

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.20102 of 2007

ORDER:

This writ petition is filed to declare the action of the respondents in acquiring the land of the petitioner without following the due process of law under the Land Acquisition Act (for short 'the Act'), as illegal and arbitrary. A consequential direction was also sought for to direct the respondents to handover the land admeasuring Ac.4.50 cents in Sy.No.194/ 6 of Chennaigunta Village, Tirupati (U) Mandal or in the alternative to pay the compensation as per market value.

2. The brief facts of the case, according to the petitioner, are that the subject land was assigned to the husband of the petitioner in the year 1968 vide proceedings No.635/ IV/ 1378 dated 12.01.1968 by the 3rd respondent. The petitioner's husband passed away on 01.01.2005 and after the death of her husband, the petitioner went to the office of the 3rd respondent, and enquired about the land and came to know that it was acquired by TUDA-4th respondent, without cancellation of assignment or resumption. No land acquisition proceedings have been initiated against the said land and that the District Collector-1st respondent allotted the said land to the 4th respondent in an extent of Ac.240.50 cents in Sy.Nos.195/ 1, 223, 224/ 1, 225, 227/ 1, 229/ 1, 230 to 235 of Chennaiahgunta village, Tirupati (U) Mandal, for the purpose of development and disposal vide proceedings Roc.No.B/ 1/ 1144/ 85 dated 21.11.1985. The land of the petitioner being adjacent to the said land, the 4th respondent encroached upon the land of the petitioner without following the procedure under the Act or without giving any notice.

3. Counter-affidavit has been filed by the 3rd respondent on behalf of respondents 1 to 3, contending *inter-alia*, that the land was assigned to the husband of the petitioner vide DKT Patta No.6235-4-78 in the year 1968 under usual conditions of Dharkhast rules and also as per the provisions issued in G.O.Ms.No.1142, Revenue Department dated 18.06.1954. It is stated that as per conditions of assignment, the assignee shall enjoy the land by way of cultivation hereditarily and shall not alienate the land. As per condition No.2 of 'D-Form patta', the assignee shall bring the assigned land under cultivation within three years from the date of assignment, otherwise, the assignment is liable to be cancelled. The petitioner's husband never entered into the assigned land and cultivated since the date of assignment. The 4th respondent has developed the said land into plots in the year 1991 and allotted to the public in DIP system. On physical verification of land, it was noticed that the land in Sy.No.194/ 6A, an extent of Ac.4.50 cents was lying vacant and formed into several house plots and hence, the assignee has been issued notice under Rule 3 of the A.P. Assigned Lands (POT) Rules, 2007, for which the petitioner gave a reply stating that the land is kept vacant only for the last two years. It is also stated that the 3rd respondent addressed a letter to the 1st respondent on 30.08.2007 to issue necessary instructions on the aspect to submit proposals for resumption of DKT land for a public purpose i.e., allocation to TUDA. The 1st respondent has ordered for resumption of the land. It is further stated that the land will be resumed from the petitioner after due process of law. The 4th respondent has acquired the patta lands in Sy.Nos.185/ 1, 186/ 1, 196/ 3, 196/ 5, 196/ 6 etc. measuring an extent of Ac.52.70 cents and an award was also passed, vide Award No.1/ 88 dated 11.03.1988.

4. The 4th respondent also filed counter-affidavit stating that the subject land was developed into plots in the year 1991 and allotted to public in DIP system.

5. This writ petition was admitted on 21.09.2007 and an order of *status quo* as on the said date was directed to be maintained.

6. Heard the learned counsel for the petitioner, learned Assistant Government Pleader for Land Acquisition and the standing counsel for the 4th respondent.

7. It is an admitted fact that the 3rd respondent assigned the subject land to the husband of the petitioner on 12.01.1968 vide Proceedings No.635/ IV/ 1378. The 3rd respondent in his counter-affidavit admitted that the land of the petitioner will be resumed after following due process of law.

8. The Assistant Government Pleader for Land Acquisition produced a brief note of the Tahsildar, Tirupati Urban Mandal (3rd respondent) dated 05.12.2017 with regard to subject land. In the said note, it is stated as follows:

“However, the assignment is yet to be cancelled and resumed to Government since the wife of the assignee Smt. K. Subbamma has filed WP No.20102 of 2007 before the Hon’ble High Court of A.P., Hyderabad and the same is pending finalization. The writ petitioner was not paid any compensation till today.”

9. As seen from the brief note issued by the 3rd respondent, even as on today, the assignment granted in favour of the petitioner’s husband is not cancelled and the land is not resumed by the Government. However, as per the counter-affidavit, possession of the land has been taken from the petitioner and handed over to the 4th

respondent, without following any process whatsoever and without paying any compensation to the petitioner.

10. Learned Assistant Government Pleader also produced a copy of the Award No.1/ 1988 dated 11.03.1988, passed with regard to an extent of Ac.52.70 cents. The subject lands of the award were given to the 4th respondent along with the land of the petitioner, even though the counter-affidavit does not specifically say so. The counter-affidavit merely says that the 4th respondent has developed the said land into plots in the year 1991 and allotted to the same to the public. It is also stated that the subject land is located amidst the acquired lands.

11. Pleadings of the parties show that the respondents 1 to 3 have taken possession of the land of the petitioner and handed over to the 4th respondent for development, without following due process of law and without paying any compensation. Award No.1/ 1988 dated 11.03.1988 has been passed with regard to the patta lands which are surrounding the land of the petitioner. As the lands of the petitioner were also taken possession, she is also entitled for compensation on par with the private patta lands, though it is an assigned land. If the subject lands were required by the respondents for any public purpose, the same ought to have been acquired by the Government by initiating land acquisition proceedings and paying compensation in accordance with law.

12. The larger bench, 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

¹ 2004(2) ALD 451 (LB)

Act, 1894 when the assigned lands are resumed by the Government for a public purpose?

13. 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 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.”

14. If the petitioner or her husband has violated any of the conditions of the assignment, the authorities ought to have cancelled the assignment issued in their favour. Admittedly, assignment patta issued in favour of the husband of the petitioner has not been cancelled even as on today. As the assignment is not cancelled, and as the lands of the petitioner are resumed for a public purpose, the petitioner is entitled to compensation on par with the patta lands. The lands of the petitioner are amidst the acquired lands vide Award No.1/88 dated 11.03.1988, and hence, she is entitled to the same compensation as is given to the private patta lands.

15. 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 petitioner also on par with patta lands in accordance with law and in accordance with Award No.1/1988 dated 11.03.1988. However, it is needless to say that the petitioner is entitled to all the statutory benefits, including interest thereon for the delay in payment of compensation, till the date of payment.

16. 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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