

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

WRIT PETITION No.11083 of 2018

ORDER:

This Writ Petition is filed by the petitioners herein challenging the action of respondents in paying only *ex gratia* to the petitioners instead of paying market value for their assigned lands which had been taken for public purpose in violation of the Larger Bench judgment in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**¹, which was confirmed by the Supreme Court by order dt.04-08-2014 in Civil Appeal No.7904-7912 of 2012.

2. The petitioners are all residents of Thanamcherla village, Rapur Mandal, S.P.S.R.Nellore District in the State of Andhra Pradesh. The petitioners are members of Community Joint Farming Society, whose Chairman is the Revenue Divisional Officer. They were cultivating various extents of land in Sy.Nos.99, 100, 102 and 103 of the said village.

3. The Executive Engineer, TPG Division-I, Nellore gave a requisition for acquisition of lands for fore shore submersion and Kandaleru Reservoir by letter dt.26-11-1983. These lands had been allotted to 29 beneficiaries including the petitioners.

¹ 2004(2) ALD 451 (LB)

4. By simply issuing proceedings dt.02-03-2003, the Special Deputy Collector (LA), Telugu Ganga Project, Rapur at Nellore resumed the said lands. The lands had been inspected on 07-11-2005 by the 3rd respondent and an inspection report dt.07-11-2005 had been furnished to the petitioners by the 3rd respondent under the Right to Information Act, 2005.

5. Petitioners contend that only a paltry compensation in the nature of *ex gratia* was paid to them though they are entitled to compensation on market value basis as per the decision of the Larger Bench in **Mekala Pandu** (1 supra), which was approved by the Supreme Court by order dt.04-08-2014 in Civil Appeal No.7904-7912 of 2012.

6. Petitioners contend that the State Government had even issued G.O.Ms.No.259 Revenue (Assn.1) Department dt.21-06-2016 stating that compensation for resumed assigned lands would be paid on par with patta lands as per the provisions of the Right for Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, but it did not pay compensation as per the said principle and only paid them *ex gratia*.

7. This fact is not disputed by the respondents in the counter-affidavit filed by them.

8. It is stated that since the lands were CJFS lands and not patta lands, the land acquisition proposals were not initiated; after inspection of the lands on 07-11-2005, a Gram Sabha was conducted

in the village along with the beneficiaries in the same village, and in the same village and reach, patta lands to an extent of Ac.31.22 cents in Sy.No.30-1 etc. were acquired and compensation amount of Rs.9,000/- per acre was fixed and Award No.134/89-90 dt.12-02-1990 was passed; due to time lag, *ex gratia* at Rs.15,000/- per acre along with 30% solatium was fixed for the lands of the petitioners; and total *ex gratia* amount of Rs.4,94,520/- was sent through cheque No.181190 dt.31-03-2006 to the Chairman, Thanamcherla CJFS and Revenue Divisional Officer, Nellore and the amount was paid to the petitioners.

9. Respondents also contend that the Writ Petition has been filed more than 12 years after receiving *ex gratia* on 07-02-2006 and so it is not maintainable and is liable to be dismissed on the ground of delay and laches.

10. It is important to note that the Larger Bench in **Mekala Pandu** (1 supra) dealt with the question whether the assignees of Government lands, which are acquired for public purposes, are entitled to market value compensation when such lands are resumed for public purpose when there is a condition incorporated in deed of assignment stating that no compensation is payable if the land is resumed for public purpose.

11. The Larger Bench held that the assignees of the Government land 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. The Bench held that no condition incorporated in the deed of assignments shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land. It held that 'no compensation' clause in the deed of assignment infringes fundamental rights guaranteed by Article 14 and 31-A of the Constitution of India and in case where deprivation of property would lead to deprivation of life or liberty or livelihood, Article 21 of the Constitution springs into action and any such deprivation amounts to infringement of the right guaranteed under Article 21 of the Constitution of India also.

12. This decision of the Larger Bench has been confirmed by the Supreme Court by order dt.04-08-2014 in Civil Appeal No.7904-7912 of 2012.

13. It is not the case of respondents that these decisions do not bind them. Yet they do not give any reason why they have not applied in the case of petitioners.

14. Coming to the contention of delay/laches in filing the Writ Petition raised by respondents, the Supreme Court in **Tukaram Kana Joshi and others Vs. M.I.D.C. and others**² had an occasion to consider whether the laches or delay can be a ground to grant relief

² 2013(2) ALD 7 (SC)

where persons who are illiterates and inarticulate are deprived of their property without following due process of law.

15. In the said case, the appellants before the Supreme Court were deprived of their immovable property in 1964 and they had filed a Writ Petition seeking compensation before the Bombay High Court in 2009. While the Court noted that there are authorities which stated that delay and laches extinguish the right to put forth a claim, most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases etc. It then stated that the functionaries of the State took over possession of the land belonging to the appellants therein without any sanction of law, that the appellants had repeatedly asked for recovery of benefit of compensation; the State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statute mode; the action of the State in taking possession of the property without recourse to eminent domain and police power is an act amounting to encroachment; and that it is in the exercise of absolute power in common parlance or abuse of power or use of muscle power. It held that the State had treated land owners as subject of medieval India but not as a citizen of the Constitution of the State, which is governed by Rule of Law and it cannot arrogate itself to a status beyond one that is provided by the Constitution. It held that the delay and laches is one of the facets to deny exercise of

discretion and it is not an absolute impediment. It observed that there can be mitigating factors, continuity of cause of action etc., and if the whole thing shocks the judicial conscience, then the Court should exercise the discretion, more so, when no third party interest is involved. It held that the petition of the appellants therein is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and also since the situation certainly shocks judicial conscience. It held that there is no period of limitation for Courts to exercise their powers under Article 226 of the Constitution, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of certain length of time; and there may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. It held that it is a matter within the discretion of the Court and such discretion must be exercised fairly and justly so as to promote justice and not to defeat it. It found fault with the High Court in non-suiting the appellants therein on the ground of delay, and pointed out that when substantial justice and technical considerations are pitted with 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 non-deliberate delay.

16. Having regard to this legal position as set out above, the objections raised by the respondents to grant relief to petitioners on the ground of delay, in the facts and circumstances of the case, where

the petitioners are similarly situated poor persons and there is denial of compensation on full market value basis along with other benefits as per the Land Acquisition Act, 1894, in spite of the Larger Bench decision of this Court in **Mekala Pandu** (1 supra) which shocks the judicial conscience cannot be accepted.

17. Therefore, it has to be held that the action of respondents in not determining market value of the lands in occupation of each of the petitioners who are assignees/lessees, and awarding compensation equivalent thereto along with other benefits on par with full owners of the land is illegal, arbitrary and violative of Article 14 and 31-A of the Constitution of India. It is declared that the petitioners are entitled to compensation equivalent to full market value of the lands in the occupation of each of them apart from other benefits on par with full owners of the land as per the provisions of the Land Acquisition Act, 1894.

18. The Writ Petition is accordingly allowed with costs of Rs.1,000/- (Rupees One Thousand only) to be paid to each of the petitioners; the respondents are directed to determine the market value of the lands which had been cultivated by each of the petitioners as per the provisions of the Land Acquisition Act, 1894 and the inspection report dt.07-11-2005 of the 3rd respondent and comply with the principles laid down in the said statute taking the date of resumption of the lands as 02-03-2003 as the date on which the market value is to be determined; and then pay the same to each of the petitioners after

deducting the amounts already received by the petitioners. This exercise shall be completed within four (04) months from the date of receipt of copy of the order.

19. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-07-2018

Vsv

