

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8981 OF 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed requesting to issue a Writ of Mandamus declaring the action of the respondents in not paying compensation to the petitioner having acquired his land of an extent of Ac.4-10 cents in Survey no.13/1 of Yakerlapalem Village, Mydukur Mandal, Kadapa District, as illegal, arbitrary and against Government orders & law, besides being violative of Articles 14, 19, 21 and 31-A of the Constitution of India. A request was also made to direct the respondents to pay compensation to the petitioner for his aforesaid acquired land as per the recommendations of the MRO, Mydukur, in his report, *vide* Ref. no.B.102/2004, dated 24.08.2005.

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Land Acquisition, appearing for the respondents 1 to 3. I have perused the material record.

3. The case of the petitioner is this:

“The entire extent of land of Yakerlapalem Village was acquired in the year 1991 for formation of Ganjikutla Subsidiary Reservoir under Telugu Ganga Project. The entire extent of land of the village and the village submerged in the Ganjikutla Subsidiary Reservoir. The Special Deputy Collector – cum – Land Acquisition Officer/the 2nd respondent (hereinafter referred to as, ‘the LAO’, for brevity) paid compensation to all the persons, whose lands were acquired and submerged in the said Reservoir. However, no compensation was paid to the petitioner in

respect of the subject land by stating that his land is a Government land and that he is a holder of DKT Patta and that, therefore, he is not entitled to any compensation. The petitioner came to know that the villagers of the other village, who are DKT land holders and whose lands were also sub-merged under the same project, were paid compensation on par with the land owners. The petitioner represented to the District Collector and to the LAO to pay compensation for his land, which was submerged under Telugu Ganga Project. The Special Collector, Telugu Ganga Project/the 1st respondent (hereinafter referred to as '1st respondent') called for a proposal for payment of compensation to DKT Pattadars. The LAO submitted a report, dated 03.08.2004, to the 1st respondent with necessary information. He stated in his report as follows:

"The Mandal Revenue Officer, Mydukur has not submitted final reports regarding restoration of land to the assignees, regularization of sale transactions in favour of the purchaser, or resumption to Govt. for the rest of the said DKT lands as per Act 9/77 for taking further necessary action in the matter.

I therefore request that necessary instructions may kindly be issued to the Mandal Revenue Officer, Mydukur for sending final reports, or no objection certificates on the rest of the DKT lands for taking further action regarding submission of exgratia proposals in favour of the DKT land holders to the Special Collector, Telugu Ganga Project, Nellore as per L.A. Act. Photostat copy of remarks furnished by the Mandal Revenue Officer, Mydukur is enclosed herewith for favour of perusal."

[Reproduced verbatim]

The Mandal Revenue Officer, Mydukur, conducted a detailed enquiry on the DKT land holdings and regularized some of the sale transactions of

some of the purchasers, on the grounds that they purchased the lands in good faith, for valuable consideration and without the knowledge that the lands are assigned; and, some of the lands were resumed by the Government, as the DKT Patta holders are not eligible to hold the DKT lands, as per rules. Further, the Mandal Revenue Officer, Mydukur, submitted a detailed report *vide* his letter in Ref. No.B.102/2004, dated 24.08.2005, and requested the LAO to take necessary action to pay the compensation (*ex-gratia*) by enclosing the statement showing particulars of the DKT lands. In that statement, the name of the petitioner was shown against Sl.no.1 in respect of the land in Survey no.13/1 admeasuring Ac.4-10 cents. The petitioner, who is the DKT Patta holder, sold his said land to Kalingiri Rama Subbaiah. However, the Mandal Revenue Officer, Mydukur, restored the said land to the petitioner, who is the original assignee, since the said purchaser, Kalingiri Rama Subbaiah, died unmarried. Though the Mandal Revenue Officer, Mydukur, recommended for payment of compensation for the petitioner's land, which was acquired, no action has been taken and no compensation is paid to the petitioner. Hence, the Writ Petition is filed."

4. The case of the respondents, as stated in the counter of the 2nd respondent - LAO, in brief, is this:

"The entire extent of land of the subject village was acquired during the year 1991 for formation of the Ganjikunta Subsidiary Reservoir, under Telugu Ganga Project. It is a fact that no *ex-gratia* has been paid in respect of DKT lands in Sy.no.13/1 of the extent of Ac.4.10 cents of the subject village. All the genuine DKT dars were paid *ex-gratia* as per Government orders in G.O.Ms.No.1307, dated 23.12.1993 i.e., market value and 30% of solatium on the market value, but, not the

compensation. The petitioner has not produced DKT patta at the time of enquiry. The Mandal Revenue Officer, Mydukur, in his report, dated 24.08.2005, reported that the land in Survey no.13/1 of the extent of Ac.4.10 cents of Yakarlapalem Village was assigned to Surasura Chinna Pullanna, S/o. Eswaraiah, [the petitioner herein] by DKT Patta No.1524/79, dated 29.05.1970, and he has sold away his DKT land to one Kalingiri Ramasubbaiah *vide* document no.2395, dated 07.08.1984 and that the said purchaser died unmarried in the year 1985 and that later on, the MRO restored the said land to the petitioner, who is the original assignee. The provisions of Act 9 of 1977 related to regularizations are applicable to the cases, where the sale transactions of DKT lands took place on or before 21.01.1977 and if only such transactions are done in good faith, for valuable consideration and without the knowledge that the lands are assigned lands. But the sale transaction in this case occurred on 07.08.1984. Hence, the rule position related to regularization procedure is not applicable to the present case. More-over in the present case, the purchaser is no more. Hence, no *ex gratia* is payable to the petitioner, who once sold away the assigned land contrary to the assignment conditions and law. As per assignment condition, the assignee should not sell the assigned land to anybody. Since the assignee has violated the assignment condition and statutory mandate, he is not entitled to get *ex-gratia* even though the said land is restored to him by the MRO, Mydukur. The proceeding of the MRO restoring the above assigned land to the petitioner, the original assignee, is void *ab initio*. Hence, the Writ Petition is liable to be dismissed.”

5. Learned counsel for the petitioner and the learned Government Pleader for Land Acquisition made submissions in line with the pleadings.

6. I have given earnest consideration to the facts & submissions. It is profitable to first deal with the settled legal position laid down in the decision in **Land Acquisition Officer – cum – Revenue Divisional Officer and others etc., Vs. Mekala Pandu and others**¹. The common question of law that arose for consideration in the above matter is: "Whether the claimants are entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894, when the assigned lands are resumed by the Government for a public purpose?" The Larger Bench of this Court while answering the question held as under:

"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

¹ AIR 2004 ANDHRA PRADESH 250

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 view of the above settled legal position, there is no dispute 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. It is also now thus well settled 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 assignee shall be entitled to compensation as owner of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894.

7. In the case on hand, though the petitioner was the original assignee of the Government land and the land was re-assigned/restored to him after the taking over of the possession of the land, after the death of the purchaser, who was unmarried, yet, ex-gratia and other benefits were denied to the petitioner on the ground that having transferred the assigned land and violated the conditions of assignment and the law, he had rendered himself disentitled to such payment. The case of the petitioner is that though he had transferred the assigned land, the competent officer of the Government having taken over possession of the land, after the death of the purchaser, re-assigned and restored

possession of the subject land to the petitioner having found that the petitioner is entitled to such assignment and restoration as per the norms fixed by the Government.

8. In the backdrop of the factual matrix and the contentions, it is necessary to refer to Sections 3 & 4 of the Act, which read as under:

"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."

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.'

As per the provision of Section 3, 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, despite the transfer of the assigned land by the assignee, the right or title in the assigned land continues to vest in the original assignee. It is to be next noted that having come to know of the transfer and the death of the transferee, a competent Government officer having taken over possession of the assigned land re-assigned/restored the said land to the petitioner obviously by exercising the powers under Section 4 of the Act referred to supra. As per the provision of Section 4, if an officer not below the rank of a Mandal

Revenue Officer is satisfied that the relevant provisions of Section 3 of the Act have been contravened; he can take action in accordance with Section 4 of the Act. As per the provision of this section, such 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 continues to be eligible as per the Government norms; or it may be assigned to any other eligible landless poor person; or it may be utilized for any public purpose, if no eligible landless poor person is available in the village or area for assignment. The said procedure was obviously followed and the land was re-assigned/restored to the writ petitioner and he continued in possession of the property in his capacity as an assignee till the land was resumed or taken possession for the purpose of acquisition. In view of these indisputable facts, the statutory legal position and the ratio in the Larger Bench decision *supra*, the petitioner's contention regarding his entitlement to *ex-gratia* and other benefits in respect of the subject land merits consideration. The State as *Parens Patriae* is the Constitutional protector. Conceptually, under this doctrine of *Parens Patriae*, it is the obligation of the State to protect and take into custody the rights and privileges of its citizens for and while discharging its obligations. Therefore, in the facts and circumstances of the case, the Government cannot be heard to say that the petitioner is not entitled to even *ex-gratia* and other benefits on par with the other assignees, when admittedly the land was re-assigned/restored to him as he was found eligible as per the norms of the Government and he was the assignee of the subject land since a long time prior to the date of the proposal for acquisition. Hence, this Court finds that the petitioner is entitled to

payment of *ex-gratia* and extension of other benefits as was done in the cases of the assignees, whose lands were also acquired for the same public purpose. The fact that the land was restored to him is self explanatory of the fact that he is a landless poor person and that the assigned land is the only source of his livelihood. In the considered view of this Court, depriving the petitioner of the land on the ground stated by the respondents even without payment of *ex-gratia* notwithstanding the admitted fact that he was the original assignee and that the land was restored to him, after the death of the purchaser of the land from him, would amount to denial of economic justice besides right to life, which is a basic human right and a fundamental right. It is trite to note that the petitioner herein cannot be given a relief more than the relief that was endowed to the original assignees/pattadars of assigned lands, as granting a larger relief to the petitioner at this distance of time would unsettle the settled cases of original assignees and causes immense hardship to the Government and opens up a Pandora's Box of inflationary claims by the original assignees.

9. Viewed thus, this Court finds that this writ petition can be disposed of granting an appropriate relief to remedy the injustice.

10. In the result, the Writ Petition is disposed of directing the respondents to pay *ex-gratia* and extend other benefits to the petitioner in respect of the subject land as was done in the cases of other assignees of assigned lands, whose lands were also acquired for the same public purpose. It is needless to state that the respondents shall complete the necessary exercise in the above regard within twelve (12) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.SEETHARAMA MURTI, J

September 24, 2018
MD/Vjl

