

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8977 OF 2007

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 compensation to the petitioner in respect of the acquired land viz., Ac.3-73 cents in Survey nos.33 and 53 of Yakerlapalem Village, Mydukur Mandal, Kadapa District, as illegal, arbitrary and against Government orders & law, besides being violative of Articles 14, 19, 21 and 31-A of the Constitution of India. A request was also made to direct the respondents to pay compensation to the petitioner for his aforesaid acquired land as per the recommendations of the MRO, Mydukur, in his report, *vide* Ref. no.B.102/2004, dated 24.08.2005.

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Land Acquisition. I have perused the material record.

3. The case of the petitioner is this:

“The entire extent of land of Yakerlapalem Village was acquired in the year 1991 for formation of Ganjikunta Subsidiary Reservoir under Telugu Ganga Project. The entire extent of land of the village and the village submerged in the Ganjikunta Subsidiary Reservoir. The Special Deputy Collector – cum – Land Acquisition Officer/the 2nd respondent (hereinafter referred to as, ‘the LOA’, for brevity) paid compensation to all persons, whose lands were acquired and submerged in the said Reservoir. However, no compensation was paid to the petitioner in

respect of the subject land on the ground that his land is a Government land and that he is not a DKT Patta holder and that, therefore, he is not entitled to any compensation. The petitioner came to know that the villagers of the other village, who are DKT land holders and whose lands were also sub-merged under the same project, were paid compensation on par with the land owners. The petitioner represented to the District Collector and to the LAO to pay compensation for his land, which was submerged under Telugu Ganga Project. The Special Collector, Telugu Ganga Project/the 1st respondent (hereinafter referred to as '1st respondent') called for a proposal for payment of compensation to DKT Pattadars. The LAO submitted a report, dated 03.08.2004, to the 1st respondent with necessary information. He stated in his report as follows:

"The Mandal Revenue Officer, Mydukur has not submitted final reports regarding restoration of land to the assignees, regularization of sale transactions in favour of the purchaser, or resumption to Govt. for the rest of the said DKT lands as per Act 9/77 for taking further necessary action in the matter.

I therefore request that necessary instructions may kindly be issued to the Mandal Revenue Officer, Mydukur for sending final reports, or no objection certificates on the rest of the DKT lands for taking further action regarding submission of exgratia proposals in favour of the DKT land holders to the Special Collector, Telugu Ganga Project, Nellore as per L.A. Act. Photostat copy of remarks furnished by the Mandal Revenue Officer, Mydukur is enclosed herewith for favour of perusal."

[Reproduced verbatim]

The Mandal Revenue Officer, Mydukur, conducted a detailed enquiry on the DKT land holdings and regularized some of the sale transactions of some of the purchasers, on the grounds that they

purchased the lands in good faith, for valuable consideration and without the knowledge that the lands are assigned; and, some lands were resumed by the Government, as the DKT Patta holders are not eligible to hold the DKT lands, as per rules. Further, the Mandal Revenue Officer, Mydukur, submitted a detailed report *vide* his letter, dated 24.08.2005, in Ref.No.B.102/2004, and requested the LAO to take necessary action to pay compensation (*ex-gratia*) by enclosing the statement showing particulars of the DKT lands. In that statement, the name of the petitioner was shown against Sl.no.4 in respect of the lands in Survey nos.33 and 53 admeasuring Ac.3-73 cents (Ac.2-69 cents + Ac.1-64 cents). The said land was purchased by the father of the petitioner from a DKT Patta holder, Penugonda Pedda Venkatesu. In a partition, the said land fell to the share of the petitioner. He is a landless poor person. The land is regularized in his name. Though he made several representations for payment of compensation for his land which was acquired, no action has been taken and no compensation is paid to the petitioner. Hence, the Writ Petition is filed.”

4. No counter is filed by the respondents. However, the learned Government Pleader for Land Acquisition strongly opposed the case of the writ petitioner on the ground that the writ petitioner is not entitled to payment of any compensation or *ex-gratia* or any other amount as admittedly the petitioner's father purchased the said land from an assignee and as such a transfer, which is prohibited under the provisions of Act 9 of 1977 is void, unenforceable & invalid; and, as consequently the claim of the petitioner is also untenable. He further submitted that the Government are justified in not paying any amount to the petitioner for the land which was resumed for the purpose of acquisition.

5. Learned counsel for the petitioner made submissions in line with the pleadings.

6. I have given earnest consideration to the facts & submissions. It is profitable to first deal with the settled legal position laid down in the decision in **Land Acquisition Officer – cum – Revenue Divisional Officer and others etc., Vs. Mekala Pandu and others**¹. The common question of law that arose for consideration in the above matter is: "Whether the claimants are entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894, when the assigned lands are resumed by the Government for a public purpose?" The Larger Bench of this Court while answering the question held as under:

“109. In the circumstances, we hold that the assignees of the Government lands are 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 of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold 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. No 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. 110. In such view of ours, the view taken by this Court in Bondapalli Sanyasi (supra) that whenever the land is taken possession of by the State invoking the terms of the grant, the right of an assignee to any compensation may have to be determined in accordance with the conditions in patta itself is

¹ AIR 2004 ANDHRA PRADESH 250

unsustainable. With due respect, we are unable to agree with the view taken in this regard. We are also unable to agree with the view taken that the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as owner but as an interested person for the interest he held in the property.

In view of the above settled legal position, there is no dispute that the assignees of the Government lands are 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 of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. It is also now thus well settled 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 assignee shall be entitled to compensation as owner of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894.

7. In the case on hand, neither the father of the petitioner nor is the petitioner the assignee of the Government land and hence, the ratio in the above decision does not advance his cause. His case is that his father purchased the assigned land from the original assignee, Penugonda Pedda Venkatesu, and that in a family partition, the said land came to his share and that he is in possession and enjoyment of the said land since several years and that the transfer is regularized. The said contentions are not contradicted by filing a counter. However, the sale/transfer of assigned land is impermissible in view of the provisions of Act 9 of 1977. Nonetheless, the contention of the petitioner that the

sale transaction in favour of his father was regularized by the MRO is also not denied by filing a counter. However, the learned Government Pleader in his submissions stated that since the sale transaction in the instant case is subsequent to 21.01.1977, the regularization of such sale transaction is impermissible under the provisions of the said Act 9 of 1977 and that the provisions of regularization are applicable to cases where the purchase of the assigned land takes place on or before the said date. Though it is contended that such regularization is impermissible, the regularization was not set aside. As per section 3 of the Act dealing with prohibition of transfer of assigned lands, 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 or site by such transfer. Section 3 of the said Act reads as under:

"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."

A bare perusal of the afore-said provision would show that sub-sections 1 to 4 apply to all cases where the assignment of lands was made either before or after the commencement of the said Act. However, sub-section (5) of the said Section makes an exception in cases where the land which has been so assigned has been purchased by another landless poor person in good faith or for valuable consideration from the original assignee or the transferee prior to the commencement of the Act. The sheet anchor of the Government's case is that since the petitioner's father purchased the land from an assignee and later he gave the same to the petitioner in a partition towards his share and as the said transfer is void, unenforceable & invalid and does not vest right, title and interest in the transferee, that is, the father of the petitioner, and consequently upon the petitioner, he is not entitled to *ex-gratia* and other benefits, which are given to the original assignees, whose lands were acquired.

8. In this backdrop, the short question is as to whether the petitioner is entitled to any relief in this writ petition.

9. In the first place, it is to be noted that the Government are aware of the sale transaction and transfer of the assigned land by the assignee in favour of the father of the petitioner and yet, no action was taken in consequence of breach of the provisions of Section 3 of the Act. On the other hand, as noted, the contention of the petitioner that the

sale/transfer of the assigned land in favour of his father was regularized is not denied by filing a counter. Though it is contended that such regularization is impermissible, the regularization was not set aside. Further, if an officer not below the rank of a Mandal Revenue Officer is satisfied that the relevant provisions of Section 3 of the Act have been contravened; he can take action in accordance with Section 4 of the Act. As per the provision of the said section, such 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 the 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 said procedure was not followed; and, initially the writ petitioner's father and later the writ petitioner were and are allowed to continue in possession of the property since the date of purchase by the father of the petitioner. Thus, the writ petitioner was and is in possession and enjoyment of the subject land till the acquisition proceedings were initiated in the year 1991. Had action been taken by the competent officer in accordance with the provisions of law, the father of the petitioner and/or the petitioner would have had an opportunity to show their entitlement for seeking an assignment patta for the subject land in their favour. Or in the alternative, had prompt action been taken by the competent authority under the provision of Section 4 of the Act for taking possession of the assigned land from the petitioner's father on the ground that the transfer by the assignee is prohibited under law, he and/or his father would have collected back the

consideration paid under the sale transaction from the original assignee. Owing to the failure of the competent Government officials in proceeding in accordance with Section 4 of the Act against the transfer of the subject land in favour of the father of the petitioner coupled with the fact that the sale transaction in favour of the father of the petitioner is regularized and that the same is not set aside, the case of the petitioner certainly stands on a higher pedestal, more particularly as his possession and enjoyment were not disturbed till the land was resumed/taken possession along with other acquired lands for the purpose of acquisition. Now, if the contention of the respondents that the petitioner's land can be resumed and the possession of the land can be taken under the land acquisition proceedings for public purpose without payment of *ex-gratia* and without extending any other benefits is to be accepted, then, as rightly contended, the petitioner would now be put to great hardship and irreparable loss as his father had already parted with the money, which was paid as sale consideration, and as the petitioner had also parted with the possession of the land in view of the acquisition proceedings. On these grounds alone, the petitioner's contention regarding entitlement to payment of *ex-gratia* for the subject land merits consideration. Further, it is submitted that the petitioner and his father, who are illiterates and are below poverty line belong to vulnerable section and that they are ignorant of law and that they had no knowledge of the fact of assignment till they sought regularization and that since transfer of the subject land by the assignee is regularized and the same is not set aside, the petitioner and his father cannot be made to suffer the loss that accrues to them on account of the taking over of the possession of the subject land, as on such taking over of the possession of the land,

they stand to lose both the money that was paid as consideration at the time of purchase and the land as well in view of the acquisition. The State as *Parens Patriae* is the Constitutional protector. Conceptually, under this doctrine of *Parens Patriae*, it is the obligation of the State to protect and take into custody the rights and privileges of its citizens for and while discharging its obligations. Therefore, in the facts and circumstances of the case, the Government having deprived the petitioner of the land in his possession, which is the only source of the livelihood for him and his dependants, cannot be heard to say that the petitioner is not entitled to even *ex-gratia* and other benefits on par with the other assignees. Since the land is resumed for the purpose of acquisition and as the possession of the land is not taken over as per the procedure envisaged under the provisions of the Act and as the petitioner was allowed to exercise rights of ownership peaceably over the subject land, which was purchased by his father for valuable consideration from the assignee and as the transfer of the subject land was regularized and the regularization is not set aside, this Court finds that the petitioner is entitled to payment of *ex-gratia* and extension of other benefits as was done in the cases of the assignees of assigned lands, whose lands were also acquired for the same public purpose. In the considered view of this Court, depriving the father of the petitioner and the petitioner of the money that was paid to the assignee under the sale transaction as well as the land on the ground of acquisition for public purpose even without payment of *ex-gratia* notwithstanding all his contentions referred to supra would amount to denial of economic justice besides right to life, which is a basic human right and a fundamental right. Nevertheless, it is trite to note that the petitioner herein cannot be given a relief more

than the relief that was endowed to the original assignees/pattadars of assigned lands, as granting a larger relief to the petitioner at this distance of time would unsettle the settled cases of original assignees and causes immense hardship to the Government and opens up a Pandora's Box of inflationary claims by the original assignees.

10. Viewed thus, this Court finds that this writ petition can be disposed of granting an appropriate relief to remedy the injustice.

11. In the result, the Writ Petition is disposed of directing the respondents to pay *ex-gratia* and extend the other benefits to the petitioner in respect of the subject land as was done in the cases of other assignees of assigned lands whose lands were also acquired for the same public purpose. It is needless to state that the necessary exercise in the above regard shall be completed by the respondents within twelve (12) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

September 24, 2018
MD/Vjl