

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.15845, 15866 and 15868 of 2016

COMMON ORDER:

The issue raised in these three Writ Petitions is one and the same and therefore they are being dealt with by this common order.

2. In all these Writ Petitions, the petitioners, who are assignees of the Government land, and who have been deprived of the same by the respondents 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, Mamillapalli, 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**.

3. Petitioners contend that ignoring their demand to pay market value compensation as per the above Larger Bench judgment, the respondents resumed their lands which were located in Chenduvoy village, Atloor Mandal of Kadapa District and have only paid exgratia. 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

¹ 2004(2) ALD 451 (LB)

same, the petitioners made a representation dt.19-01-2015 to the 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 these Writ Petitions.

4. Counter affidavit has been filed by 4th respondent in all these Writ Petitions taking a stand that the village Eguva Chenduvoy was one among the submerged villages under foreshore submersion of Somasila Project on Penna river, that the structures of Arundhathiwada belonging to the petitioners were located in Reach No.2 of Atloor Mandal, Kadapa District in Sy. No.82 which was classified as Hill Poramboke and there were all paid exgratia as per G.O.Ms.No.1307 dt.23-12-1993 which they received on 21-02-2004, 24-03-2004 and 20-10-2004 without any protest.

5. It is admitted by 4th respondent that some of the petitioners had filed W.P.No.2029 of 2007 before this Court seeking higher compensation and the same was disposed of on 15-09-2009 directing the petitioners to make appropriate representation to respondent Nos.2 and 3 within four weeks and further directing the said respondents to consider the same in accordance with law within eight weeks; that the request of the petitioners for higher compensation was rejected since it is not supported by Government Orders or any provision of law vide proceedings Reference No.A/61/2002 dt.31-12-2009 by the Special Deputy Collector (LA), TGP, Unit-II, Kadapa.

6. Reliance is placed on G.O.Ms.No.1307 dt.23-12-1993 and it is contended that under the said G.O., the amount paid will be only exgratia and the assignees cannot seek relief under Section 18 of the Land Acquisition Act, 1894 to a Court for enhancement; and an amount equivalent to 15% for lands resumed prior to 30-04-1982, and 30% after that date, could be treated as market value payable under Section 23 (1) of the said Act, and was to be included in the total exgratia payable to the assignees as solatium, and they would not be entitled to interest or additional market value.

7. It is contended that the judgment of **Mekala Pandu** (1 supra) or the judgment of the Supreme Court confirming it have no retrospective effect and that the said judgment does not apply to structures existing on Government lands but only to private lands.

8. I have noted the contentions of both sides.

9. 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).

10. From the proceedings dt.21-02-2004, 24-03-2004 and 20-10-2004 issued by 3rd respondent in each of the three cases, in respect of the petitioners therein, it can be seen that the petitioners are D Form patta holders and the structures in question had been erected by them in Government land in Reach No.II, Arundhathiwada of Eguva Chenduvoy, H/o.Chenduvoy village, Atloor Mandal, Kadapa District and only the value of the structures and not that of the land

underneath the structure was calculated under the above proceedings and paid to them.

11. 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).

12. 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. Also on what basis the calculation of the “exgratia” was made is also not specified therein. The said orders also do not show that any notice was issued to the petitioners before passing them.

13. Even according to the respondents, some of petitioners had filed W.P.No.2029 of 2007 before this Court seeking payment of higher compensation and the same had been disposed of on 15-09-2009 directing them to make appropriate representation to respondent Nos.2 and 3 therein within four weeks and the later was directed to consider the said representation within eight weeks thereafter.

14. It is not the case of the respondents that any fresh order considering petitioners’ representation was passed thereafter.

15. The petitioners have represented the matter again on 19-01-2015 placing reliance on the decision of the **Mekala Pandu** (1 supra), but there is no response thereto.

16. 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 ?”

17. 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.

18. 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.

19. 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.

20. The issue of paying higher amount as compensation to the petitioners has been alive since admittedly some of the petitioners have filed W.P.No.2029 of 2007 which was disposed of on 15-09-2009, but their request for higher compensation was not considered as directed in the said Writ Petition.

21. 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).

22. 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.

23. 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

² 2013(2) ALD 7 (SC)

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 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.

24. 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.

25. The other plea of the respondents that the decision in **Mekala Pandu** (1 supra) having been rendered on 9.3.2004 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.

26. 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.

27. Therefore, all the Writ Petitions are allowed; the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, Unit-II, Mamillapalli, Kadapa District (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 in Chenduvoy village, Atloor Mandal, Kadapa District 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.

28. 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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