

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.15616 of 2017

ORDER:

The petitioner has filed this Writ Petition challenging the inaction of the respondents in initiating proceedings for acquisition of her land as per the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, and resuming her land admeasuring Acs.2.32 cents in Sy.No.24/B of Paravada Village and Mandal, Visakhapatnam District.

2. The petitioner had been granted 'D' Form Patta vide proceedings in R.No.28/1401, dt.05.01.1992, for the above land and a pattadar pass book (Ex.P.1) was also issued to petitioner by the Mandal Revenue Officer, Paravada for the said land as well as other land of extent Ac.0.85 cents in Sy.No.314/3 in the same village in 1996.

3. However, vide proceedings Rc.No.5/98 dt.03.02.1998, the Mandal Revenue Officer, Paravada resumed the land of Ac.2.32 cents in Sy.No.14/2B for the purpose of establishment of Industrial Development Area by the A.P. Industrial Infrastructure Corporation (6th respondent). The said proceeding itself indicates that petitioner gave consent to hand over the land to the Government *subject to payment of compensation* as per Rules of the Government, or on showing alternative Government land and assigning it to petitioner.

4. According to petitioner, the then Mandal Revenue Officer, Paravada Mandal gave a report to the District Collector, Visakhapatnam District (2nd respondent) that Acs.41.07 cents in the said village is alienated in favour of 6th respondent; that the Joint Collector, Visakhapatnam approved market value at Rs.87,000/- per acre for dry land with 15% appreciation for two years amounting to Rs.1,13,100/- per acre to be paid to the land losers; that petitioner contended that the Mandal Revenue Officer, Paravada again wrote to 2nd respondent in letter Rc.No.6/98/SA dt.26.09.2006 stating that 'D' Form Patta lands were also alienated to the A.P.I.I.C. and requested to provide for compensation to such 'D' Form patta holders, such as the petitioner; but nothing had happened and no compensation was paid to the petitioner at all.

5. Petitioner contends that an endorsement was given by the Tahsildar, Paravada Mandal (5th respondent) in L.P.No.305/10/A.No./14-5-2010, on an application made by petitioner through Praja Vani, stating that after obtaining necessary orders in regard to payment of compensation from A.P.I.I.C., necessary steps would be taken for payment of compensation; that petitioner again made a representation on 11.11.2010 to 2nd respondent seeking payment of compensation, but no action has been taken thereon; that she made another representation on 26.08.2014 to 2nd respondent, and he endorsed it to 3rd respondent on 26.08.2014 asking 3rd respondent to enquire and send necessary proposal for eligibility under

Government land / assigned lands resumption; though the 3rd respondent instructed the 5th respondent to conduct detailed enquiry in respect of payment of compensation, the 5th respondent did not send any proposal; and that the 3rd respondent again issued proceedings in Rc.No.7971/2014/SDT/LR dt.25.08.2015 with a request to 5th respondent to enquire into the case of petitioner for payment of compensation as per the applicable norms, and to send a report to him.

6. Petitioner contends that she is entitled to compensation on market value basis for deprivation of her land with all other benefits as per the decision of the Supreme Court in **L.A.O.-cum-R.D.O. Chevella Division, Domalguda, Hyderabad and others v. Mekala Pandu and others**¹, which was confirmed by the Supreme Court by order dt.04.08.2014 in Civil Appeal No.7904-7912 of 2012; and the action of the respondents in denying her the same is arbitrary, illegal and violates Article 14 and 300-A of the Constitution of India and the above decision of this Court.

7. The counsel for petitioner reiterated the same, and also relied on G.O.Ms.No.259 Revenue (ASSN.I) Department dt.21.06.2016 issued by the Government of Andhra Pradesh which stated that :

(i) *“Whenever the assigned lands are required for a public purpose for a project or for alienation to a Government Department or Corporation, the lands shall be resumed as per conditions of Patta;*

¹ 2004 (2) A.L.D. 451 (L.B.)

(ii) *The compensation for the resumed assigned lands shall be paid on par with Patta lands as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 or any other L.A. Act in force in the State.”*

8. He also relied upon Order dt.24.08.2017 in WP.No.14209 of 2011 passed by this Court as well as Order dt.18.04.2017 in Writ-C No.15084 of 2016 of the Allahabad High Court.

Counter of respondents :

9. Counter-affidavit is filed by Revenue Divisional Officer, Visakahapatnam on behalf of respondent nos.1 to 3 stating that the subject land was originally registered as *poramboke* and had been provisionally registered in favour of the husband of petitioner vide proceedings Dr.No.160/91 dt.03.07.1991; that after petitioner's husband died in a train accident, at her request, assignment was made to her of the said land vide proceedings Dr.No.28/1401 dt.05.01.1992 subject to the condition that the land will be resumed as and when it is required by the Government for a public purpose/for public welfare for establishment of projects, and no compensation shall be paid for such resumed land.

10. It is stated that she was issued a pattadar pass book and her name was also entered in the I-B Register; that the Government intended to develop the area for establishment of industries; and petitioner's land was also resumed in 1998 for the said purpose and was alienated to the 6th respondent.

11. The 3rd respondent admitted that the letter in Rc.No.6/98/SA dt.26.09.2006 (Ex.P.3), addressed to District Collector by Mandal Revenue Officer, Paravada, was true but there was no commitment made by authorities that compensation will be paid to assignees whose lands were resumed by the Government for public purpose; that none of the documents filed by petitioner showed any commitment or assurance by the authorities to petitioner to pay compensation for her resumed land, and they are not entitled to the same as per the term in the patta/assignment deed permitting the State to resume the land without paying compensation. It is contended that Act 30 of 2013 will not be applicable to Government assigned lands which have been resumed prior to its coming into force.

12. The learned Government Pleader for Land Acquisition, appearing for respondent nos.1 to 5, reiterated the same contentions and also pointed out that there are laches on the part of petitioner disentitling her to relief.

13. Smt. A. Jayanthi, learned Standing Counsel for 6th respondent, adopted the stand taken by the Government Pleader.

14. In view of the above rival contentions, the following questions arise for consideration :

- (a) *Whether the action of the respondents in depriving the petitioner of her assigned land without paying any compensation is valid in law ?*
- (b) *Whether the petitioner is disentitled to relief on the ground of laches ?*

Point (a) :

15. From the facts narrated above, it is clear that the petitioner was assigned Acs.2.32 cents in Sy.No.14/2 of Paravada Village by proceedings Rc.No.28/1401 dt.05.01.1992 and it was resumed by the Mandal Revenue Officer, Paravada vide proceedings Rc.No.5/98 HDT dt.03.02.1998 for the purpose of Industrial Development Area by the 6th respondent-Corporation.

16. No compensation therefor has been paid to the petitioner and the respondents seek to rely on the clause in the deed of assignment granted to her stating that *“the land will be resumed at any time whenever required for public purpose and the Government has got full liberty to cancel the ‘D’ Form patta and resume the land with or without paying any compensation and the assignee has no right over the lands and title cannot be confirmed to any assignee”*.

17. 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.

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

19. Though the Government Pleader sought to contend that the decision in **Mekala Pandu** (1 supra) has no application since in the instant case, resumption orders were issued in 1998 prior to the said decision, the said contention is untenable. The said decision in my opinion is declaratory of the law and the law is always deemed to be as per the said decision since the High Court while rendering the said decision cannot and did not give only prospective operation to it and only the Supreme Court can do so.

20. Therefore, I hold on Point (a) that the action of the respondents in depriving the petitioner of her assigned land without paying any compensation is not valid in law.

Point (b) :

21. Coming to the second contention of laches, this issue has been considered by the Supreme Court in **Tukaram Kana Joshi and others Vs. M.I.D.C. and others**². In that case, the land was notified for acquisition on 06-06-1964 for establishment of a project for industrial development in the district of Thane in Maharashtra State, but compensation was not paid by the Maharashtra Industrial Development Corporation. A Writ Petition was filed in 2009 in the High Court of Bombay, which was dismissed on the ground of laches.

22. The Supreme Court reversed the said decision and observed that while there are some decisions stating that delay or laches extinguish the right to put forth a claim, most of these pertain to

² 2013(2) ALD 7 (SC)

service jurisprudence, grant of compensation for a wrong done to a party decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases; yet where functionaries of the State who took over possession of the land belonging to land holders without any sanction of law and without complying with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode, they have to be held to have acted in exercise of absolute power which in common parlance is also called 'abuse of power' or 'use of muscle power'. It observed that the appellants had asked repeatedly for payment of compensation, but the same was not considered treating the land owners as a subject of medieval India, but not as a citizen under the Constitution. It declared that the State, especially, a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond the Constitution, and though delay and laches may be one of the facets to deny exercise of discretion, it is not an absolute impediment. It held that if whole thing shocks the judicial conscience, then the Court should exercise discretion more so when no third party interest is involved. It held that petition is not hit by doctrine of delay and laches as the same is not a constitutional limitation, since the cause of action is continuous, and further, the situation certainly shocks judicial conscience. It noted that no period of limitation is prescribed for the exercise of jurisdiction by Courts under Article 226 of the Constitution of India and there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of

time. There may be a case where the demand for justice is so compelling that the Court would be inclined to interfere with in spite of delay. In the event that the claim made by an applicant is legally sustainable, delay should be condoned; where the circumstances justifying the conduct exist and the illegality, which is manifest, cannot be sustained on the sole ground of laches. It held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay.

23. The record clearly reveals that the issue of payment of compensation to the resumed land was constantly pursued by the petitioner and the Mandal Revenue Officer, Paravada issued proceedings dt.26.09.2006 to the 2nd respondent to make available compensation for payment to 'D' Form patta holders; the 5th respondent issued endorsement L.P.NO.305/10/A.NO/14.05.2010 stating that steps would be taken for payment of compensation to petitioner after obtaining necessary orders from A.P.I.I.C.; petitioner made representations dt.11.11.2010 and 26.08.2014 for release of compensation, and the latter representation was also endorsed by the 2nd respondent to 3rd respondent; the 3rd respondent directed the 5th respondent to conduct enquiry, but he did not do anything; and the 3rd respondent again directed 5th respondent on 25.08.2015 to take steps for payment of compensation to petitioner. Thus, the issue of

payment of compensation to petitioner has been live but nothing concrete has been done by the respondents to pay any amounts to the petitioner who is a widow, and who had been assigned the land after her husband's death.

24. So, the plea of delay in laches raised by the respondents cannot be any impediment to this Court for granting relief to petitioner when its action in denying compensation totally to petitioner, an illiterate widow shocks the judicial conscience. The demand for justice is so compelling that the Court is inclined to grant relief in spite of the delay and the respondents cannot claim any vested right in injustice being done because of non-deliberate delay on the part of the petitioner. The petitioner cannot be deprived of compensation to which they are entitled to in a Welfare State and technical considerations such as the plea on the laches cannot come in the way of doing substantial justice to them.

25. I, therefore, reject the said contention.

26. Point (b) is answered accordingly.

27. As regards the contention of the counsel for petitioner regarding payment of compensation on the basis of Act 30 of 2013, I am of the opinion that since the resumption of lands is much prior to the said Act, petitioner cannot claim compensation on the basis of the said Act and is only entitled to compensation on the basis of the Land Acquisition Act, 1894.

28. Accordingly, the Writ Petition is allowed and respondent no.2 is directed to determine the compensation payable to the petitioner as per the provisions of Land Acquisition Act, 1894 treating the date of resumption, i.e., 03.02.1998, as the date for determination of market value of the resumed land; and grant to the petitioner all the benefits which a land owner of such land would have been entitled to under the said Act, after giving a notice to the petitioner and 6th respondent, within three (03) months from the date of receipt of copy of the order. The said determination shall also be communicated by the 2nd respondent to the 6th respondent who shall then make available the funds for payment to the petitioner of the determined compensation within four (04) weeks thereafter. The 1st respondent shall also pay costs of Rs.25,000/- to the petitioner.

29. As a sequel, miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-07-2018

Ndr/*