HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.14734 of 2018

ORDER:

Petitioners belong to the Schedule Tribe and Schedule Caste Community. They contend that they are absolute owners and possessors and enjoyers of different extents of land and different sub divisions of Sy. Nos.173 and 174 of Ayyagaripeta village in Sathupalli Mandal of Khammam District. Details are given in para-3 of the affidavit filed in support of the Writ Petition.

2. According to them, these lands were originally assigned to their predecessors and the names of the original assignees were incorporated in the pahanies as pattadars and possessors of the said lands and that after the demise of their predecessors, they have succeeded the said lands.

PETITIONER'S CONTENTIONS

3. Petitioners contend that the Tahsildar, Sathupalli, on the requisition of the Singareni Collieries Company Limited (SCCL) dispossessed them from their lands without any manner of right by saying that petitioners lands have been alienated to the said Company and that an the order in Rc.No.G/2472/2012 dt.05-02-2018 of the District Collector, Khammam (2nd respondent) fixing *exgratia* payable as Ra.12 lakhs per acre without following the proper procedure for determination of compensation.

4. Petitioners contend that they have given representation on 13-02-2018 to (i) the District Collector, Khammam, (ii) Revenue Divisional Officer, Kalluru Division and (iii) Tahsildar, Sathupally, requesting for acquisition of their land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013). They contend that without following due procedure established by law, respondents paid *exgratia* to them invoking G.O.Ms.No.571 dt.14-09-2012 amounting to Rs.12.00 lakhs per acre even though the prevailing market value is more than Rs.1.00 crore per acre. They also stated that while deciding the quantum of *exgratia*, no notice was issued to them and that this is arbitrary, illegal and violates Articles 14 and 300-A of the Constitution of India. They also placed reliance on the Larger Bench judgment of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**[1].

5. Learned counsel for the petitioners has relied on registered sale deed being doc. No.1215 of 2008 executed on 17-04-2008 wherein land in Sy. No.106/5 of extent 435.1/2 sq yds was alienated at Rs.4,000/- per sq yd. He also relied upon another registered sale deed being doc. No.1214 of 2008 dt.17-04-2008 wherein land in Sy. No.106/5 of extent 674.1/2 sq yds was alienated at Rs.4000/- per sq yd and contended that these transactions were not considered by the respondents.

[1] 2004(2) ALD 451 (LB)

6. Petitioners contend that the order in Rc.No.G/2472/2012 dt.05-02-2018 of 2nd respondent, where he fixed the exgratia payable at Rs.12.00 lakhs per acre for the land of the petitioners which was allegedly resumed and handed over to the Company, did not consider the any sale transactions in the neighbourhood and the respondents cannot deny to the petitioners market value compensation as per Act 30 of 2013 which they are entitled to as per the decision in **Mekala Pandu** (1 supra).

COUNTER OF RESPONDENT NO.S 1-4

7. The Revenue Divisional Officer, Kalluru, filed a counter affidavit on behalf of respondent Nos.1 to 4.

8. He stated that the SCCL (Respondent Nos.5 and 6) filed a requisition for alienation of the land in Ayyagaripeta village of Sathupalli Mandal to an extent of Ac.51.15 gts in Sy. Nos.173 and 175 for construction of employees quarters and colony for Project Displaced Families of Kommepalli village. It is stated that the said land which was requisitioned was Government land assigned to landless poor and so the proposals were submitted as per G.O.Ms.No.571 dt.14-09-2012.

9. It is contended that basic value of the lands in these two survey numbers of the said village was only Rs.4.00 lakh per acre and the same was doubled to arrive at the figure of Rs.8.00 lakhs per acre and keeping in mind the local market value, the District Collector

fixed the compensation at Rs.12.00 lakhs per acre. It is also stated that the petitioners gave their consent to give the said amount and stated that they will not approach any Court for enhancement of compensation. Alleged consent letters of some of the assignees have been filed as annexures to the counters.

10. It is also alleged that the District Collector had issued notices to the petitioners and they were served on the petitioners on 23-01-2018 and they have given representation on 12-02-2018. It is stated that the District Collector then issued the impugned order dt.05-02-2018 for handing over of advance possession and also released Rs.12.00 lakhs per acre to the assignees.

11. It is also stated that the petitioners are informed that only for the land the *exgratia* was paid and with regard to the payment of compensation for trees, norms would be fixed by the Horticulture and Excise Departments and the reports from the said departments are awaited. It is stated that the petitioners suppressing the above facts filed the Writ Petition.

COUNTER OF RESPONDENT Nos.5 AND 6

12. Respondent Nos.5 and 6 filed counter affidavit adopting the stand taken by the respondent Nos.1 to 4. It is stated that on the request of the SCCL, after issuing notices to the assignees of Government land, the land assigned to petitioners was resumed with the consent of the assignees on 12-02-2018 on payment of *exgratia* of

Rs.12.00 lakhs per acre vide proceedings dt.05-02-2018 and that the Company has deposited the compensation for the land, trees and sheds therein.

13. It is stated that the petitioners received the cheques from the RDO, Kalluru without any remark and handed over their lands to the Government and the said Officer in turn handed over the possession of the lands on 23-02-2018.

14. It is also stated that the said Company leveled the land and is proposing to make house plots for Project Displaced Families and also construct quarters to the employees. Reliance is also placed on Section 26 (1) (b) of Act 30 of 2013 and it is contended that the *exgratia* fixed at Rs.12.00 lakhs per acre is adequate compensation.

REPLY AFFIDAVIT OF PETITIONER

15. Reply affidavit is filed by the petitioners denying that in the last three years, the basic value of the land in Sy. Nos.173 and 175 of the Ayyagaripeta village is only Rs.4.00 lakhs per acre.

16. It was denied that the petitioners have given consent and also stated that they do not approach any Court for enhancement of compensation.

17. It is contended that the consent letter filed by the annexure to the counter of respondent Nos.1 to 4 is fabricated and concocted.

18. It is stated that the respondents should have acquired petitioners land by applying Act 30 of 2013 and they should pay compensation and rehabilitation and resettlement benefits in terms thereof, but instead they played fraud on the poor, illiterate and innocent Schedule Tribe farmers by invoking G.O.Ms.No.571; and that the respondents misrepresented the facts and law to obtain signatures and thumb impressions of the petitioners on blank papers. It is contended that such action on the part of the respondents is *non est* in the eye of law.

19. It is stated that the prevailing market value of the land is Rs.43,56,000/- per acre.

20. Reliance is placed on the valuation fixed by the Market Value Reviewing committee under Rule 7 of the Indian Stamp Act, 1899 in Form-IV while fixing market value guidelines for rural properties as on 01-04-2013, signed by the Convener, Market Value Revision Committee (the Sub Registrar), Sathupalli, Commissioner, Nagarpanchayat, the Chief Executive Officer, Zilla Parishad, Khammam apart from the Joint Collector, Khammam. It is contended that the present market value is Rs.65.00 lakhs per acre.

21. Reliance is also placed on deed of conveyance executed by the State Government in favour of a farmer K.V.Appayya wherein 518 sq yds of land in Sy. No.173 of Ayyagaripeta was purchased for Rs.6,99,300/- on 18-06-2016.

REJOINDER BY RESPONDENTS 5 AND 6 TO REPLY OF PETITIONERS

22. A re-joinder has been filed by the SCCL (respondent Nos.5 and 6) mentioning about certain registered sale transactions in Ayyagaripeta village which according to the respondents was around Rs.4.00 lakhs per acre.

23. It is contended that the assigned lands in the instant case were not suitable for house sites and in the last three years there were no registered transactions in the assigned lands presumed in the instant case. It is contended that there were no sale transactions in Sy. Nos.171, 174, 175, 176 and 183 of the said village which are near the resumed land.

24. It is denied that the market value of the land in Sy. No.173 is Rs.43,56,000/- per acre. It is contended that only the general market value of Rs.4.00 lakhs prescribed from agricultural land is applicable and not for lands fit for house sites which is what is being relied upon by the petitioners.

CONSIDERATION BY THE COURT

25. I have noted the contentions of the parties.

26. From the facts narrated above, it is clear that the lands which were assigned to the petitioners in Sy. Nos.173 and 175 of Ayyagaripeta village were sought by the SCCL for construction of employees quarters and a colony for Project Displaced Families of

Kommepalli village and after passing the impugned order on 05-02-2018, possession was taken over by the respondent Nos.1 to 4 and they have handed over possession to the company on 23-02-2018.

27. In the impugned order passed on 05-02-2018, it is merely stated that the Tasildar, Sattupalli and Revenue Divisional Officer, Kalluru processed and submitted alienation proposals of the assigned lands of Ayyagaripeta village and proposed exgratia Rs.12.00 lakhs per acre. How this amount of Rs.12.00 lakhs was arrived at is not mentioned in the said order.

28. Admittedly, the resumption of the lands of the petitioners was for the purpose of private house plots to Project Displaced Families and to private quarters to employees of the SCCL. If really the lands assigned to the petitioners are not suitable for house sites as is contended in para-4 of the rejoinder affidavit of the company, why the said land has been resumed is beyond comprehension. Having stated in earlier counter filed by it that the Company has even leveled the land for house plots and foundation stone was also laid for construction of quarters, it is not open to the Company to now say that the lands of the petitioners cannot be used as house sites. This is a blatant attempt on the part of the SCCL to mislead the Court and to play fraud on the Court and the petitioners.

29. A Larger Bench of 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 ?" 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.

30. This view has been confirmed by the Supreme Court in its order dt.04.08.2014 in Civil Appeal No.7904-7912 of 2012.

31. The G.O.Ms.No.571 dt.14-09-2012 referred to by respondent nos.1-4 only deals with the Government land allotment policy and lays down guidelines with regard to extent of land to be allotted for various purposes for Government and private organizations. It does not deal with compensation which is to be paid to the assigned persons whose lands were acquired.

32. Though the determination at Rs.12.00 lakhs per acre as *exgratia* is being supported in the counter affidavit filed by respondents, it is clear that no exercise has been done to determine the market value of the lands of the petitioners in accordance with the principles laid down in Act 30 of 2013 by the respondents. Thus, it is clear that the respondents deliberately ignored the decision of **Mekala Pandu** (1 supra) and instead of paying market value compensation and benefits payable under the Land Acquisition Law to the petitioners, circumvented the same by fixing only *exgratia*, that too without giving any notice of hearing to the petitioners regarding the determination of compensation payable to them. They have thus committed a fraud on the petitioners.

33. Only one consent letter of one individual has been filed by the respondents in support of their plea that the petitioners voluntarily accepted to receive the amount of Rs.12.00 lakhs per acre and also agreed not to seek any enhancement by approaching any Court. A look at the consent letter shows that it is a printed format. Petitioners contend that they illiterate and by misleading some of them, their thumb impressions and signatures have been obtained on blank consent forms.

34. Any such statements obtained from the petitioners without independent legal advice cannot operate as an estoppel since there can be no estoppel against law (See **Elson Machines (P) Ltd v. CCE**[2]) and the petitioners cannot be deprived of compensation on market value basis with other statutory benefits under the applicable land acquisition law merely on the basis of the statements obtained from them.

35. In fact the conduct of the respondents in obtaining the same from the petitioner appears to be unconscionable and is hit by Section 23 of the Indian Contract Act, 1872 in view of the unequal bargaining power between the petitioner and the respondents as held in **Central Inland Water Transport Corporation v. Brojo Nath Ganguly**[3].

36. I am therefore of the opinion that the impugned order insofar as *exgratia* payable to the petitioners only at Rs.12.00 lakhs

[2] AIR 1989 SC 617
[3] (1986) 3 SCC 156

per acre is clearly arbitrary, unreasonable and violates Articles 14 and 300-A and the decision in **Mekala Pandu** (1 supra) and the alleged consent letters obtained from some or all of the petitioners cannot estop them from claiming higher compensation.

37. Therefore, the Writ Petition is allowed; the impugned order Rc.No.G/2472/2012 dt.05-02-2018 of 2nd respondent in so far as he fixed *ex-gratia* payable to petitioners at rs.12.00 laks per acre, is set aside; and the 2nd respondent is directed to compute the compensation payable to the petitioners strictly in accordance with the decision in **Mekala Pandu** (1 supra) by applying Act 30 of 2013 and pay the same to the petitioners market value compensation with all benefits (after deducting Rs.12 lakhs per acre already paid to them) as are payable to owners of such land within six weeks from the date of receipt of a copy of this order. Before passing the order, he shall give notices to each of the petitioners so as to enable them to produce material regarding market value of the land in the neighbourhood as on 05-02-2018, and any such material produced by the petitioners shall be considered by him in accordance with the principles of law laid down for determination of market value compensation. No costs.

38. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-10-2018
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