

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.15709 of 2009

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the action of the respondents in not paying *ex gratia* to the petitioner in respect of the lands admeasuring Ac.0.81 cents in Survey no.33/14 and Ac.0.08 cents in Survey no.33/15 of Changambakam Village, Satyavedu Mandal, Chittoor District, as per terms of G.O.Ms.no.1307, dated 23.12.1993, as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and consequently direct the 2nd respondent to dispose of the representation, dated 16.07.2009, of the petitioner and pass such other orders as this Court deems fit.

2. I have heard the submissions of Sri T.C.D.Sekhar, learned counsel appearing for the petitioner; and of the learned Government Pleader for Land Acquisition (AP), appearing for the respondents 1 to 4. The respondents 5 & 6 have not entered appearance though they are served with notices. I have perused the material record.

3. The case of the petitioner and the submissions made on her behalf, in brief, are as follows: 'The afore-stated lands were originally assigned by the then Tahasildar under a DKT patta to the grandmother of the petitioner, Chellamma. Since then and till her death, she was in possession and enjoyment of the above said assigned lands. She died 10 years prior to the institution of the writ petition leaving behind her, the petitioner as her only legal heir. The petitioner made a representation to the 4th respondent-Tahasildar for transfer of the patta in her name. The Tahasildar transferred the

lands above stated in favour of the petitioner and issued pattedar passbook *vide* Patta no.116, dated 26.10.2003. The petitioner is eking out her livelihood by cultivating the said lands. In the year 2006, the Government of Andhra Pradesh declared the entire subject village as Special Economic Zone (SEZ) for the purpose of establishing Industrial Park. The Government acquired the afore-stated lands of the petitioner for the above said purpose in the year 2008. The Government also acquired the lands of others and paid *ex gratia* to said land owners, whose lands were acquired; but no *ex gratia* was paid to the petitioner in respect of the subject lands. The petitioner reliably learnt and understands that the 3rd respondent-Special Deputy Collector and the 4th respondent, having colluded are trying to manipulate the revenue records and incorporate the names of third parties for extraneous considerations and deprive the payment of *ex gratia* to the petitioner in respect of the subject lands. The petitioner has not violated any conditions of the DKT patta and she is in possession of the lands till the same were acquired in the year 2008. Though the petitioner made several requests to the respondents 3 & 4 to pay the *ex gratia*, they have not taken any action. The petitioner gave a representation, dated 16.07.2009, to the 2nd respondent-District Collector, Chittoor District. However, no action has been taken. Hence, the present writ petition is filed.'

4. The case of the respondents, as stated in the counter affidavit of the 4th respondent-Tahasildar, in brief, is this: 'As per the Village Accounts, the lands *viz.*, Ac.0.81 cents in Survey no.33/14 and Ac.0.72 cents in Survey no.33/15 (total Ac.1.53 cents) were originally assigned under a DKT patta, dated 174.04.1385, to Chellamma, W/o.Chellaiah. Subsequently, the then Tahasildar granted pattedar

passbook and title deed document in favour of the writ petitioner as per the provisions of the Rights in Land and Pattedar Passbooks Act, 1971 (for short, 'the ROR Act'). The petitioner is in possession and enjoyment of the said lands is not correct. During the course of field inspection, it was noticed that the said lands, except Ac.0.64 cents in Survey no.33/15, are in possession and enjoyment of others. Ac.0.81 cents in Survey no.33/14 was in possession of one Boyana Krishnaiah and Jagannati Chandraiah and Ac.0.08 cents in Survey no.33/15 was in possession of Jagannati Chandraiah. The subject lands were resumed to the Government and are alienated to the Andhra Pradesh Industrial Infrastructure Corporation (for short, 'APIIC'), the requisitioner for acquisition of land, for establishing Industrial Park *vide* G.O.Ms.no.1111, Revenue (Assign-IV) Department, dated 16.09.2008. Since only Ac.0.64 cents out of Ac.0.72 cents in Survey no.33/15 is found in possession and enjoyment of the petitioner and the remaining extents afore-stated were found to be in possession and enjoyment of third parties, the Tahasildar, Sathyavedu, issued notice in Roc.no.B/332/07, dated 01.05.2007, to the pattedar directing to show cause, within seven (07) days, as to why the land in Ac.0.64 cents in Survey no.33/15 shall not be resumed and as to why the remaining DKT patta land shall not be resumed after cancellation of the patta for violation of the conditions of the assignment patta/grant. The said notice was served on the writ petitioner. She has not filed any objections within the stipulated time. Therefore, the Tahasildar, *vide* proceedings in Roc.no.B/332/07, dated 18.05.2007, issued cancellation orders cancelling the DKT patta for violation of conditions of grant and alienating the patta land to third parties. And, the land was resumed to the Government. The said orders are also served on the

writ petitioner, on 19.05.2007. Necessary entries were made in the village records. Insofar as the land in possession of the petitioner, *ex gratia* was paid *vide* Bank Demand Draft no.839663, dated 19.06.2007, drawn on State Bank of India. The orders, dated 18.05.2007, of the Tahasildar have become final. The alienated land, which was resumed was re-assigned to the enjoyers. Thus, Ac.0.32 cents in Survey no.33/14A and Ac.0.08 cents in Survey no.33/15 were assigned to Boyana Krishnaiah and Jagannati Chandraiah *vide* DKT pattas bearing nos.11/4/1417 & 42/4/1417, dated 28.06.2007. The land admeasuring Ac.0.49 cents in Survey no.33/14B was assigned to Jagannati Chandraiah *vide* DKT patta no.42/4/1417, dated 28.06.2007. The said three pattas in favour of the said assignees were also cancelled by invoking condition no.10 of the said DKT pattas, and the said assigned lands were resumed to the Government by the Tahasildar for public purpose i.e., for establishment of Industrial Park. The said cancellation was made *vide* proceedings, dated 23.08.2007. After obtaining necessary orders from the District Collector, *ex gratia* was paid by way of Bank Demand Drafts in respect of the above said lands to the above said two persons during November, 2007, and January, 2008. The said Jagannati Chandraiah also filed WP.no.17250 of 2009. After lapse of 1 ½ years, the present writ petition is filed. The subject lands were already handed over to APIIC for the desired purpose. The DKT patta of the petitioner was not in force and, therefore, the writ petitioner is not entitled to claim *ex gratia*. The writ petition may be dismissed.'

5. I have given thoughtful consideration to the facts and submissions. I have perused the material record.

6. The incontrovertible facts are – that the subject lands were originally assigned to Chellamma, the grandmother of the petitioner under a DKT patta; after her death, the petitioner was granted pattedar passbook and title deed document in respect of the above said lands *viz.*, Ac.0.81 cents in Survey no.33/14 and Ac.0.72 cents in Survey no.33/15 (total Ac.1.53 cents); however, though the lands were resumed for a public purpose, namely establishment of Industrial Park, no *ex gratia* was paid to the petitioner. The reasons assigned by the respondents for denial of payment of *ex gratia* to the petitioner are as follows: ‘At the time of inspection, it was found that the petitioner is in possession of Ac.0.64 cents out of Ac.0.72 cents in Survey no.33/15 and that the petitioner is not in possession and enjoyment of Ac.0.32 cents in Survey no.33/14, Ac.0.08 cents in Survey no.33/15 and Ac.0.49 cents in Survey no.33/14; and that the second mentioned extent is found in possession of Boyana Krishnaiah and that the last mentioned two extents were found in possession of Jagannati Chandraiah. The petitioner had alienated the above said three extents of lands to the said two enjoyers and that the said transferees are in possession and enjoyment of the said three extents of land, while the petitioner continued in possession and enjoyment of the remaining extent of Ac.0.64 cents out of Ac.0.72 cents in Survey no.33/15. Hence, and for violating the conditions of the assignment patta/the grant, her DKT patta was cancelled, however, after issuing a show cause notice to the petitioner. Later, the lands in possession of the respondents 5 & 6 were assigned to them by the Tahasildar under a DKT patta. In a while, their DKT pattas were also cancelled and, the land was resumed by the Tahasildar for the purpose desired by the APIIC. Thus, the *ex gratia* was paid to the petitioner insofar as land of an

extent of Ac.0.64 cents, which is in her possession and the *ex gratia* insofar as the other lands was paid to the respondents 5 & 6. Hence, the petitioner is not entitled to make the instant claim.' Admittedly, as on the date of the requisition given by the APIIC for the acquisition of the lands in the village and also as on the date of the initiation of the acquisition proceedings & the date of notification under Section 4 (1) of the Act issued insofar as the acquisition of the private/patta lands in the village, the petitioner was the possessor of the assigned lands and was having a pattadar passbook and title deed document in her name in respect of the lands, which were originally assigned under DKT patta to her grandmother and which devolved on her after her death. Though it is the case of the respondents that at the time of field inspection, it was noticed that the petitioner was in possession and enjoyment of Ac.0.64 cents out of Ac.0.72 cents in Survey no.33/15 and that she alienated/transferred Ac.0.08 cents in Survey no.33/15 and Ac.0.49 cents in Survey no.33/14 to Jagannati Chandraiah and Ac.0.32 cents in Survey no.33/14 to Boyana Krishnaiah, the counter affidavit is conspicuously silent about the names of the officers, who made the field inspection and the date of inspection. No inspection report, if any, is produced with the counter. Further, though it is the case of the respondents that the DKT patta originally issued to her grandmother was liable for cancellation on the ground that she transferred the assigned land mentioned above, yet, the dates of transfers and the details like modes and manner of transfers are nowhere mentioned. No documents evidencing such transfers are produced. Even the respondents 5 & 6, who are said to be the transferees of the afore-stated extents of lands, have not filed any counter and they preferred to remain *ex parte*.

7. In this regard, it is profitable to refer to Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity, 'Act 9 of 1977').

“Section 3: Prohibition of transfer of assigned lands (1) Where before or after the commencement of this Act, any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house site, then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed of transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred, and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer. (2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. (3) Any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void. (4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court or of any award or order of any other authority. (5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement.”

As per the provision of the said section, land assigned by the Government to a landless poor person for purpose of cultivation or as a house site shall not be transferred; and, even if any transfer is made, it shall be deemed that such land or site has never been transferred; and, no right or title in such assigned land or site shall vest in any person acquiring the land/site by such transfer. So, even if it is to be assumed that there were transfers in respect of certain extents of the assigned lands, yet, it shall be deemed that the said extents of lands have never been transferred; as a consequence, it follows that the right or title in the entire assigned land continued to

vest in the original assignee or her legal heir, despite such transfers, if any, either by the original assignee or the legal heir.

8. Further, for consequences of breach of the provisions of Section 3, the competent officer shall take appropriate action under Section 4 of the Act 9 of 1977, which reads as under:

4. Consequences of breach of provisions of Section 3:-

(1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorised by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3 have been contravened in respect of any assigned land he may, by order—

(a) take possession of the assigned land after evicting the person in possession after such written notice as the Collector or Mandal Revenue Officer may deem reasonable and any crop or other produce raised on such land shall be liable to forfeiture and any building or other construction erected or anything deposited, thereon shall also be forfeited, if not removed by him, after such notice, as the Collector or the Mandal Revenue Officer may direct. Forfeitures under this section shall be adjudged by the Collector or Mandal Revenue Officer and any property forfeited shall be disposed of as the Collector or Mandal Revenue Officer may direct.

(b) restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose:--

(i) to the original assignee if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time; or

(ii) assign to other eligible landless poor person:

Provided that where the original assignee or his legal heir, after the first restoration transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor:

Provided further that if no eligible landless poor persons are available in the village/areas, the resumed land will be utilised for public purpose.

Explanation:- For the purpose of this clause, 'public interest' and "public purpose" shall mean and include, the Weaker Section Housing, Public Utility, Infrastructure development,

Promotion of Industries and Tourism or for any other public purpose;

(c) In the areas which may be notified by Government from time to time, lands resumed under clause 4(a) above, shall be utilised for public purpose.

(2) An order passed in revision under Section 4-B and subject to such order, the decision in appeal under Section 4-A and subject to the said orders in revision and appeal, any order passed under sub-section (1) shall be final and shall not be questioned in any Court in respect of any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by any officer of authority or Government in pursuance of any power conferred by or under this Act.

(3) For the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3.'

In the case on hand, even according to the case of the respondents, show cause notice was issued to the writ petitioner, who is the legal heir of the DKT patta holder, to show cause within seven days as to why the DKT patta shall not be cancelled and why the assigned lands shall not be resumed for violation of conditions of patta/grant namely transfer of three extents out of the assigned land to third parties/respondents 5 & 6. Further, a time of seven days was given to the petitioner as per the contentions of the respondent. No notices were given to the present enjoyers stating that possessions of the lands would be taken as the transfers in their favour in breach of provisions of Act 9 of 1977 are void and invalid. Further, Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977, contemplates that the District Collector or the authorized officer shall, before taking action under the provisions of Act 9 of 1977, issue notices in form I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of

Section 3 of the said Act 9 of 1977 and shall take further action after expiry of 15 days specified in the notice. Thus, while cancelling the pattas allegedly of the original assignee/writ petitioner, the procedure contemplated under Section 4 of the Act 9 of 1977 was not followed. Further as per the provision of the Section 4, in case of contravention of provision of Section 3, the competent officer can take possession of the assigned land after evicting the person in possession after a written notice which may deem reasonable and such assigned land taken possession can be restored to the original assignee if he/she continues to be eligible as per Government norms; or it may be assigned to any other landless poor person; or it may be utilized for any public purpose if no landless poor person is available in the village or area for assignment. The competent officer admittedly has not considered the entitlement of the writ petitioner, who is the legal heir of the original assignee for restoration of the assigned lands to her. Thus, the DKT patta issued to the deceased grand mother of the petitioner was allegedly cancelled that too without following the procedure established by law; and, the three extents of lands were allegedly re-assigned to the alleged enjoyers that too after initiation of the acquisition proceedings. The facts narrated supra reflect that in post haste the DKT patta of the original assignee, who is the grandmother of the writ petitioner, was cancelled and fresh DKT pattas were granted to third parties/enjoyers in respect of three extents of lands said to have been alienated in their favour and in a while the said pattas issued to the said enjoyers were also cancelled and the lands covered by their pattas were resumed for the purpose desired by APIIC and *ex gratia* amounts were said to have been paid to the assignees/enjoyers. The whole exercise is thus contrary to the settled legal position and is

hence, illegal. As on the crucial dates, that is, as on the date of requisition given by the APIIC for acquisition of the lands in the village and also as on the date of initiation of acquisition proceedings and, further, as on the date of notification under Section 4(1) of the Act issued insofar as acquisition of private/patta lands in the village, the petitioner is the possessor and enjoyer of the land originally assigned to her deceased grand mother under a DKT patta and she was also holding pattadar passbook and title deed document in respect of the subject lands. Her pattadar passbook and title deed document were not cancelled by following the procedure established by law and the DKT patta in the name of the petitioner's deceased grand mother was cancelled only after acquisition proceedings, that is, by initiating the proceedings for cancellation of DKT patta, after the initiation of the acquisition proceedings. For all the above reasons, the action of the official respondents in paying *ex gratia* to the third parties/enjoyers other than the writ petitioner, who is the legal heir of the original assignee, cannot be treated as payment of compensation for the subject land to the original rightful claimants. Accordingly, this Court finds that the writ petitioner is entitled to the relief claimed in the writ petition.

9. A Larger Bench of this Court in **Land Acquisition Officer – cum – R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others** (LB)¹, held that even if assigned lands are acquired for public purpose, the assignees have to be treated as full owners of the land and they are entitled to compensation equivalent to the full market value of the land along with other benefits on par with full owners. It was also held that no condition incorporated in

¹ 2004 (2) ALD 451

Patta or Deed of Assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as an owner of the land. In that view of the matter, the writ petitioner, who is the legal heir of the original assignee is entitled to compensation equivalent to full market value of land along with the other benefits on par with full owners.

10. On the above analysis, this Court holds that the contentions of the writ petitioner merit consideration and the writ petition deserves to be allowed.

11. In the result, the Writ Petition is allowed and the respondents 1 to 4 are directed to pay compensation, equivalent to the market value of the lands, and extend other benefits to the petitioner in respect of the subject lands viz., Ac.0.08 cents out of Ac.0.72 cents in Survey no.33/15, Ac.0.49 cents out of Ac.0.81 cents in Survey no.33/14 and Ac.0.32 cents out of Ac.0.81 cents in Survey no.33/14, as per the provisions of the Act, as if she is the full owner of the said lands. The necessary exercise in the above regard shall be completed within three months from the date of receipt of a copy of this order. However, liberty is reserved to the respondents 1 to 4 to recover, if they so desire, the amounts paid to the respondents 5 & 6.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

Date: 10th October, 2018

KL

288

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**WRIT PETITION No.15709 of 2009**

Date: October, 2018

KL