

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.519 OF 2009

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the action of the respondents in not paying *ex gratia* to the petitioner in respect of the lands admeasuring Ac.0.11 cents in Survey no.1/16; Ac.0.15 cents in Survey no.1/21; Ac.0.15 cents in Survey no.4/12; Ac.0.42 cents in Survey no.24/15; Ac.2.16 cents in Survey no.25/2; Ac.0.50 cents in Survey no.26/2; Ac.0.91 cents in Survey no.39/2; Ac.0.12 cents in Survey no.12/18; and Ac.0.18 cents in Survey no.12/22 of Changambakam Village, Satyavedu Mandal, Chittoor District, as illegal, arbitrary and violative of Articles 14 & 300-A of the Constitution of India and consequently direct the respondents to forthwith pay *ex gratia* to the petitioner in respect of the above said lands.

2. I have heard the submissions of Sri T.C.D.Sekhar, learned counsel appearing for the petitioner; and of the learned Government Pleader for Land Acquisition (AP), appearing for the respondents 1 to 4. I have perused the material record.

3. The case of the petitioner is this: 'He belongs to Scheduled Caste Community. He is a landless poor person. About 30 years back, the State Government assigned the afore-mentioned lands to his father under a DKT patta. For the said lands, the 4th respondent/Tahasildar, Satyavedu Mandal, Chittoor District, issued pattadar passbooks, as per the provisions of the A.P. Rights in Land and Pattedar Passbooks Act, 1971. The father of the petitioner possessed and enjoyed the said lands till his death. After the death

of his father, the petitioner is enjoying the said lands and is eking out his livelihood by raising crops in the said lands. The Government declared the entire subject village as a Special Economic Zone (SEZ) for the purpose of establishing an Industrial Park. For the said purpose, the subject lands of the petitioner, which were originally assigned to the father of the petitioner, were also acquired. The lands of the others in the same village were also acquired. And, *ex gratia* was paid to such persons, whose lands were acquired. However, the petitioner was isolated. The respondents gave evasive answers, when they were approached by the petitioner with the request for payment of *ex gratia* in respect of his above said lands. The respondents 3 & 4, who are in collusion, are trying to manipulate the revenue records in respect of the subject lands by incorporating the names of third parties and thereby deprive payment of *ex gratia* to the petitioner. As per law, it is incumbent upon the respondents to pay to the petitioner, the *ex gratia* in respect of his lands, which were originally assigned to his deceased father. Though the lands were taken possession in the month of September, 2007, till date, no compensation is paid to the petitioner, despite the petitioner approaching the Tahasildar several times. Hence, the writ petition is filed.'

4. The case of the respondents, as stated in the counter affidavit of the Tahasildar/4th respondent, in brief, is this:

'The subject lands were granted on DKT Patta to Maddali Kuppaiah. A request was made by the Andhra Pradesh Industrial Infrastructure Corporation (APIIC), Tirupati, for alienation of the lands in the subject village, along with the other lands, for establishment of Industrial Park (SEZ). Hence, special teams were

formed for inspection of all the lands in the village, including the DKT lands. During the course of inspection it was noticed that the original assignee, M.Kuppaiah, alienated his lands and that the alienated lands were in possession and enjoyment of the respective purchasers. Thus, an extent of Ac.4.72 cents, which was assigned under DKT Patta, has been alienated to other villagers. Hence, the Tahasildar/4th respondent, *vide* his proceedings, dated 01.05.2007, bearing Roc no.B/332/07, issued notice in respect of the above said alienated lands, *viz.*, Ac.4.31 cents, to the said Kuppaiah calling upon him to show cause, within seven days from the date of the receipt of the said notice, as to why the DKT Patta issued in his favour for the said land should not be cancelled on the ground of alienation of the said lands to others. However, Ac.0.28 cents in Survey no.26/2 was found to be in possession and enjoyment of Maddali Sanyasaiah, the son of the DKT pattedar, Maddali Kuppaiah. Hence, *ex gratia* for the said extent of land was paid to the said son of M.Kuppaiah, *vide* Bank Demand Draft no.842018, dated 21.07.2007. An extent of Ac.0.12 cents, situated in Survey no.12/18, is covered by residential houses. No objections are filed in response to the show cause notice. It is not informed that the DKT pattadar died. Later, the Tahasildar/4th respondent, issued orders, *vide* proceedings, dated 18.05.2007, bearing Roc no.B/332/07, for cancellation of DKT Patta for violation of conditions of grant and resumed the lands to the Government for the above said public purpose. Subsequently, after following the due process of law, the Tahasildar/4th respondent assigned the said lands to the enjoyers of the said lands, as shown in the table below:

Sy. No.	Sd. No.	Classification	Extent under enjoyment Acres.Cts	Name of the Enjoyer	Father/Husband Name	Tahsildar Orders in which DKT Patta granted to Enjoyer	Demand Draft No. & Date in which Ex.gratia paid
1	2	3	4	5	6	7	8
1	16A	Dry	0.07	Arimeni Muniraja	Kesavulu	3/4/1417 Dt.28.6.2007	845901 Dt.19.12.2007
1	16B	Dry	0.03	Arimeni Ramanaiah	Kesavulu	4/4/1417 Dt.28.06.2007	845902 Dt.19.12.2007
1	16C	Dry	0.01	Maddu Venkatesh	Polaiah	69/4/1417 Dt.28.06.2007	845932 Dt.19.12.2007
1	21	Dry	0.15	Arimeni Muniraja	Kesavulu	3/4/1417 Dt.28.6.2007	845901 Dt.19.12.2007
4	12A	Dry	0.13	Jagannati Kanchanamma	Sankaraiah	43/4/1417 Dt.28.06.2007	844958 Dt.13.11.2007
4	12B	Dry	0.01	Vanka Kantha Rao	Chellaiah	95/4/1417 Dt.28.06.2007	844988 Dt.13.11.2007
4	12C	Dry	0.01	Vanka Srinivasulu	Chellaiah	97/4/1417 Dt.28.06.2007	844990 Dt.13.11.2007
24	15A	Dry	0.30	Neerugatti Kataiah	Chengaiiah	77/4/1417 Dt.28.06.2007	845933 Dt.19.12.2007
24	15A	Dry	0.10	Boyana Nagaratnamma	Vijayaratnam	77/4/1417 Dt.28.06.2007	845904 Dt.19.12.2007
24	15B	Dry	0.02	Olipi Papaiah	Venkataiah	83/4/1417 Dt.28.06.2007	845934 Dt.19.12.2007
25	2A	Dry	1.79	Jagannati Lakhmamma	Nagaiah	41/4/1417 Dt.28.06.2007	845919 Dt.19.12.2007
25	2B	Dry	0.51	Jagannati Chandraiah	Kuppaiah	42/4/1417 Dt.28.06.2007	844957 Dt.13.11.2007
26	2	Dry	0.22	Vanka Munisubbaiah	Subrahmanyam	406/4/1417 Dt.08.11.2007	845945 Dt.19.12.2007
39	2	Dry	0.91	Thanam Venu	Chinna Raghava Reddy	93/4/1417 Dt.28.06.2007	845944 Dt.19.12.2007
12	22A	Wet	0.09	Chinni Chinni Harinath	Krishnaiah	16/4/1417 Dt.28.06.2007	845906 Dt.19.12.2007
12	22B	Wet	0.03	Maddala Manohar	Lakshmaiah	56/4/1417 Dt.28.06.2007	845924 Dt.19.12.2007
			4.31				

Subsequently, DKT Pattas, which were issued to the above said enjoyers/assignees were also cancelled by invoking condition no.10 of the respective DKT Pattas and the respective extents of lands were resumed to the Government for the desired public purpose, i.e., for establishment of Industrial Park,. The said resumption was ordered by the Tahasildar/4th respondent *vide* proceedings, dated 23.08.2007, bearing Roc. no.B/332/07. After obtaining necessary orders from the District Collector, *ex gratia* was paid, during November, 2007, to the said assignees and the resumed land was alienated to APIIC *vide* Collector's proceedings, dated 28.08.2008, in Ref. Roc.no.E1/10704/2008, and as per terms of G.O.Ms.no.1111, Revenue (Assn-IV) Dept., dated 16.09.2008. Thereafter, after lapse of one year, the present writ petition is filed. One Sadasivaiah filed WP.no.24604 of 2008 in this Court against the grant of DKT Patta,

after the issuance of the 4(1) notification in respect of patta lands of the same village. The original records are submitted to this Court in the afore-stated writ petition. The writ petition is not maintainable, since the assignment patta was cancelled. The petitioner cannot seek a direction for payment of *ex gratia*.'

5. I have given thoughtful consideration to the facts and submissions.

6. The incontrovertible fact is that the subject land was originally assigned to the father of the petitioner under a DKT patta. However, the reasons assigned by the respondents for denial of payment of *ex gratia* to the petitioner are as follows: 'At the time of inspection it was found that an extent of Ac.4.31 cents from out of the subject total assigned lands was alienated to other villagers/third parties and that the said alienated extent of land was not in possession of the original assignee. The transferees are in possession and enjoyment of the respective extents of lands alienated to them. Hence, and for violating the conditions of the assignment patta/the grant, the DKT patta was cancelled, however, after issuing a show cause notice to the original assignee. Later, the subject land was assigned by the Tahasildar to the transferees under various DKT pattas. In a while, the DKT pattas that were issued to such transferees/enjoyers were also cancelled; and, the land was resumed by the Tahasildar for the purpose desired by the APIIC. Since the *ex gratia* was thus paid to the respective transferees, the petitioner, who is the son of the original assignee, is not entitled to make the instant claim.' It is also the case of the respondents that Ac.0.28 cents in Survey no.26/2 was found to be in possession and enjoyment of

Maddali Sanyasaiah, the son of the DKT pattedar, Maddali Kuppaiah, and hence, *ex gratia* for the said extent of land was paid to the said son of M.Kuppaiah, *vide* Bank Demand Draft no.842018, dated 21.07.2007, and that an extent of Ac.0.12 cents, situated in Survey no.12/18, is covered by residential houses.

7. Admittedly, as on the date of the requisition given by the APIIC for the acquisition of the lands in the village and also as on the date of the initiation of the acquisition proceedings and the date of notification under section 4 (1) of the Act issued in so far as the acquisition of the private/patta lands in the village, the petitioner's father was the holder of the DKT patta in respect of the subject assigned lands and the DKT patta that was issued to the father of the petitioner was not cancelled. It is undisputed that assigned lands are heritable though not alienable. Though it is the case of the respondents that at the time of field inspection it was noticed that the assigned lands were transferred to the others/3rd parties, the counter affidavit is conspicuously silent about the names of the officers who made the field inspection and the date of inspection. No inspection report, if any, is produced with the counter. Further, though it is the case of the respondents that the DKT patta was liable for cancellation on the ground that the assigned lands were transferred, yet, the dates of transfers and the details like mode & manner of transfers are nowhere mentioned. No documents evidencing such transfers in favour of 3rd parties are produced. Under law, any transfer of assigned land is void.

7.1 In this regard, it is profitable to refer to infra Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, (for brevity, 'Act 9 of 1977).

"Section 3: Prohibition of transfer of assigned lands (1) Where before or after the commencement of this Act, any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred, and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer. (2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. (3) Any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void. (4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court or of any award or order of any other authority. (5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement."

As per the provision of the said section, land assigned by the Government to a landless poor person for purpose of cultivation or as a house site shall not be transferred; and, even if any transfer is made, it shall be deemed that such land or site has never been transferred; and, no right or title in such assigned land or site shall vest in any person acquiring the land/site by such transfer. So, even assuming that there are any alienations of the land assigned under

the DKT patta, despite such transfers, if any, the right or title in the assigned land continues to vest in the original assignee. In the event of his death, the right or title continue to vest in his legal heirs as the assigned land is heritable.

7.2 Further, for consequences of breach of the provisions of Section 3, the competent officer shall take appropriate action under Section 4 of the Act 9 of 1977, which reads as under:

4. Consequences of breach of provisions of Section 3:-

(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorised by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3 have been contravened in respect of any assigned land he may, by order—

(a) take possession of the assigned land after evicting the person in possession after such written notice as the Collector or Mandal Revenue Officer may deem reasonable and any crop or other produce raised on such land shall be liable to forfeiture and any building or other construction erected or anything deposited, thereon shall also be forfeited, if not removed by him, after such notice, as the Collector or the Mandal Revenue Officer may direct. Forfeitures under this section shall be adjudged by the Collector or Mandal Revenue Officer and any property forfeited shall be disposed of as the Collector or Mandal Revenue Officer may direct.

(b) restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose:--

(i) to the original assignee if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time; or

(ii) assign to other eligible landless poor person:

Provided that where the original assignee or his legal heir, after the first restoration transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor:

Provided further that if no eligible landless poor persons are available in the village/areas, the resumed land will be utilised for public purpose.

Explanation:- For the purpose of this clause, 'public interest' and "public purpose" shall mean and include, the Weaker Section Housing, Public Utility, Infrastructure development, Promotion of Industries and Tourism or for any other public purpose;

(c) In the areas which may be notified by Government from time to time, lands resumed under clause 4(a) above, shall be utilised for public purpose.

(2) An order passed in revision under Section 4-B and subject to such order, the decision in appeal under Section 4-A and subject to the said orders in revision and appeal, any order passed under sub-section (1) shall be final and shall not be questioned in any Court in respect of any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by any officer of authority or Government in pursuance of any power conferred by or under this Act.

(3) For the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3.'

8. In the case on hand, even according to the averments in the counter affidavit, the Tahasildar issued the show cause notice to the original assignee, who is the father of the petitioner, requiring him to show-cause, within seven days, as to why the DKT Patta issued in his favour shall not be cancelled & the land shall not be resumed to the Government for alienating the land in favour of 3rd parties and for violating the conditions of the grant/assignment patta. Further,

only a time of seven days was given even as per the contentions of the respondents. No notices were given to the transferees stating that lands in their respective possessions would be taken as the transfers in their favour in breach of the provisions of the Act 9 of 1977 are void and invalid. Further, Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977, contemplates that the District Collector or the authorised officer shall, before taking action under the provisions of Act 9 of 1977, issue a notice in Form I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the said Act 9 of 1977 and shall take further action after expiry of 15 days specified in the notice. Thus, while cancelling the patta of the original assignee, the procedure contemplated under Section 4 of the Act 9 of 1977 was not followed. Further, as per the provision of Section 4, in case of contravention of provision of Section 3, the competent officer can take possession of the assigned land after evicting the person in possession after a written notice which may deem reasonable and such assigned land taken possession can be restored to the original assignee if he continues to be eligible as per Government norms; or it may be assigned to any other eligible landless poor person; or it may be utilized for any public purpose, if no eligible landless poor person is available in the village or area for assignment. The competent officer admittedly has not considered the entitlement of the writ petitioner, who is the son of the deceased original assignee, for restoration of the alienated assigned lands to him. Even assuming that there were some transfers of the assigned lands to the 3rd parties, the competent officer is obliged to follow the procedure envisaged under law. Be it noted that the said procedure

is obviously not followed in the case at hand. The petitioner contends that he is not served with any such notice and that the show cause notice was admittedly addressed to the original assignee, who died much prior to issuance of such notice. The Tahasildar admittedly proceeded to cancel the patta as he was not made aware of the death of the original assignee to whom the show cause notice was addressed. Thus the cancellation proceedings, which were issued after addressing the show cause notice to a dead person, are a nullity and are invalid & *non est* in the eye of law. Be that as it may. Thus, by addressing a notice to a dead person, that is, the deceased father of the petitioner, who was the original assignee, the DKT Patta issued in the name of the father of the petitioner was cancelled, that too, after the initiation of the acquisition proceedings and without following the procedure established by law and, thereafter, the land was reassigned to 3rd parties, even without considering the entitlement of the petitioner to restoration of the assigned land in his favour. The facts narrated supra reflect that in post-haste, the DKT patta in the name of the father of the petitioner was cancelled, on 18.05.2007, and that fresh DKT pattas were granted to 3rd parties, on 28.06.2007, and in a while the said pattas granted to the 3rd parties were also cancelled, on 23.08.2007, and the land was resumed for the purpose desired by the APIIC and *ex gratia* was paid to the 3rd parties, on 16.09.2008, as per the orders of the District Collector. The whole exercise is thus contrary to the settled legal position & the principles of natural justice, and is, hence, illegal. As on the crucial dates, that is, as on the date of requisition given by the APIIC for acquisition of the lands in the village and also as on the date of initiation of acquisition proceedings

and further as on the date of notification under Section 4(1) of the Act issued insofar as acquisition of private/patta lands in the village, the petitioner's father was the holder of DKT patta in respect of the subject assigned land, which is not in dispute, and his DKT patta was not cancelled; and, only after the acquisition proceedings were initiated, the proceedings for cancellation of DKT patta were undertaken. For all the above reasons, the action of the official respondents in paying *ex gratia* to the 3rd parties cannot be treated as payment of compensation for the subject land to the original/rightful claimant. Accordingly, this Court finds that the writ petitioner, who is the son of the original deceased assignee, is entitled to the relief claimed in the writ petition.

9. A Larger Bench of this Court in **Land Acquisition Officer – cum – R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others (LB)**¹, held that even if assigned lands are acquired for public purpose, the assignees have to be treated as full owners of the land and they are entitled to compensation equivalent to the full market value of the land along with other benefits on par with full owners. It was also held that no condition incorporated in Patta or Deed of Assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as an owner of the land. In that view of the matter, the writ petitioner/original assignee is entitled to compensation equivalent to full market value of land along with the other benefits on par with full owners.

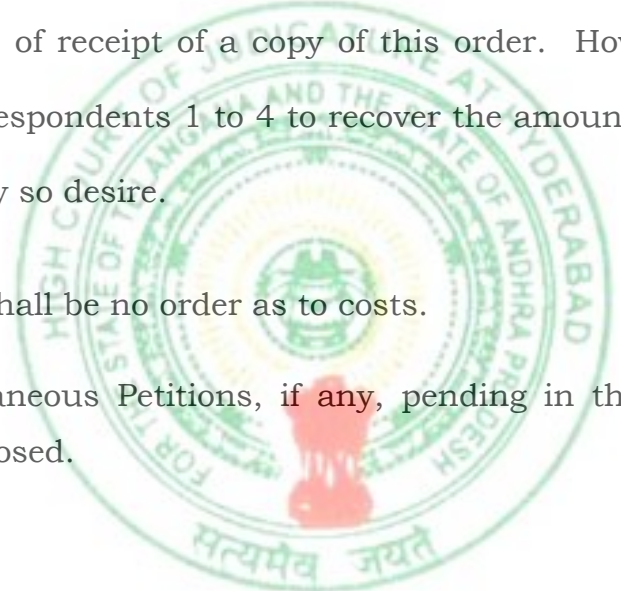
¹ 2004 (2) ALD 451

10. On the above analysis, this Court finds that the contentions of the petitioner merit consideration and the Writ Petition deserves to be allowed.

11. In the result, the Writ Petition is allowed and the respondents 1 to 4 are directed to pay compensation, equivalent to the market value of the land and extend other benefits to the petitioner in respect of the subject land, as per the provisions of the Act, as if he is the full owner of the subject land. The necessary exercise in the above regard shall be completed within a period of three months from the date of receipt of a copy of this order. However, liberty is given to the respondents 1 to 4 to recover the amount paid to the 3rd parties, if they so desire.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.



M.SEETHARAMA MURTI, J

Date: 1st October, 2018

KL

231

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.519 OF 2009Date: 1st October, 2018

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