

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.23148 of 2018

ORDER:

Heard the learned counsel for the petitioners, and the learned Government Pleader for Land Acquisition, appearing for respondents.

2. Petitioners (91 in number) and their predecessors had been assigned various extent of lands in Kancheru village.

3. On 31-08-2015, the District Collector, Vizianagaram (2nd respondent) issued preliminary notification under Section 11 of the Right to Fair Compensation, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) for the purpose of establishment of Greenfield International Airport at Bhogapuram, in the Vizianagaram District for acquiring Ac.5311.88 cts. In the said notification, the lands of the petitioners were also notified. Later a final notification under Sec.19 of the Act 30 of 2013 was issued for 2004 acres including the lands assigned to petitioners.

CONTENTIONS OF PETITIONERS

4. Petitioners contend that it is settled law that where assigned lands are acquired for public purpose, the Government shall pay compensation equivalent to market value of the land and other benefits as are payable to land owners; that G.O.ms.No.259 Revenue (Assignment.I) dt 21-6-2016 was issued by the State of A.P (the 1st respondent) directing payment of compensation in respect of assigned

lands on par with patta lands as per Act 30 of 2013; and in contravention of this law and GO, the District Collector (2nd respondent) and the Special Deputy Collector cum Land Acquisition Officer, Green Field International Airport (3rd respondent) fixed exgratia payable to assignees such as petitioners at much lower rate than what was fixed for land owners in Kancheru village.

5. They contend that vide G.O.Rt.No.64 Energy, Infrastructure and Investment (Airports) department dt.9.6.2016, the 1st respondent fixed compensation payable for land owners at Gudepuvalasa, Kancheru and Kavulavada as Rs.33 lakhs per acre, Rs.28 lakhs per acre and Rs.28 lakhs per care respectively, but fixed exgratia payable to assignees in the said villages at a mere Rs.12,50,000/- per acre, and this action is wholly arbitrary, illegal, discriminatory and unjust.

6. Petitioners contend that they were initially promised by the respondents that they would also get the compensation being fixed for land owners, made to sign/affix thumb impressions on proforma consent forms on various dates individually; that at the said time only details of their names, addresses, assigned lands were written in the blanks provided in the consent forms and the quantum of compensation was left blank and not informed.

7. Petitioners contend that the 3rd respondent played fraud on petitioners and obtained the consent forms by misrepresentation and has denied to them their legally entitled compensation as per

**LAO-cum-Revenue Divisional Officer, Chevella Division,
Domalguda, Hyderabad and others Vs. Mekala Pandu and others¹**
and the mandate in G.O.Ms.No.259 dt.21.6.2016.

8. Petitioners contend that their representations dt.13.11.2017 and 6.6.2018 were not replied forcing them to approach this Court.

9. They therefore seek a Writ of Mandamus declaring that the action of respondents in paying to them only Rs.12.50 lakhs as exgratia for resuming/acquiring their assigned lands for the International Greenfield Airport at Bhogapuram is in violation of Act 30 of 2013 and G.O.Ms.No.259 dt.21-6-2016, arbitrary, illegal, unjust, violative of constitutional and fundamental rights guaranteed to petitioners and to direct the respondents to pay compensation to petitioners on par with patta land holders and G.O.Rt.No..64 dt.9-6-2016.

THE INTERIM ORDER DT. 10.7.2018.

10. On 10-07-2018 in I.A.No.1 of 2018, this Court granted interim direction restraining the respondents from dispossessing the petitioners from the subject land till compensation is paid to them on par with the patta lands in terms of Act 30 of 2013 and G.O.Ms.No.259 Revenue (Assn.I) Department dt.21-06-2016.

¹ 2004(2) ALD 451 (LB)

THE STAND OF RESPONDENTS

11. I.A.No.2 of 2018 is filed by the Special Deputy Collector (Land Acquisition) (FAC), Vizianagaram (3rd respondent) to vacate the interim order passed on 10-07-2018.

12. It is contended in the counter affidavit that the Government of Andhra Pradesh proposed for construction of International Greenfield Airport near Visakhapatnam city in view of the bifurcation of the State of Andhra Pradesh in 2014 as per Government Memo No.512/Airports/A2/2015 Energy, Infrastructure & Investments Department dt.31-08-2015; that the District Collector, Vizianagaram, issued Notification under Section 11 of Act 30 of 2013 on 31-08-2015 for acquisition of Ac.5311.88 in six villages viz., Gudepuvalasa, Kancheru, Munjeru, Koulawada, Ravada and Savaravilli of Bhogapuram Mandal to establish the said airport; and on seeing the same, petitioners approached the District Collector, Visakhapatnam and the 3rd respondent stating that their assigned lands also figured in the notification and they are ready to relinquish the same and requested for payment of exgratia which was fixed at Rs.12,50,000/-.

13. It is contended that the petitioners were informed about the above compensation and they accepted the same voluntarily on signed statements or affixed thumb impression statements stating that the said amount will be adequate and they will not seek any further reference to any authority. It is stated that the said amount was

directly credited to their bank accounts through office orders Rc.No.06/2015/A dt.04-01-2017 and after receiving the same, petitioners handed over the assigned lands on 04-01-2017 to 3rd respondent which in-turn handedover the same to the Managing Director, Andhra Pradesh Airports Development Corporation Limited on 06-04-2017 and their signed statements are in possession of the said Corporation.

14. It is stated that after final notification was issued under Section 19 of the Act 30 of 2013, compensation for private lands was worked out for Gudepuvalasa, Kancheru and Koulavada and compensation was determined as Rs.22,17,841/-, 18,80,001/- and 18,68,230/- as per the provisions of Sections 26 to 30 of the 2013 Act.

15. It is stated that the prevailing value of private land was higher than the compensation worked out under the 2013 Act and the land owners of private lands did not come forward to part with their lands for acquisition and so, a committee was constituted to negotiate with the land owners consisting Principal Secretaries of Revenue, Finance and Administration. As per recommendations of the said Committee, G.O.Ms.No.64 Energy, Infrastructure and Investments Department dt.09-06-2016 was issued fixing higher compensation for these villages and Rs.33.00 lakhs per acre for Gudepuvalasa village and Rs.28,00,000/- per acre for Koulavada and Kancheru villages.

16. It is contended that the petitioners having received compensation 1½ year back kept silent and then approached the Court

misrepresenting the facts and therefore, the Writ Petition is not maintainable.

17. It is contended that G.O.Ms.No.259 dt.21-06-2016 was issued *after* payment of compensation to the petitioners on 04-01-2017 and they received Rs.12.50 lakhs per acre and that this payment would comply with the said G.O. It is also stated that G.O.Rt.No.64 dt.09-06-2016 would not apply to assigned lands which are only assigned for agricultural purpose and not for any commercial purpose and the said G.O. would apply only to private lands in Gudepuvalasa, Kancheru and Koulavada where there are commercial activities like real estate, private engineering colleges, aqua industries etc.

18. It is also contended that petitioners were paid compensation between 30-09-2015 and 16-10-2017 and after fixation/ payment of compensation for assigned lands, the package deal G.O.Rt.No.64 was issued on 30-09-2015 and the petitioners are not entitled to compensation fixed under the said G.O.

THE CONSIDERATION BY THE COURT

19. I have noted the contentions of both sides.

20. It is an admitted fact that the petitioners are assignees of Government lands in Kancheru village of Bhogapuram Mandal, Vizianagaram District.

21. Admittedly, the respondents had issued a notification under Section 11 (1) of Act 30 of 2013 on 31-08-2015 for acquiring petitioners' lands as well as other lands in Kancheru and five other villages as mentioned above.

22. This Court in **Mekala Pandu and others** (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.

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

24. G.O.Ms.No.259 dt.21-06-2016 was also issued by 1st respondent stating that where land of assignees is required for public purpose for a project in terms of the conditions mentioned in the patta or assignment deed, they are entitled to compensation on par with the patta lands as per Act 30 of 2013. Thus, G.O.Ms.No.259 dt.21-06-2016 incorporates the principle in **Mekala Pandu** (1 supra).

25. A look at the 'consent forms' of petitioners filed by respondents only indicates that they stated their willingness to surrender the lands assigned to them and have furnished details of name, land, bank account etc. Though the word 'exgratia' is

mentioned in them, no figure/amount was mentioned in any of the said consent forms.

26. Thus those consent letters do not indicate that the petitioners had agreed to take only Rs.12,50,000/- per acre towards compensation/exgratia.

27. The respondents cannot, having issued G.O.Ms.No.259 dt.21-06-2016, and in the light of **Mekala Pandu** (1 supra), obtain such consent forms fraudulently and by misrepresentation and cheat the petitioners of compensation legitimately due to them.

28. Any interpretation on said 'consent forms' that petitioners consented to taking ex-gratia, of whatever amount the respondents choose to give, would be unjust, unconscionable and contrary to public policy.

29. In **Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**², the Supreme Court declared that Courts in this country can strike down 'unconscionable' contract terms if they are contrary to public policy invoking S.23 of the Contract Act,1872. It declared :

“ 89. The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great

² (1986) 3 SCC 156

equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be...

91. Contracts in prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group or groups of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and would also not be in the public interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void. While the law of contracts in England is mostly judge-made, the law of contracts in India is enacted in a statute, namely, the Indian Contract Act, 1872. In order that such a contract should

be void, it must fall under one of the relevant sections of the Indian Contract Act. The only relevant provision in the Indian Contract Act which can apply is Section 23 when it states that “The consideration or object of an agreement is lawful, unless ... the court regards it as ... opposed to public policy.

93. ...The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void.” (emphasis supplied)

30. In the instant case too there is unequal bargaining power between petitioners and respondents representing the mighty State and they have no choice in the matter. Where large number of poor illiterate assignees like petitioners were all made to fill up and sign identical dotted line ‘consent forms’ to deprive them of market value compensation for their resumed assigned lands by respondents as per **Mekala Pandu** (1 supra), shocks the conscience of the Court. Thus the instant case falls within the principle laid down in **Central Inland Water Transport Corpn** case (2 supra) and the said consent forms cannot disentitle the petitioners of what they are entitled to as per law.

31. Since admittedly the petitioners had given up possession of their lands after coming into effect of G.O.Ms.No.259 dt.21-06-2016 on 04-01-2017, petitioners cannot be denied the benefit under the said G.O. on the pretext that the petitioners have given ‘consent forms’/signed statements mentioning that they would take exgratia.

32. It is also settled principle of law that there is no estoppel against the law³ and if the law as in **Mekala Pandu** (1 supra) and G.O.Ms.No.259 (Assn.I) Department dt.21-06-2016 entitles them to market value compensation as per Act 30 of 2013 on par with owners of patta lands, petitioners cannot be denied the same by the State by pleading any estoppel on basis of the 'consent forms' signed by petitioners.

33. The plea of the respondents that petitioners are not entitled to Rs.28.00 lakhs per acre fixed under G.O.Ms.No.64 dt.09-06-2016 for resumption of their lands in Kancheru village cannot be countenanced in view of G.O.MS.No.259 dt.21-06-2016 which entitles the petitioners to the same compensation as is given to private land owners by the State and is in tune with the decision in **Mekala Pandu** (1 supra). When even according to the respondents, private owners in Kancheru village were paid Rs.28.00 lakhs per acre as per G.O.Rt.No.64 dt.09-06-2016, the petitioners cannot be denied equivalent amount as compensation in view of G.O.Ms.No.259 dt.21-06-2016.

34. It is even more surprising how the respondents can state in their counter that G.O.Ms.No.259 dt.21-06-2016 was issued *after* payment of compensation to the petitioners on 04-01-2017. The respondents have obviously missed the fact that 04-01-2017 occurs only *after* G.O.Ms.No.259 was issued on 21-06-2016.

³ Elson Machines (P) Ltd. v. CCE ... AIR 1989 SC 617

35. The State is not entitled to defeat the rationale behind the judgment of **Mekala Pandu** (1 supra) and it's own policy reflected in G.O.Ms.No.259 dt.21-06-2016 in this clandestine manner by raising technical pleas.

36. Therefore, the Writ Petition is allowed with costs of Rs.1000/- (Rupees One Thousand only) to be paid by the respondents to each of the petitioners; the respondents are directed to pay Rs.28,00,000/- (Rupees Twenty Eight Lakhs only) per acre to each of the petitioners, whose assigned lands in Kancheru village have been resumed for the Bhogapuram International Airport, within six weeks. Till the said compensation is paid, the respondents shall not put the subject land to use for the said Airport.

37. I.A.Nos.1 and 2 of 2018 stand disposed of as above.

38. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-10-2018

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