

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.22475 of 2005

ORDER:

This writ petition is filed to declare the action of the 4th respondent in issuing the proceedings dated 16.02.2002 for resumption of the assigned land of the petitioners in Sy.No.616/ AA, admeasuring Ac.3.00, Sy.No.616/ AA2, admeasuring Ac.3.00, Sy.No.616/ AA2, admeasuring Ac.3.00, Sy.No.616/ AA, admeasuring Ac.3.00, Sy.No.616/ E, admeasuring Ac.1.03 guntas, Sy.No.617/ E, admeasuring Ac.2.03 guntas, Sy.No.617/ A, admeasuring Ac.3.00, and Sy.No.617/ AA, admeasuring Ac.3.00, situated at Rajapur Village, Balanagar Mandal, Mahabuubnagar District and the proceedings of the 2nd respondent dated 25.01.2003 for payment of exgratia at Rs.18,000/- per acre, without treating the assigned land of the petitioners on par with other acquired lands for the purpose of formation of Growth Centre, as illegal.

2. The brief facts of the case, according to the petitioners, are that the petitioners are the absolute owners of the agricultural lands in Sy.No.616/ AA, admeasuring Ac.3.00, Sy.No.616/ AA2, admeasuring Ac.3.00, Sy.No.616/ AA2, admeasuring Ac.3.00, Sy.No.616/ AA, admeasuring Ac.3.00, Sy.No.616/ E, admeasuring Ac.1.03 guntas, Sy.No.617/ E, admeasuring Ac.2.03 guntas, Sy.No.617/ A, admeasuring Ac.3.00, and Sy.No.617/ AA, admeasuring Ac.3.00, situated at Rajapur Village, Balanagar Mandal, Mahabuubnagar District. The said lands were assigned to the families of the petitioners long back and with great difficulty and by spending huge amounts, they brought the above lands under cultivation and they are eking out their livelihood depending upon the agriculture operations. When the matters stood thus, the

Government proposed to acquire the lands within the limits of Rajpur village for formation of a growth centre near Jadcherla by the A.P. Industries Infrastructure Corporation Ltd. Accordingly, the Government issued proceedings, under Section 4(1) and Section 6 of the Land Acquisition Act, proposing to acquire vast extent of the land at Rajapur Village. Since the lands of the petitioners are in the middle of the said land, which was proposed to be acquired, the 4th respondent issued notice dated 16.02.2002 resuming the lands of the petitioners. The 2nd respondent also addressed a letter to the 1st respondent on 25.01.2003 seeking permission for payment of exgratia to the petitioners in terms of G.O.Ms.No.1307 dated 29.12.1993 at Rs.18,000/- per acre. The 3rd respondent passed an award in File No.F/ 2022/ 2002 dated 03.02.2005 determining the compensation as Rs.1,80,000/- per acre for Category I, Rs.1,60,000/- per acre for Category II, Rs.1,70,000/- per acre for Category III and Rs.1,55,000/- per acre for Category IV by obtaining the consent of the land owners. The said proceedings dated 25.01.2003 of the 2nd respondent also show that the petitioners gave consent to receive Rs.18,000/- per acre, when in fact, no negotiations were held for determining the exgratia payable to the lands of the petitioners and as such, the consent was not given by them. The Government also issued G.O.Ms.No.135 dated 30.11.2004 directing the Land Acquisition Officers to treat the assigned lands for determination of compensation on par with other patta lands and the 2nd respondent also vide order dated 21.12.2004 communicated the above G.O. to the 3rd respondent vide order dated 21.12.2004 asking him to treat the assigned lands on par with patta lands. The petitioners pray for payment of compensation for their lands on the basis of the award dated 03.02.2005 passed by the 3rd respondent in File No.F/ 2022/ 2002.

3. A counter-affidavit has been filed by the 3rd respondent on behalf of all the respondents, *inter-alia*, contending that the assigned lands situated in Sy.Nos.616/ AA, 616/ AA2, 616/ E, 617/ E, 617/ A and 617/ AA comes in the middle of the lands acquired and that the lands are resumed by the Mandal Revenue Officer, Balanagar, in the year 2002. It is further stated that the Mandal Revenue Officer, through letter dated 19.12.2002 reported that the said assignees have given consent for the exgratia amount @ Rs.18,000/- per acre. Accordingly, proposals for sanction of exgratia have been submitted to the District Collector, Mahabubnagar District, vide letter dated 27.12.2002. The District Collector, sought for some clarification from the Chief Commissioner of Land Administration, A.P., Hyderabad as to whether the lands in question pertains to ceiling surplus land can be paid on par with the government land. It is further stated that the sanction from the District Collector, Mahabubnagar is awaited. Afterwards the award has been passed on 03.02.2005 for (I) patta lands of Rajapur village fixing the market value @ Rs.1,00,000/- for wet/ irrigated dry/ gardens adjacent to NH.7 within the range of ½ KM range, (II) @ Rs.81,000/- for dry lands adjacent to NH-7 within the range of ½ KM , (III) @ Rs.95,000/- for wet/irrigated dry/ gardens beyond ½ KM range to NH-7 and (IV) @ Rs.76,000/- for dry land and beyond ½ KM for category I, II, III and IV, respectively.

4. The writ petition was admitted on 18.10.2005. On 04.12.2008, it was represented by the learned Government Pleader for Land Acquisition that the respondents are taking necessary steps for payment of exgratia at the rate of Rs.18,000/- per acre.

5. Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Land Acquisition.

6. Learned counsel for the petitioners relied upon G.O.Ms.No.135 dated 30.11.2004, wherein it was directed to treat the assigned lands on par with patta lands. Learned Assistant Government Pleader submits that the said G.O. is of the year 2004 and the lands of the petitioners were resumed in the year 2002 and hence, the said G.O. is not applicable to them. The government Pleader further submits that as the respondents proposed to pay Rs.18,000/- per acre and as the petitioners gave their consent to receive the said amount of Rs.18,000/-, they are not entitled for compensation on par with patta land. The respondents cannot be allowed to contend that the petitioners gave consent to receive paltry sum, when they are entitled for compensation on par with patta land. It is also the specific case of the writ petitioners in the writ petition that no negotiations were held and no consent whatsoever has been given.

7. Though the proceedings of the 4th respondent dated 16.02.2002 is titled as 'notice', the contents of the said proceedings show that the Government has decided to resume the lands of the petitioners without giving any opportunity to the petitioners whatsoever. The said impugned order further shows that in the event the land, being required for a project or any other public purpose, the land will be resumed and no compensation shall be paid to the assignees. By the said proceedings, the petitioners were directed to vacate the said land and handover the possession to the 4th respondent. However, the letter of the 2nd respondent addressed to the 1st respondent dated 25.01.2003 shows that the assignees of the land are in physical possession and enjoyment of the said land and that they are cultivating the lands since the date of

assignment. In the counter-affidavit, the 3rd respondent specifically stated as follows:

“...The proposals for sanction of exgratia have been submitted to the District Collector, Mahabubnagar, vide letter No.F/2022/2002 dated 27.12.2002. The District Collector, Mahabubnagar sought for some clarification from the Chief Commissioner of Land Administration, A.P., Hyderabad, as to whether the lands in question pertain to Ceiling Surplus land can be paid on par with Government land. The sanction from the District Collector, Mahabubnagar is awaited.”

8. The said averments in the counter-affidavit which is dated 30.01.2006 shows that even the said amount of exgratia of Rs.18,000/- per acre was also not paid to the petitioners. Even on 04.12.2008, the Government Pleader for Land Acquisition, under instructions from the Government, states that the respondents are taking necessary steps for payment of exgratia @Rs.18,000/- per acre to the petitioners. Basing on the statement made by the learned Government Pleader which was recorded by this court on 04.12.2008 and basing on the averments made in the counter-affidavit, it can safely be presumed that even the paltry sum has not been paid to the petitioners, since 2002.

9. It is also surprising to observe that even the 2nd respondent-District Collector, addressed a letter dated 21.12.2004 to the 3rd respondent-Revenue Divisional Officer, which reads thus:

“Though the reference cited, the Govt. have issued comprehensive orders on payment of exgratia to the assignees/ allottees when resumed for Irrigation Projects on par with the package deal payable to the pattedars/ awardees of private lands acquired on consent award basis.

While communicating the same it is requested to follow the instructions without fail.”

10. If the subject lands are required by the respondents for any public purpose, the same ought to have been resumed by the

Government by paying the compensation in accordance with law. The larger bench of this court, consisting seven judges of this court, decided the very same issue in '*LAO-cum-RDO, Chevella Division, Domalaguda, Hyderabad vs. Mekala Pandu*¹'. The issue that fell for consideration in the said case 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?

11. While answering the said issue, this court held that the condition imposed in the patta that assignees are not entitled to compensation in case the Government resumes the land for a public purpose is unconstitutional and they have to be treated as full owners of the land and they are entitled to compensation based on market value along with other benefits on par with full owners. At paragraphs 108 and 109, this court held as follows:

"108. In the result, we hold that 'no compensation' clause, restricting the right of the assignees to claim full compensation in respect of the land resumed equivalent to the market value of the land, is unconstitutional. The 'no compensation clause' infringes the fundamental rights guaranteed by Articles 14 and 31-A of the Constitution. We are conscious that [Article 21](#) essentially deals with personal liberty. But in cases where deprivation of property would lead to deprivation of life or liberty or livelihood, [Article 21](#) springs into action and any such deprivation without just payment of compensation amounts to infringement of the right guaranteed thereunder. The doctrine of 'unconstitutional conditions' applies in all its force.

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

¹ 2004(2) ALD 451 (LB)

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.”

12. Hence, the issue is no longer *res integra* and the petitioners are entitled to compensation on par with patta lands.

13. In view of the judgment of the Larger Bench in *Mekala Pandu's* case (supra) and in the facts and circumstances of the case, the respondents are directed to pay compensation to the lands of the petitioners also on par with patta lands in accordance with law and Award dated 03.02.2005 in File No.F/ 2022/ 2002.

14. The writ petition is, accordingly, allowed. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

Date: 02.02.2018
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KONGARA VIJAYA LAKSHMI, J

HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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