

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3254 OF 2005

ORDER:

The first petitioner, who is an assignee, filed this Writ Petition challenging the Memos issued by the first respondent in Memo No.B/158/2004 dated 10.09.2004 and the subsequent Memo No.B/158/04 dated 23.11.2004 as illegal and arbitrary, *void ab initio* besides violative of principles of natural justice and violative of Article 21 and 300-A of Constitution of India, set aside the same and consequently direct the first respondent to pay compensation for the land of the petitioner to an extent of Acs.2.00 guntas in survey No.201/6, Gollapalli Khurdu Village, Shamshabad Mandal, Ranga Reddy (for short 'the subject land').

2. The petitioner was originally assigned the subject land vide proceedings No.A9/7089/1961 dated 11.12.1961. Since then, he has been in continuous possession and enjoyment of the same. In the year 1982, the petitioner has shifted his residence to Uppuguda due to his sickness. Taking advantage of his absence in the village, his name was deleted in the revenue records. Aggrieved by such deletion, he made an application to the second respondent and the second respondent vide letter No.B/1100/98 dated 25.05.2004 held that the transfer of assigned land is *void ab initio* and hit by the provisions of Sections 3 and 4 of The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'Act, 1977') and ordered to vacate the purchasers from the land and resume to the original assignees or their legal heirs. While matter stood thus, the first respondent has taken possession of the subject land along with other lands for the purpose of

construction of International Airport at Shamshabad. But, the petitioner was not paid any compensation. Petitioner submitted representation dated 02.06.2004 to the first respondent. The first respondent issued Memo No.B/158/04 dated 10.09.2004 rejecting his claim stating that the matter has been enquired into and found that the petitioner was not in possession of the land in Survey No.201/6 situated at Chinnagollapalli (V). It is the contention of the petitioner that the second respondent vide letter dated 25.05.2004 stated that the land is in occupation of encroachers, purchasers, occupiers and are hit by provisions of Act 9 of 1977 and ordered to evict the encroachers from the land and to resume the land to the original assignees and therefore it shall not be considered that the second respondent has taken possession of the government land and handed over to the first respondent for formation of International Airport. It is further stated that the assignment of land to the petitioner was not cancelled at any time as per provisions of Act, 1977 and taken possession of the subject land. Hence, the petitioner is entitled for compensation for the subject land in view of the judgment of Full Bench of this Court in ***Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division, vs. Mekala Pandu***¹ wherein it has been held that the assignees are also entitled for compensation as per the market value paid by the government for the acquired lands.

3. The first respondent filed a counter affidavit on his behalf and on behalf of the second respondent stating that the petitioner had sold away the subject land, which was assigned to him, to one Smt.Bharathi Bai through registered document No.316/1999

¹ 2002 (2) ALD 451

dated 19.04.1969. In turn, Smt.Bharathi Bai sold the subject land to Smt.Y.Laxmamma through registered sale deed vide document No.6525/82 dated 13.08.1982. The second respondent in his proceedings No.B/1100/98 dated 25.05.2004 stated that the land in question is a government land and thereby ordered for eviction of the occupiers/purchasers and resume to the original assignees or their legal heirs, if the assignee expired. Said order was rectified by the second respondent vide orders No.B/1100/98 dated 04.06.2004, stating about acquisition of subject land for establishment of International Airport and ordered that the possession of the said land need not be resumed to the assignees or their legal heirs. Thereafter, the lands were also taken to the custody of the government and possession was handed over to the first respondent for formation of International Airport by conducting panchanama duly fixing the boundaries. Accordingly, the petitioner was informed vide Memo No.B/1100/2004 dated 10.09.2004 and Memo No.B/158/2000 dated 29.03.200. The Mandal Revenue Officer, Shamshabad, vide letter No.B/1100/98 held that the assignee, to whom the subject land was assigned, has violated the conditions of assignment. As the petitioner was never in possession of the said land, he petitioner is not entitled for compensation for the assigned land.

4. Though this Court admitted the writ petition on 23.02.2005, no interim orders were passed.

5. Heard both sides and perused the material on record.

6. Sri J.Ashwini Kumar, learned counsel for the petitioners, would contend that the first petitioner was assigned the subject

land in the year 1961. Due to ill-health, he shifted his residence to Uppuguda. During such period, the name of the first petitioner was deleted from revenue records illegally and on his application, the second respondent, vide proceedings dated 22.05.2004, ordered to restore the possession to the assignee by evicting the purchasers. As per the pahani for the year 1986-87 in respect of the petitioners' land, the name of the petitioner was shown as pattedar and the name of one Atul Patel was shown as possessor of the land and he continued to be the pattedar of the land. Without any notice, the second respondent by proceedings dated 04.06.2004 passed an order rectifying the earlier order dated 25.05.2004 stating that the land was already taken to the custody of the government and possession was handed over to the first respondent for establishment of International Airport, possession of the land is not necessary to be restored to the assignee or the legal heirs of the assignee. But, the same is not referred in the impugned memos dated 10.09.2004 and 23.11.2004. By illegal order dated 04.06.2004, the resumption order dated 25.05.2004 resuming the land to the first petitioner could not be rectified and possession cannot be handed over to the first respondent for formation of International Airport. The rectification order dated 04.06.2004 passed by the second respondent is without jurisdiction. As per Section 3 of Act, 1977, the assigned lands shall not be transferred and shall be deemed never to have been transferred and accordingly no right or title over such land shall vest in person acquiring the land by such transfer. He would further contend that the petitioners are entitled for compensation equivalent to the full market value of the land and other benefits

as the assignment was never cancelled. In support of his contention, reliance is placed on ***Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division vs. Mekala Pandu***² wherein this Court held that the assignees of government land were entitled to payment of 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 the assigned lands are taken possession by the State in accordance with the terms of grant of patta, though such resumption is for a public purpose and where the government has initiated proceedings under the Act, the assignees are entitled for compensation also under the provisions of the Act. Learned counsel further contended that the order dated 04.06.2004 resuming the land to government and handing over the possession to the first respondent is only to deny compensation to the petitioners. In this context, reliance is placed on ***N.Radhamma vs. Secretary to Government***³ wherein this Court held that the assignees are entitled to compensation as per market value prevailed as on the date of resumption along with interest at 9% per annum from the date of resumption till the date of payment. He would further contend that when the respondent sought to improve the government stand by way of counter which is not stated in the impugned memos, the same is not permissible. In support of the same, learned counsel relied on ***Bandeep Singh vs. Punjab State Leather Development Corporation***⁴ wherein the Supreme Court held that subsequent explanations or reasons cannot be accepted to sustain decision or order. The authority

² 2004 (2) ALD 451 (LB)

³ 2012 (5) ALD 300

⁴ (2016) 1 SCC 724

cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action.

6. Per contra, the learned Government Pleader would contend that the first petitioner was assigned the subject land in the year 1961. But, during the period 1986-87 he sold away the said land to third parties and thereafter several registered transactions were taken place and the petitioners were not in possession and enjoyment of the land. However, the second respondent on *suo moto* enquiry found that some persons encroached the government land illegally and after serving Form-I notice as required under Act, 1977, issued on 27.11.2003, resumption order dated 25.04.2004 was passed under Section 3 (1) of Act, 1977 directing to evict the purchasers from the land and to resume the land to the original assignees. Thereafter, the second respondent issued a rectification order dated 04.06.2004 rectifying the earlier order dated 25.05.2004 stating that the land was taken to the custody of the Government and possession was handed over to the first respondent for establishment of International Airport at Shamshabad. The said order could not be found fault with even though it is passed at the instance of the first respondent's telephonic message. Hence, the first respondent rightly passed the impugned orders rejecting the claim of the petitioners for payment of compensation. He would further contend that the first respondent had already initiated proceedings under Section 3 (3) of Act, 1977 and before cancellation of assignment, the land was resumed to the government and possession was handed over to the first respondent. Since long time, the petitioners are not in possession of the land and the first

petitioner sold away the land to third parties violating the conditions of the assignment and also in violation of Sections 3 and 4 of Act, 1977. In support of his contentions, he relied on the decision of this Court in W.A.No.170 of 2002 & batch rendered on 28.08.2017 wherein this Court held that assignees whose assignment of land is cancelled and resumed to government and utilised for public purpose are not entitled for compensation.

7. In the facts and circumstances of the case and in considered view of this Court, the first petitioner was assigned the subject land in the year 1961. When his name was deleted in the revenue records, he filed an application before the second respondent. On such application, the second respondent vide order dated 25.05.2004 ordered resumption and restoration of the land, there after the second respondent passed rectification order dated 04.06.2004 illegally, without any notice, the same was not referred in the impugned memos. The first respondent had taken possession of the subject land along with other lands for establishment of International Airport at Shamshabad, the same is contrary to Sections 3 and 4 of Act, 1977 and rules made thereunder. The first petitioner submitted an application for payment of compensation and the same was rejected vide memos dated 10.09.2004 and 03.11.2004 on the ground that he is not in possession of the subject land. Even though the land is sold to third parties without admitting the same under the provisions of the Act, it shall be deemed never to have been transferred the land to third parties and accordingly no right or title of such assigned land vests in any person by acquiring the land by such transfer. The competent authority is assigned with a duty to take possession

of the assigned land after evicting the purchasers in possession and restore the assigned land to the original assignee or his legal heirs, or where it is not reasonably practical to do so, to resume the same to government for assignment to landless poor person in accordance with the rules. This is exactly the purpose and intendment sought to be achieved by Act, 1977. The main object of Act, 1977 is to declare such alienations void and restore the assigned lands to the assignees. If the land is resumed without payment of compensation equivalent to the market value of the land, the same is unconstitutional and it violates Article 21 of the Constitution of India besides violating of Articles 14 and 31-A of the Constitution of India. In view of the ratio laid down by this Court in ***Mekala Pandu (referred supra)***, the petitioners are entitled for compensation in respect of the subject land.

8. Accordingly, the Writ Petition is allowed directing the respondents to pay compensation to the petitioners in respect of the land to an extent of Acs.2.00 guntas in survey No.201/6, Gollapalli Khurdu Village, Shamshabad Mandal, Ranga Reddy, as per the provisions of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of two months from the date of receipt of a copy of this order.

9. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

23rd March, 2018
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