

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.27996 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a writ of mandamus declaring the action of the respondents 1 & 2 in not paying the compensation for the structures, trees and the lands in Survey no.523 in an extent of Ac.1.45 cents and in Survey no.524 in an extent of Ac.2.40 cents of Chenduvai Village, Atloor Mandal, of Kadapa District, as illegal, arbitrary and violative of Article 300-A of the Constitution of India and consequently direct the respondents 1 & 2 to pay compensation to the petitioners for the structures, trees and lands afore-stated of the writ petitioners as per law.

2. I have heard the submissions of Sri *D.Kodanda Rami Reddy*, learned counsel appearing for the petitioners; and of the learned Government Pleader for Land Acquisition (AP) appearing for the respondents 1 to 4. I have perused the material record.

3. The case of the petitioners, in brief, is this: 'On 17.01.1970, the 1st petitioner was assigned lands of extents of Ac.1.45 cents in Survey no.523 and Ac.2.40 cents in Survey no.524 of Chenduvai Village, Atloor Mandal, Kadapa District, by the then Tahasildar of Sidhout Taluk. Since then the 1st petitioner is cultivating the said lands. The 1st petitioner has given half share in the said lands to his son, who is the 2nd petitioner. The 3rd petitioner is the wife of the 1st petitioner. They have constructed three houses in the above said lands about 22 years back and are living in the said houses. Out of the three houses, the house with Mangalore tiled roof stands in the

name of the 3rd petitioner. There are 17 teak trees in the said lands. The respondents acquired lands and structures in the village for Foreshore Submersion of Somasila Project excluding DKT (assigned) lands and the structures thereon. 68 TMC water is now in the Somasila Project. The petitioners' lands submerged in the back water of Somasila Project. The petitioners requested the authorities to pay the compensation for the lands, structures and trees of the petitioners. The Special Deputy Collector-cum-Land Acquisition Officer, Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, instructed the Engineering Department to conduct inspection of the lands of the petitioners. The Executive Engineer, Somasila Project, Division no.IV, Atmakur, Nellore District, the 4th respondent, and the officers of Revenue Department conducted a joint inspection, on 26.11.2007, and noticed the structures present in the lands of the petitioners. A joint inspection report, dated 26.11.2007, was prepared by the said authorities. A copy of the same was filed with the writ petition. The Tahasildar, Atloor Mandal, on the representation of the 1st petitioner, inspected the lands and structures and sent a report, dated 22.10.2007. In the said report, the Tahasildar stated *verbatim* as follows:

“...that the lands have been cultivated and enjoying by them for the last 20 years. Now it is vacant. The totalling structures are existing in the fields are as follows:

- 1. One bore with Motor and Pipe line in the fields.**
- 2. Tiled house in 10 Ankanams.**
- 3. 15-Teack trees in between 10-12 years age.**
- 4. 2-Teak trees in between 2 to 4 years.**
- 5. Two portions R.C.C. building in 0.20 cents Including compound wall.**
- 6. “2” – 8 Iron poles and iron sheets.**

It is also submitted that ½ of the land is completely submerged in back water along with Bore, Motor and Pipe line. Now the land is vacant.

In this connection, I request that necessary action may kindly be taken in this regard.”

The 4th respondent, in his letter, dated 06.02.2008, informed the 2nd respondent that he prepared estimates. The 2nd respondent also stated in his Proceedings no.C/152/2007, dated 20.05.2006, that the petitioners are only entitled to development made in the land and that no compensation need be paid towards any structures. The petitioners sent reply to the said proceedings stating that they are entitled to compensation for DKT Patta lands and structures thereon. The Government are obliged under law to pay full compensation for DKT assigned lands on par with patta lands in view of the decision of a Larger Bench of this Court reported in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others v. Mekala Pandu and others**¹. The respondents cannot deny compensation to the structures, only on the ground that they are assigned lands. The Divisional Forest Officer in his proceedings in Rc.no.1283/2007/A1, dated 26.02.2008, submitted valuation statements in respect of trees in the lands of the petitioners. The said report was submitted to the 2nd respondent. However, the respondents are not paying compensation for the lands, structures and trees. The said action is illegal. Hence, the writ petition is filed.’

4. The case of the respondents, as stated in the counter of the Special Deputy Collector (Land Acquisition), Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, in brief, is this: The Executive Engineer, Somasila Project, Division no.IV, Atmakur, Nellore District, 4th respondent, sent a requisition to the

¹ 2004 (2) ALD 451

2nd respondent for acquisition of lands in Chenduvai Village of Atloor Mandal, Kadapa District, as the lands are coming under submergence under Somasila Project. The details of the lands are as follows:

Patta land	- Ac.19.14 cents
DKT land	- Ac.3.67 cents
Government land	- Ac.1.49 cents
Poramboke land	- Ac.0.20 cents
Total	- Ac.24.50 cents

Award was passed for the patta lands by the Special Deputy Collector (Land Acquisition), Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, *vide* Award no.3/93-94, dated 28.03.1994. The Special Deputy Collector, Land Acquisition, resumed the DKT lands covering an extent of Ac.0.64 cents *vide* Proceedings no.C/173/1992, dated 02.10.1992. In the said proceedings, subject lands in Survey nos.523 & 524 were included. The details of the said lands are:

Sl. No.	Survey No.	Extent	DKT No. & Date	Name of the assignee
1	523	Ac.1.45 cents Part Ac.0.44 cents	440/79 Dt: 07.04.72	Bayapu Venkata Subbaiah
2	524	Ac.2.40 cents Part Ac.0.20 cents		

The DKT patta was issued in the name of one Bayapu Venkata Subbaiah. The first writ petitioner is Paturi Gangi Reddy. He claims that he was granted D-form patta for the subject lands in the said survey numbers. He also states that he constructed three houses in the said assigned lands 22 years back and he is claiming compensation for the lands, trees and structures. Therefore, resumption order of the Special Deputy Collector (Land Acquisition), Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd

respondent, was issued to Bayapu Venkata Subbaiah for the lands in Survey no.523 in an extent of Ac.1.45 cents part Ac.0.45 cents & Survey no.524 in an extent of Ac.2.40 cents part Ac.0.20 cents of Chenduvai Village, *vide* DKT no.440/79, dated 17.01.1970. The 1st petitioner has not produced original DKT patta said to have been granted to him. The DKT patta said to have been granted to him is fabricated with an intention to get compensation for the lands, trees and structures. Even if the land is assigned, it is a conditional patta and the land shall be used for agricultural purpose only, but not for raising structures. No order is obtained from the competent authority for using agricultural land for non-agricultural purpose. A joint inspection was made by the Tahasildar, Atloor Mandal, Kadapa District, the 3rd respondent, and others. An inspection report was submitted. A joint inspection was made by the Revenue and Engineering officials, on 26.11.2007. During inspection they enumerated the existing trees and structures. That does not mean that the petitioner is entitled for *ex-gratia* for the structures raised by him unauthorizedly with the knowledge of submersion. The structures in the subject assigned lands are not authorised structures. Notice was issued to the writ petitioner, on 20.05.2008, informing that no *ex-gratia* need be paid to the structures raised in the assigned lands as per condition no.19 of the DKT patta. The explanation given by the writ petitioner regarding the constructions of structures is not convincing. All the agricultural lands and habitations in Chenduvai Revenue Village were requisitioned and notified for acquisition in 1992 and the acquisitions were completed by 1994. As per the resumption orders, dated 02.10.1992, of the Special Deputy Collector (Land Acquisition), Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, the lands covered

by the DKT patta issued in favour of Bayapu Venkata Subbaiah viz., lands in Survey no.523 in an extent of Ac.1.45 cents Part Ac.0.45 cents & Survey no.524 in an extent of Ac.2.40 cents Part Ac.0.20 cents of Chenduvai Village, were resumed to the Government. Hence, no *ex-gratia* need be paid. The petitioners are not entitled for any *ex-gratia* for lands, trees and structures since their DKT patta is a fabricated one. The patta lands were resumed by the Government. Hence, the writ petition may be dismissed.'

5. I have given earnest consideration to the facts and submissions.

6. The first general question is as to whether the claimants whose assigned lands are resumed by the Government for public purpose are entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894. The answer to this question is no longer *res integra* in view of the decision of a Larger Bench of this Court reported in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others v. Mekala Pandu and others (1 supra)**, wherein while answering the said question, the Larger Bench 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."

7. The question to be considered next is – 'whether the petitioners are entitled to claim compensation in respect of the portions of the subject lands, which are acquired and which are being claimed to have been assigned under a DKT patta to the 1st petitioner?.

8. The petitioners claim that, on 17.01.1970, the subject lands viz., land in Survey no.523 in an extent of Ac.1.45 cents and land in Survey no.524 in an extent of Ac.2.40 cents of Chenduvai Village, Atloor Mandal, of Kadapa District, was assigned to the 1st petitioner by the then Tahasildar, Sidhout Taluk, and that since then he is cultivating the lands and that in the said lands, he has given half share to his son, the 2nd petitioner, and that in the said lands they have constructed three houses about 22 years back and that one of such houses with Mangalore tiled roof stands in the name of the 3rd

petitioner, who is the wife of the 1st petitioner, and that there are 17 teak trees in the said lands apart from the structures.

9. The respondents, in the counter of the 2nd respondent, *inter alia* contend that the patta being relied upon by the petitioners is fabricated and not genuine and that the lands viz., lands in Survey nos.523 & 524 assigned to Bayapu Venkata Subbaiah *vide* DKT patta no.440/79, dated 07.04.1972, were resumed by the Government for public purpose as per the resumption order. Therefore, there is a dispute about the assignment of land to the 1st petitioner, as the official respondents are claiming that the DKT patta being relied upon by the petitioners is fabricated and that the subject land was assigned to one Bayapu Venkata Subbaiah under a DKT patta no.440/79, dated 07.04.1972. In this backdrop, the following facts need a mention and consideration: The petitioners had made a claim for payment of compensation to them in respect of the subject property. The Special Deputy Collector (Land Acquisition), Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, instructed the Engineering Department to conduct inspection of the subject lands and the structures thereon. The Executive Engineer, Somasila Project, Division no.IV, Atmakur, Nellore District, the 4th respondent, and the officers of Revenue Department conducted a joint inspection, on 26.11.2007, is not in dispute. In the said report, a copy of which is filed along with the material papers, the names of the petitioners 1 & 2 are mentioned and the details of their structures are also noted. The Tahasildar, Atloor Mandal, has inspected the subject lands and sent a report to the 2nd respondent *vide* Ref.C/210/2007, dated 22.10.2007, is also not in dispute. A copy of the said report is also filed by the writ

petitioners. The contents of the said report, which are already extracted while adverting to the case of the petitioners, clearly reflect that the said Tahasildar inspected the fields and Village along with Village Revenue Officer, Chenduvai Village, and the Additional Revenue Inspector, Atloor, on 20.10.2007, and that his inspection revealed that water already entered into the fields i.e., Ac.3.85 cents in Survey nos.523 & 524, which was assigned in the year 1970. In his report, he further stated that the lands have been cultivated and were being enjoyed for last 20 years. He further noted the nature of structures including the bore with motor and pipeline in the fields, which are there in the said lands. His report further reflects that half of the land is completely submerged in back water along with bore, motor & pipeline and the land is now vacant. Along with the counter of the 2nd respondent, proceeding of the Special Deputy Collector (Land Acquisition), Unit-I, Telugu Ganga Project, Mamillapalli, Kadapa District, the 2nd respondent, dated 02.10.1992, in Ref.no.C/173/92, is produced. In that proceeding, against Survey nos.523, Ac.1.45 cents part Ac.0.44 cents and Survey no.524 Ac.2.40 cents part Ac.0.20 cents, the DKT patta no.440/79, dated 07.04.1972, name of Bayapu Venkata Subbaiah are shown. However, in the material papers enclosed to the counter of the 2nd respondent, there is a copy of DKT patta no.440/79 in the name of Paturi Gangi Reddy, son of Govinda Reddy, i.e., the first petitioner, for the lands in Survey nos.523 of an extent of Ac.1.45 cents and Survey no.524 of an extent of Ac.2.40 cents (Total Ac.3.85 cents). There is also a copy of 10(1) Adangal showing the name of Paturi Gangi Reddy, the 1st petitioner, in respect of the said lands though the DKT patta number and date therein are mentioned as 440/79, dated 17.01.1970. However, the respondents contend that the patta

being relied upon by the petitioners is a fabricated patta and that they have not produced the original DKT patta.

10. The petitioners filed a reply affidavit denying the contentions of the respondents that the subject land was assigned to Bayapu Venkata Subbaiah; and the petitioners further contended that the Revenue Divisional Officer, Rajampet, by his proceedings in Ref.H.no.1647/2006, dated 03.12.2007, informed the 2nd respondent that the land in Survey nos.523 & 524 is assigned to the 1st petitioner *vide* DKT patta no.440/79, dated 17.01.1970, and that he had also issued Genuineness certificate. A copy of the said Genuineness certificate, dated 28.11.2007, is filed with material papers. The said certificate reads as under:

“This is to certify that the lands in S.No.523 & 524 extent 1.45, & 2.40 totally 3.85 Acres of Chenduvoy village was assigned in the name of Paturu Gangi Reddy S/o Govindaiah of Chenduvoy village vide D.K.T. No.440/79 dated 17.1.1970. As per the revenue records it is genuine.”

It is also pertinent to note that in the material papers, the petitioners filed a letter in Ref. H. 1647/2006, dated 03.12.2007, addressed by the Revenue Divisional Officer, Rajampet, to the Special Deputy Collector (L.A), T.G.P., Unit-I, Kadapa, wherein he stated as follows:

“The Tahsildar, Atloor in the reference cited has submitted genuineness certificate for the land in S.No.523 and 524 DKT land of Atloor village assigned to Sri Paturu Gangi Reddy S/o Govindaiah of Chenduvoy village, Atloor Mandal in DKT No.440/79 Dt.17.01.1970. The said certificate is countersigned and sent herewith.”

Thus, the petitioners having relied upon the material documents contend that they produced *prima facie* evidence in support of their case that the lands in question are assigned to the 1st petitioner

under a DKT patta and that the said patta is not only found by the competent officer to be genuine but also certified by him as genuine and that the said certificate was also countersigned by another competent officer of the Government. Therefore, they submit that there is sufficient evidence to find that the petitioners' claim for compensation on par with full owners of lands which is *prima facie* established deserves examination keeping in view the settled legal position in the decision of the larger bench of this Court referred to *supra*. However, there is a rival claimant by name Bayapu Venkata Subbaiah, who, according to the respondents, was the assignee of the subject land under DKT Patta no.440/79, dated 07.04.1972. Therefore, the complex question of fact as to which one of the two pattas is correct and which one of the two claimants under the two pattas would be entitled to compensation in respect of the subject acquired lands requires resolution after examining the issue, in detail, if necessary, by considering the oral and documentary evidence that may be adduced by the parties concerned. In that view of the matter, this Court considers this a fit case for disposal with appropriate directions.

11. In the result, the Writ Petition is disposed of directing the respondents to reconsider the claim of the petitioners in strict accordance with the procedure established by law, however, after giving an opportunity of hearing to the petitioners as well as Bayapu Venkata Subbaiah - the other claimant, and other stakeholders, if any, and take a considered decision as regards the person to whom the compensation is payable in respect of the subject land. In the alternative, liberty is reserved to the respondents to make a reference to a civil Court both under Sections 30 & 18 of the Land Acquisition

Act, 1894, in accordance with the procedure established by law, for determination of the amount of compensation payable in respect of the subject lands [with structures and tress thereon] and the resolution of the dispute in accordance with law, as to the person to whom the compensation is payable. In the event the option for reconsideration as mentioned supra is undertaken by the respondents, they shall complete the necessary exercise in the said regard within two months from the date of receipt a copy of this order. If the respondents choose to prefer the alternative course supra, they shall complete the necessary exercise within one month from the date of the receipt of a copy of this order. It is needless to mention that this Court did not express any opinion on the merits of the matter and, therefore, it is for the authority concerned to take an independent decision on merits of the matter having regard to the facts, the evidence that may be produced before the said authority and the law.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 3rd October, 2018

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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**WRIT PETITION No.27996 of 2008**Date: 3rd October, 2018

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