

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.6621 and 6749 of 2011

COMMON ORDER:

These two writ petitions are filed by the petitioners claiming that though their lands along with the structures stands thereon have been acquired for the purpose of Priyadarshini Jurala Project, their application under Section 18 of the Land Acquisition Act (in short "the Act") seeking enchantment of compensation have not been considered.

Learned counsel for the petitioners submits that though the land acquisition proceedings were initiated, the compensation was determined as per G.O.Ms.No.1307, dated 23.12.1993, and thereby denied the petitioners' fair and just compensation as could be assessed under the Land Acquisition Act. It is also the further contended that admittedly, there is no dispute about acquisition of the subject land by the respondents, but the only controversy is with regard to the compensation, which is to be determined as per the market value. Learned counsel for the petitioners also submits that on par with the patta lands is not justified in any manner. They would also further contend that the issue is now settled by a Larger Bench of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalaguda, Hyderabad and others v. Mekala Pandu and others**¹, popularly known as 'Mekala Pandu case'.

Learned counsel for the petitioner Sri C.B. Rammohan Reddy, while drawing attention to various paragraphs of the judgment in Mekala Pandu's case and also the counter affidavit filed by the respondent in the writ petition, would submit that the Writ Petition

¹ 2004 (2) ALD 451 (LB)

may be allowed with a direction to the respondent authorities to re-workout the compensation that is required to be paid, keeping in view the principles laid down in Mekala Pandu's case and also the cases which were considered by the respondents with regard to the similarly-situated persons, whose properties were acquired for the project.

Heard the learned Government Pleader, who reiterates the contents of the counter affidavit, and he does not dispute the payment of compensation to the petitioners and the principles laid down in the judgment of the Mekala Pandu's case.

Having considered the respective submissions, it will be useful to notice the ratio laid down in Mekala Pandu's case. The question which was posed by the Larger Bench for consideration is that *"Whether the terms of grant or patta enabling the State to resume the assigned lands for a public purpose without paying compensation equivalent to the market value of the land to the assignees are valid in law? Whether such restrictive conditions or covenants suffer from any constitutional infirmity?"* After elaborate discussion, it was answered as under:

"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.

110. In such view of ours, the view taken by this Court in *Bondapalli Sanyasi* (supra) that whenever the land is taken possession of by the State invoking the terms of the grant, the right of an assignee to any compensation may have to be determined in accordance with the conditions in patta itself is unsustainable. With due respect, we are unable to agree with the view taken in this regard. We are also unable to agree with the view taken that the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as owner but as an interested person for the interest he held in the property.”

In the light of the above dicta of the Larger Bench, there is no manner of doubt that the petitioners’ case would have to be considered on par with the land owners, who claimed their ownership through pattas, notwithstanding the fact that the petitioners and others might have been the beneficiaries of the assignment of pattas in their favour by the Government. Further, the respondents, in their counter affidavit, in Para-4, states as under:

“4. In reply to averments made in Paras 4 and 5 of the petitioner’s affidavit, it is a fact that the then Land Acquisition Officer acquired structures and Houses in Revulapalli H/o Chintharevula village, Dharur Mandal by issuing a notification under section 4(1) of L.A. Act on 15.04.2005 and passed Award No.18/2006 and 19/2006, dated: 25.03.2006 while awarding an amount of Rs.90/- per sq.mtrs for Open Area and structure values as furnished by the concerned Executive Engineer while deleting Government lands both in DN & DD and Award. It is also a fact, aggrieved with the Award, the Awardees filed petitions under section 18 of the Land Acquisition Act and the same were also referred to the Senior Civil Judge’s Court, Gadwal and the same are numbered as O.P.Nos.29/2007 and 36/2007. The Senior Civil Judge, Gadwal vide order and decree dated:17.08.2009, enhanced the compensation one time more than amount what is awarded by the Land Acquisition Officer. It is also a fact that, the Government dropped further action and sanctioned entire decretal amount vide G.O. Rt.No.654, dated 01.10.2010 and the same was deposited in the Court of Senior Civil Judge, Gadwal. Further, it is to submit that in the similar case, the beneficiaries filed Writ Petition No.1760/2010, dated 09.02.2010 for allowing their petitions which were filed under section 28-A of Land Acquisition Act before the Hon’ble Court. The Hon’ble High Court directed to pursue the said applications filed under section 28-A of the Land Acquisition Act. In compliance with the Hon’ble Court orders, this office perused the applications and rejected the same and issued an endorsement to the petitioners on 09.03.2010 stating that, as said lands are Government lands and assigned to the petitioner on free of cost. In the mean time, the petitioners filed Contempt Case No.1282/2010 for non-compliance of Writ orders. In response to the petitioner’s affidavit, this office filed counter affidavit stating the above facts before the Hon’ble High Court. The Hon’ble High Court of A.P. dismissed the Contempt Case vide order dated 28.10.2010 in C.C.No.1282/2010 and ordered that. However, if the petitioner herein is aggrieved of the endorsement referred above, he may pursue any remedy open under law.”

As can be seen from the above extracted portion of the counter affidavit, in relation to other land oustees, the amount of compensation that is payable stood determined by the competent Civil Court under reference, under Section 18 of the Act, and thereby there is an yardstick available, as on date, for fixing the compensation even with respect to the petitioners. In normal circumstances, the petitioners could have claimed the benefit under Section 28 (A) of the Act, however, the same is not available to the petitioners as the Land Acquisition Act, 1894 stood repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In those circumstances, it would be in the interest of justice that the petitioners' case also be directed to be considered on par with the cases, which have already been decided and the compensation was determined for similarly situated persons.

Accordingly, the Writ Petition is allowed with a direction to the Land Acquisition Officer and the state authorities-respondents to re-determine the compensation, that is payable to the petitioners, by applying the principles laid down in Mekala Pandu's case, and on par with the similarly situated land oustees, whose lands were acquired, within a period of four months from the date of receipt of a copy of this order. No costs.

Consequently, the Miscellaneous Applications, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date: 01.11.2018

Note: Issue Copy forthwith
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