petitioner with only Ac.0-84 cents in survey No.370/2.

4. Petitioner contends that though his assigned lands have been resumed for the above purpose, as per G.O.Ms.No.259 dt.21.06.2016 petitioner is entitled to compensation on par with patta land as per Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (Act 30 of 2013) and the action of respondents in denying the same to the petitioner is arbitrary, illegal and violative of Article 14 of the Constitution of India and the judgment of the Supreme Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others v. Mekala Pandu and others**¹.

5. Petitioner contends that the 5th respondent had informed the Joint Collector, Kadapa that pattas issued in respect of the petitioner's lands are genuine and the Tahsildar, Atloor Mandal had also issued proceedings on 31.05.2016 certifying that the petitioner is the assignee of the subject land which was handed over to Irrigation and Forest Department.

6. Counter affidavit is filed by the 3rd respondent raising a plea that 4th respondent issued proceedings Ref.B/8/2007 dt.12.06.2007 resuming petitioner's land allegedly on violation by the petitioner of provisions of A.P. Assigned Land(Prohibition of Transfers) Act, 1977 and therefore the petitioner is not entitled to any compensation.

¹ 2014(2) ALD 451 (LB)

7. On 19.07.2018 this Court directed the Government Pleader for Land Acquisition to produce the order dt.12.06.2007 allegedly passed by the 4th respondent resuming the land of the petitioner, since the petitioner contended that the said order was never received by the petitioner and he is unaware of it.

8. When the matter is listed today, the Government Pleader for Land Acquisition states that the said order is not available with any of the respondents and is presumed to have been destroyed in floods between 2010 and 2016.

9. Thus, there is no evidence at all of such order having been passed, since any such order, if it was passed, would have been communicated to the petitioner.

10. Therefore, in view of the inability of the respondents to produce the same, an adverse inference is drawn against the respondents that said order was never in existence.

11. Therefore, there is no valid resumption of petitioner's land by the revenue officials i.e., respondents 2 to 4.

12. The Government Pleader for Forest appearing for 7th respondent has filed a counter affidavit stating that the land was handed over to the Forest Department on 01.05.2008 under panchanama for protection of Kalvikodi, an endangered species. He has also relied on the proceedings dt.12.06.2007

resuming petitioner's land and he has also not been able to file a copy of the said order.

13. No counter affidavit has been filed by respondents 5 & 6 though notice has been served on them. Therefore, it is deemed that they have nothing to say in the matter.

14. Since there is no valid resumption of land of the petitioner by the revenue officials and the order dt.12.06.2007 allegedly passed resuming the land of the petitioner, is not produced, the dispossession of petitioner and handing over of the subject land to the Forest Department by the Revenue Department is illegal, arbitrary and violates Articles 14 and 300A of Constitution of India.

15. Therefore, the petitioner is entitled to restoration of the same by the respondents 5 to 7 or for compensation for it as per decision in **Mekala Pandu's** case(1 supra) on market value basis.

16. Therefore, the Writ Petition is allowed and the respondents 5 to 7 are directed to restore the land of the petitioner, which they have utilized both for formation of water canal under Telugu Ganga Project and for maintenance of park for Kalvikodi protection within four (04)weeks from date of receipt of copy of this order; *alternatively*, the 1st respondent shall determine through the 2nd respondent the market value of the subject land as on 12.06.2007, the date of the alleged resumption, strictly in accordance with the provisions of the Land Acquisition Act, 1894 and the decision

of the Larger Bench of this Court in **Mekala Pandu**'s case(1 supra), after notice to the petitioner. This exercise shall be completed within a period of eight (08) weeks from the date of receipt of a copy of this order. No order as to costs.

17. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th July, 2018.

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