

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

I.A.Nos.2 and 3 of 2018 in WP.No.26046 of 2018

and

WRIT PETITION No.26046 of 2018

COMMON ORDER:

The petitioner in this Writ Petition is widow of an Ex-Servicemen. He died on 24-04-1998. Petitioner then made an application for assignment of Government land on 24-06-2012. After taking note of petitioner's husband's service in the Indian Army, the Government of Andhra Pradesh assigned to her Ac.2.25 cents in Sy.No.47/3, Ac.2.24 cents in Sy.No.48/3, and Ac.0.80 cents in Sy.No.50/3A in Chinnapanduru Village, Varadaiahpalem Mandal, Chittoor District, in all Ac.5.29 cents under DKT Patta No.42/4/1423 dt.22-02-2014.

2. Pattadar pass book and title deed was issued to the petitioner by the Revenue Department which had been filed along with the Writ Petition.

3. The petitioner contends that she had been in continuous and uninterrupted possession of the above lands from the date of assignment; that she had not violated any conditions of the patta; that in 2016, her lands along with other lands in the said village were taken possession by the Tahsildar, Varadaiahpalem Mandal (5th respondent) promising to pay *ex gratia* for establishment of Industrial Park by the Andhra Pradesh Industrial Infrastructure

Corporation (A.P.I.I.C.) (6th respondent); and when she approached the 5th respondent seeking compensation which she is entitled to as per the decision in **LAO-cum-Revenue Divisional Officer, Chevella Division, Domalguda, Hyderabad and others Vs. Mekala Pandu and others**¹, he did not take any action.

4. Petitioner contends that she filed W.P.No.25102 of 2018 seeking compensation for her land which was resumed and the Court on 20-07-2018 granted interim order restraining the respondents from carrying out any development activity on the said land pending the Writ Petition.

5. Petitioner contends that on 23-07-2018, personnel of the 5th respondent came to his house and served on him proceedings D.Dis.(E4)/Rev-ESECOLAS(APL)/52/2018 dt.20-06-2018 passed by the Joint Collector, Chittoor (3rd respondent) and under the said order, without issuing any prior notice to her, her DKT patta was cancelled on the ground that one G.Chandraiah, G.Jaya Ramaiah, P.Indumathi had been assigned portions of the land assigned to the petitioner and without cancellation of the same, she had been granted DKT patta for the said land; and so the DKT patta as well as pattadar passbook and title deed issued to the petitioner are cancelled.

6. Petitioner contends that she had knowledge of the same only on 23-07-2018 and though the said impugned order states that there was a show cause notice dt.Nil issued to her in the month of May, 2018

¹ 2004(2) ALD 451 (LB)

and in para-6 there is a reference to a notice issued to her on 07-06-2018, she did not receive any such notice and the said statements themselves are contradictory to each other.

7. In the said order, there is a table showing the land and the survey numbers of lands assigned to petitioner and others, the remarks column in the table states that petitioner was issued Khatas subsequently without canceling the first Khata, and that the first Khata should be considered for payment of ex gratia, and the subsequent Khata (land assigned to petitioner) should be cancelled as mistake of fact invoking Board Standing Order No.15(18).

8. The petitioner contended that the 3rd respondent proceeded on the assumption that petitioner was at fault, but it was evident that the mistake was on the part of the Revenue authorities if they had really assigned the land to her without verifying previous records. It is contended that the respondents are trying to deny her compensation on one ground or the other and they cannot knock away the compensation in the name of the alleged assignees. Petitioner therefore contends that the said order is illegal, arbitrary, violative of Article 14, 21 and 300-A of the Constitution of India, that it should be set aside. She also seeks a consequential direction to the State of Andhra Pradesh (1st respondent) and the District Collector, Chittoor (2nd respondent) to pay compensation to her in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013).

9. Petitioner filed I.A.No.1 of 2018 in W.P.No.26038 of 2018 to direct the respondents to ensure that no development activity is carried out on the land assigned to her which has been resumed for public purpose.

10. On 27-07-2018, in I.A.No.1 of 2018 in W.P.No.26046 of 2018 this Court passed the following order:

“... .. since notices by Registered Post Acknowledgment Due (RPAD) have not been served on petitioner and no explanation is furnished in the impugned order as to why ‘substituted service’ was resorted to, and in what manner and when, prima facie, the impugned order can be said to have been passed in gross violation of principles of natural justice.

Therefore, there shall be interim direction as prayed for.”

11. Learned counsel for petitioner contended that the Sub-Collector, Tirupathi (4th respondent) submitted ex gratia proposals for the lands acquired in the above village for the above purpose; that he reported that some of the assigned lands in the village have two or three Khatas existing for a single survey number and recommended that the subsequent Khatas be cancelled under “mistake of fact”. Counsel for petitioner contends that the extents assigned to petitioner and the extents assigned to third parties in whose favour *ex gratia* is proposed are different though in same survey numbers.

12. Learned counsel for petitioner contends that Board Standing Order (B.S.O.) No.15 (18) read with G.O.Ms.No.912 Revenue (B)

Department dt.02.08.1985 was invoked erroneously while passing the impugned order; that the 3rd respondent proceeded on the assumption that petitioner was at fault and asked them to give explanation; in fact, it was a mistake on the part of the Revenue Authorities to have assigned the lands to the petitioner without verifying previous records; since petitioner is not at fault and had cultivated the same for the said period, she alone is entitled to compensation; and the earlier assignees, who had never challenged the assignment to the petitioner of the lands, cannot be granted compensation depriving the petitioner of the same.

13. The petitioner placed reliance on G.O.Ms.No.259 dt.21.06.2016 and contended that she is entitled to compensation on par with full owners of the land (patta land owners) and all attendant benefits under Act 30 of 2013.

14. I.A.No.2 of 2018 has been filed by 6th respondent and I.A.No.3 of 2018 was filed by respondent Nos.1 to 5 to vacate the order 27-07-2018 in I.A.No.1 of 2018 in W.P.No.26046 of 2018.

CONTENTIONS IN THE COUNTER-AFFIDAVIT OF RESPONDENTS

15. The APIIC (6th respondent) filed a counter stating that petitioner was not in possession of land of Ac.2.25 cents in Sy.No.47/3, Ac.2.24 cents in Sy.No.48/3, and Ac.0.80 cents in Sy.No.50/3A and G.Chandraiah, G.Jayaramaiah and P.Indumathi etc.

of the lands assigned to the petitioner. It is also contended that petitioner is not in possession of this land on the ground.

16. However, in support of the contentions of APIIC that petitioner is not in possession of the lands assigned to him, no adangal or other revenue record has been filed.

17. It is stated that notice was issued to the petitioner by way of *substituted service* and an order dt.29-05-2018 was issued for cancellation of DKT patta to the petitioner on the ground of mistake of fact. No such order has been filed along with the counter-affidavit by the APIIC.

18. It is contended that an appeal lies against the order dt.29-05-2018 to the Commissioner (Appeals), O/o. Chief Commissioner of Land Administration, A.P., Vijayawada within 40 days. Since the said order has not even been filed by the APIIC and there is no evidence of its service on the petitioner till date, the question of the petitioner filing an appeal against the said order does not arise.

19. It is stated that possession of the land of the petitioner and other land was taken on 04-08-2017 and 23-07-2016 and since then it is in possession of the APIIC.

20. Two counter affidavits, one dt.12-09-2018 and the other dt.28-11-2018 were filed by respondent Nos.1 to 5.

21. In the counter dt.12-09-2018, the Tahsildar, Varadaiahpalem (5th respondent) reiterated what is contained in the counter of APIIC and also extracted Board Standing Order 15 (18) as amended by G.O.Ms.No.912 (Revenue-B) Department dt.02-08-1985.

22. In the counter-affidavit filed in support of the said application, it is the stand of the respondents that there was a requisition from the APIIC for providing land for construction of an Industrial Park; and that the Sub-Collector, Tirupathi enquired into the matter and found that there are two or three ROR Khatas existing for a single survey number in the land sought by the A.P.I.I.C. and recommended for cancellation of such Khatas under 'mistake of fact'. It is stated that compensation / *ex gratia* is proposed to be paid not to the petitioner but to third parties who had been earlier granted Khatas in the said survey numbers in which petitioner was later assigned lands; that the persons who were given earlier pattas were found in possession of the lands; and so compensation is proposed to be paid to them and the subsequent Khatas issued in the name of the petitioner was cancelled basing on the recommendations of the Sub-Collector by invoking B.S.O. 15 (18) read with G.O.Ms.No.912, Revenue (B) Department, dt.02.08.1985.

23. It is stated that notice was sent to the petitioner vide Roc.REV-ESECOLOAS(APL)/52/2018 dt.07-06-2018 calling for explanation within 7 days as to why the patta, pattadar pass book and title deed given to her should not be cancelled and she was given opportunity to

appear before the Joint Collector on 18-06-2016. It is contended that since the petitioner was not residing in the village, as is clear from the address given by the petitioner in the cause title itself, notice sent through R.P.A.D. was returned unserved; and that notice was served through substituted service i.e. by exhibiting the same in a conspicuous place i.e. the Gram Panchayat office.

24. No returned postal cover evidencing attempt to serve the petitioner by RPAD is filed along with the counter by 5th respondent. Therefore this contention of 5th respondent cannot be believed.

25. Respondents cannot contend that she was not residing in the village on the basis of the address given in the cause title to the Writ Petition. The respondents cannot rely on the address of the petitioner shown in the cause title of the Writ Petition because by the time the Writ Petition was filed, the land of the petitioner was resumed, and so she cannot stay in the said land in the village and has to find a different place of residence.

26. Also, the notice dt.07-06-2018 cannot fix the date of hearing before the Joint Collector on 18-06-2016 and this itself falsifies the 5th respondent's case. No rule is quoted permitting affixture in gram Panchayat's office and such affixture cannot be said to be proper service on petitioner.

27. Therefore the pleas of the 5th respondent cannot be accepted and it has to be held that the order passed by Joint Collector, Chittoor on 20-06-2018 was in violation of principles of natural justice.

28. It is stated in the counter of 5th respondent that land was taken possession after sanctioning ex gratia to the 1st khata holder and not to the subsequent khata holders, under whose name patta was issued under mistake of fact as per the proposal of the 4th respondent. It is stated that there was collusion between the petitioner and the then Tahsildar, who was posted in the village temporarily for election purpose in 2014 got pattas illegally without following the procedure under BSO 15 and also got her name entered in the 1B records.

29. It is contended that order dt.20-06-2018 was passed by the Joint Collector, Chittoor invoking the above provision and canceling the DKT pattas issued to petitioner as well as the pattadar pass book and title deeds issued to him on the basis of “mistake of fact”; that there is jurisdiction for cancellation of patta on grounds of fraud and misrepresentation; and that the B.S.O. does not prescribe any period of limitation for exercise of revisional jurisdiction to cancel assignments if there is material irregularity in the procedure or if the decision was grossly inequitable or it exceeded the powers of the officer who passed it or it was passed under a ‘mistake of fact’ or owing to fraud or misrepresentation. Reliance is placed on **In Re P. Shyam Rao², Habeeb Yahiya and another vs. Government of**

² 1984 (2) A.L.T. 386

Andhra Pradesh³, C. Subhash Mudiraj vs. Regional Joint Commissioner⁴ and it is contended that when fraud is committed, authorities are competent to withdraw the benefit at any point of time, and similar is the case with regard to ‘mistake of fact’ and ‘material irregularity in procedure’.

30. It is contended that there is no reason to stall development activity in the land as respondents are willing to pay compensation / *ex gratia* to earlier assignees and so the interim order is liable to be vacated.

31. Along with the Vacate Stay application copy of proceedings ROC.G2/2095/2016 dt.24.06.2016 of the then District Collector, Chittoor were filed which records that market value for acquisition of land of Acs.164.57 cents acquired from assignees has been fixed by the Sub-Collector, Tirupathi at Rs.6,50,000/- per acre and a sum of Rs.10,03,55,125/- was sanctioned to be disbursed for payment of *ex gratia* to 126 assignees of DKT lands of Chinnapaduru Village. The said order contained two categories (A) and (C). Copies of 1-B Register of certain survey numbers are also filed.

32. In the second counter-affidavit dt.28-11-2018 filed by Sub-Collector, Tirupati (4th respondent), it is stated that resumption of the land was done by Tahsildar, Varadaiahpalem on 16-10-2015 and panchanama was conducted on 17-10-2015. But this contradicts the

³ 2003 (5) ALD 215

⁴ 2003 (2) ALD 750

counter of the Tahsildar who stated in para-8 of his counter that possession was taken in 2016. The panchanamas and the resumption orders do not relate to the petitioner but to 7th respondent and others.

33. After referring to G.O.Ms.No.259 Revenue (Assignment-I) Department dt.21-06-2016 and Section 26 of the Act 30 of 2013, it is stated that 16 sale transactions for the period 17-10-2012 to 16-10-2015 were taken into account but all were discarded on the ground that they relate to non-similar lands, or were not in vicinity of the lands of the petitioner or some sales have house site potentiality and were existing nearby village settlements.

34. It is stated that basic value as per Stamp Duty Act, 1899 was taken at Rs.2,00,000/- per acre as on 01-08-2016 and on that basis, the rate was worked out as Rs.2,00,000/- per acre x 1.25 multiple factor = Rs.2,50,000/- + Rs.2,50,000/- as 100% solatium = Rs.5,00,000/-, but since some assignees had agreed for Rs.6,50,000/- per acre, the market value was fixed on that basis. It is admitted in para-11 that petitioner is entitled to Rs.34,19,000/- and the same had been deposited with the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh on the above basis.

REPLY AFFIDAVIT OF THE PETITIONER

35. Reply-affidavit is filed by the petitioner to the above Vacate Stay applications / counter-affidavits.

36. The petitioner contended that she was issued issued pattadar pass book pursuant to the D-Form patta issued to her; there was a statutory presumption under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 in her favour; therefore, respondents cannot contend that there are two or three ROR accounts in each survey number and put it against the petitioner. The petitioner denied that third parties were in possession of the lands at the time of resumption of the lands and asserted that she alone was in possession of the lands from the date of assignment till resumption and the Revenue Records also reflect her name.

37. It is contended that the power to cancel assignment DKT pattas vests with the District Collector as per G.O.Ms.No.912 Revenue (B) Department, dt.02.08.1985 and the Joint Collector (3rd respondent) had no jurisdiction to do so. It is also contended that power to revise assignments by canceling them should be exercised within a reasonable time (from the date of assignment) even if there is no time limit prescribed for exercise of such revisional power; and in the instant case there is no allegation of fraud against the petitioner and the cancellation is on the basis of the 'mistake of fact' only. Therefore, the Writ Petition is maintainable and the petitioner is entitled to compensation.

THE POINTS FOR CONSIDERATION

38. From the above pleadings, the following questions arise for consideration:

- (a) *What was the ground on the basis of which action was taken by the Joint Collector, Chittoor to cancel the assignment made to the petitioner?*
- (b) *Whether the 3rd respondent passed the impugned order in violation of principles of natural justice?*
- (c) *Whether exercise of suo motu revisional powers invoking Board Standing Order No.15 (18) by the Joint Collector, Chittoor is valid in law?*
- (d) *Whether the petitioner is entitled to compensation from the respondents and if so, how much?*

Point (a):-

39. According to the petitioner, she had been assigned various extents of land in Chinnapanduru village on 22-02-2014 , as widow of ex-serviceman.

40. According to the impugned order, the Sub Collector, Tirupathi, submitted a report in April 2018 that lands assigned to the petitioner had been assigned to him under “mistake of fact” since there were two or three khatas existing for a single survey number. Thus respondents state that there was earlier assignment of lands in the same survey numbers to others and without canceling the same, there was assignment again to the petitioner. The table given in the impugned order mentions these facts as regards land assigned to petitioner and others.

41. In para-15 of the impugned order, it is stated that '*DKT pattas were issued to the respondents/subsequent assignees without canceling original assignments*' and so the DKT patta, pattadar pass book and title deed granted to petitioner are cancelled under BSO 15 (18) read with G.O.Ms.No.912 Revenue (B Department) dt.02-08-1985.'

42. Therefore, though in the first paragraph of the impugned order, it is stated that there was *misrepresentation of facts* under BSO 15 (18), the basis on which the impugned order was passed is not misrepresentation but that there was a *mistake of fact*.

43. In the first counter affidavit filed by the Tahsildar, Varadaiahpalem, at paragraph 5, it is admitted that the Sub Collector, Chittoor, recommended cancellation of Khatas under *mistake of fact* only and this is also reiterated in para-7 of the counter affidavit.

44. So the 5th respondent in para 7 of his counter cannot state that petitioner colluded with the then Tahsildar and got entered his name in the 1B records. This is a false plea made to mislead the Court.

45. Therefore on this point, I hold that the basis for cancellation of assignments granted to the petitioner was *mistake of fact* and not fraud or misrepresentation of the petitioner.

Point (b):

46. It is stated in the counter of the 5th respondent that notice was sent to the petitioner vide Roc.REV-ESECOLOAS(APL)/52/2018

dt.07-06-2018 calling for explanation within 7 days as to why the DKT patta, pattadar pass book and title deed given to her should not be cancelled and she was given opportunity to appear before the Joint Collector on 18-06-2016. It is contended that since the petitioner was not residing in the village, as is clear from the address given by the petitioner in the cause title itself, notice sent through R.P.A.D. was returned unserved; and that notice was served through substituted service i.e. by exhibiting the same in a conspicuous place i.e. the Gram Panchayat office.

47. No returned postal cover evidencing attempt to serve the petitioner by RPAD is filed along with the counter by 5th respondent. Therefore this contention of 5th respondent cannot be believed.

48. Respondents cannot contend that she was not residing in the village on the basis of the address given in the cause title to the Writ Petition. The respondents cannot rely on the address of the petitioner shown in the cause title of the Writ Petition because by the time the Writ Petition was filed, the land of the petitioner was resumed, and so she cannot stay in the said land in the village and has to find a different place of residence.

49. Further no rule is quoted permitting affixture in gram Panchayat's office and such affixture cannot be said to be proper service on petitioner. Such affixture cannot be deemed to be proper service on petitioner.

50. Also, the notice dt.07-06-2018 cannot fix the date of hearing before the Joint Collector on 18-06-2016 and this itself falsifies the 5th respondent's case.

51. Thus the impugned order was passed in violation of principles of natural justice and is therefore bad in law and unsustainable.

Point (c):-

52. Board Standing Order 15 (18) deals with the power of Revision conferred on the District Collector. Sub para (1) states:

“(1) the order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of, is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation he may set aside, cancel or in any way modify the decision passed by an officer subordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him.”

53. From the above provision, it is clear that powers of Revision can be exercised by the District Collector on being satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to

fraud or misrepresentation. No period of limitation is indicated therein.

54. The Special Government Pleader Sri D.Ramesh appearing for the respondents contended that the impugned order exercising Revisional power under BSO 15(18) is valid since there is no period of limitation prescribed for exercise of Revisional powers by the Collector.

55. In **State of Gujarat Vs. Patel Raghav Natha⁵**, the Supreme Court held that even when no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied.

56. This was reiterated in **Collector and others Vs. P.Mangamma and others⁶**. The Supreme Court held that it would be hard to give an exact definition of the word “reasonable” and that it is a relative term and is essentially what is rationale according to the dictates of reason and not excessive or immoderate on the facts and circumstances of a particular case.

57. In **Collector v. D.Narsing Rao and others⁷**, the Supreme Court again reviewed the case law in relation to exercise of *suo motu* revisional powers under Section 166-B of the A.P. (Telangana) Area Land Revenue Act, 1317 Fasli. The said provision stated:

⁵ (1969) 2 S.C.C. 187

⁶ (2003) 4 S.C.C. 488

⁷ (2015) 3 SCC 695

“166-B. Revision.—(1) *Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F, the Government or any Revenue Officer not lower in rank to a Collector the Settlement Commissioner of Land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf;*

Provided that no order or decision affecting the rights of the ryot shall be modified or annulled unless the parties concerned are summoned and heard.

(2) *Every Revenue Officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings for a subordinate department and satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and if, in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case and with his opinion to the Collector or Settlement Commissioner as the case may be. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of sub-section (1).*

(3) *The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision.”*

58. The Supreme Court referred to the above decisions and observed:

“25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of

the power is concerned which ought to be permissible only when the power is invoked within a reasonable period....

31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.” (emphasis supplied)

59. Thus, according to the above decision, even when there is no period of limitation prescribed for exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period and this is so even in cases where allegations of *fraud* have necessitated the exercise of any corrective power. It held that simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; and otherwise the very exercise of Revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority. It held that where the State sought to exercise revisional powers 50 years after the names of the predecessors in title of the respondents were incorporated in the

Khasra pahani and other revenue records, such exercise of power is bad in law since *the Government had every occasion to verify the revenue entries but had not chosen to do so and it must be presumed to have known about the record and the revenue entries concerning the parcel of the land made in the ordinary course of official business.*

60. Consequently, the decisions cited by the respondents in their counter affidavit on **C.Subash Mudiraj** (5 supra) and **Habeeb Yahiya** (4 supra) and **In Re P Shyam Rao** (3 supra) which dealt with cases of *fraud* and empowered Revisional powers to be exercised at any point of time are not good in law, and are deemed to be overruled by the decision in **D.Narsing Rao and others** (7 supra).

61. In the instant case, there is admittedly no allegation of fraud against the petitioner and the impugned order proceeds on the basis that there was a *mistake of fact*. It is also not open to the respondents to contend that the principle in **C.Subash Mudiraj** (4 supra) and **Habeeb Yahiya** (3 supra) and **In Re P Shyam Rao** (2 supra) which dealt with fraud can also be extended to cases of *mistake of fact* and *material irregularity*, and that even in such cases, they can exercise the Revisional powers at any point of time.

62. In view of the above settled legal position, I hold on point (c) that the *suo motu* revisional powers, having been exercised in May, 2018 through show cause notice by the Joint Collector, more than 4 years from the grant of assignment to the petitioner, cannot be

said to have been exercised within a reasonable time, since it is not the case of the State that it was precluded from verifying the revenue records and the number of khatas in each survey number before issuing assignment/DKT pattas to the petitioner or at any time thereafter within a reasonable time.

63. Also when the power under BSO 15 (18) is conferred on the Collector, the Joint Collector cannot exercise the said power. So, the exercise of such a power by the Joint Collector is wholly without jurisdiction.

64. When such exercise of power by the Joint Collector is without jurisdiction, there is no need for the petitioner to avail the remedy of appeal to the Chief Commissioner of Land Administration, A.P., Vijayawada, within 40 days in view of the decision of the Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks**⁸.

65. Accordingly, Point (c) is held in favour of the petitioner and against the respondents.

Point (d):-

66. I shall now consider the question “*Whether the petitioner is entitled to compensation from the respondents and if so, how much?*”

67. A Larger Bench of 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

⁸ (1998) 8 S.C.C. 1

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.

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

69. This legal position is not disputed by the Special Government Pleader.

70. So if the assignment of land to the petitioner is valid, he is also entitled to compensation as per the decision in **Mekala Pandu** (1 Supra).

71. From the pleadings of the parties, it is clear that DKT patta was also issued to the petitioner on 22-2-2014 by the Revenue officials, though it is the stand of the respondents that this was done under “mistake of fact”.

72. Petitioner has filed pattadar pass book and title deed issued to her by the 5th respondent. The issuance of the said pattadar pass books to petitioner has not been disputed. As per Rule 26(6) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989, such pass books would be issued only to those persons who are in actual possession of the land. Therefore the very fact that the petitioner has been issued such pattadar pass book indicates that she is in possession of the land assigned to her and the stand of the respondents that she was not in possession of the land cannot be accepted.

73. In para-7 of the counter-affidavit filed by respondent Nos.1 to 5, it is admitted that petitioner's name was also incorporated in 1B register though it is suggested that this was done by them with the help of an incompetent Tahsildar, who was deputed for Election duty in 2014. There is absolutely no basis or evidence in support of the said plea and there is no mention of this allegation in the impugned order passed by the Joint Collector. Obviously the then Tahsildar who affected entries of the petitioner's name in the 1B register is conveniently made the scapegoat to avoid payment of compensation on market value basis to the petitioner as per **Mekala Pandu** (1 supra). Under Section 6 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 there is a presumption of correctness of entries in Record of Rights and the petitioner is entitled to the benefit of the said presumption particularly when pattadar pass book was also issued to him.

74. In the impugned order passed by the Joint Collector though there is mention that petitioner is not in possession of the lands claimed to have been assigned to him, no adangal is filed by the respondents along with their counter-affidavits to show that the persons who were allegedly assigned lands prior to the petitioner, were in possession of the land at the time of its resumption and not the petitioner.

75. The 3rd parties who are alleged by the respondents to be prior assignees had never complained to anybody about the fresh

assignment given to the petitioner and have kept silent all these years. This also indicates that she was probably in possession of different parcel of land in the same survey number and not the parcel of the land assigned to the petitioner.

76. So they would not be entitled to claim any compensation for the resumption of the land assigned to the petitioner and the respondent nos.1 to 5 cannot deprive the petitioner of the compensation on the said pretext.

77. Therefore, I see no reason to doubt the genuineness of the assignment of lands to the petitioner.

78. Consequently, the impugned order dt.20-6-2018 passed by the Joint Collector, Chittoor cannot be sustained not only on the above ground but also on the ground that he did not have jurisdiction to revise the pattas granted to the petitioner and only the District Collector had such jurisdiction; and even if he had jurisdiction, it was exercised not within reasonable time and is vitiated.

79. Accordingly, the impugned order dt.20-06-2018 of the Joint Collector, Chittoor is declared as one without jurisdiction, illegal and void and is accordingly set aside.

80. I also hold that petitioner is entitled to compensation on market value basis as per the decision in **Mekala Pandu** (1 Supra). and that the action of the respondents in totally denying compensation to the petitioner whose assigned lands were resumed in 2016 is illegal,

arbitrary and violative of Article 14 and 300-A of the Constitution of India as well as the decision in **Mekala Pandu** (1 supra).

81. Coming to the quantum of compensation, it is not disputed that the State Government had issued G.O.Ms.No.259 Revenue (Assn.1) Department dt.21-06-2016 stating that compensation for resumed assigned lands would be paid on par with patta lands as per the provisions of the Right for Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

82. Proceedings Roc.No.G2/2095/2016 dt.24-06-2016 have been filed by respondents proposing compensation at Rs.6,50,000/- per acre for the DKT lands which are acquired in Chinnapanduru village.

83. In para-5 of the counter-affidavit filed by the Sub-Collector, Varadaiahpalem it is contended that resumption proceedings were issued by the then Tahsildar, Varadaiahpalem on 16-10-2015 and possession was taken under panchanama on 17-10-2015. Some resumption orders in relation to respondent no.7 and others have been filed along with the said counter-affidavit. However, there is no assertion by respondents that similar resumption orders were passed resuming the land assigned in favour of the petitioner.

84. But in para-9 of the counter-affidavit filed by Tahsildar, Varadaiahpalem on behalf of all the respondents, he contradicts the Sub-Collector by saying that possession of the land was taken by

respondents in 2016 and 2017 and handed over to the A.P.I.I.C. in 2017. *No specific date is mentioned in the counter-affidavit as regards the date of dispossession of the petitioner. No panchanama is filed in proof of taking of possession of the lands assigned to the petitioner and it appears that the same has been deliberately suppressed by the respondents.* When a specific question was put to the Government Pleader on this aspect, he could not give any satisfactory answer.

85. This shows that the respondents are not speaking truth and wish to mislead the Court as to the date when they actually resumed the lands assigned to petitioner by dispossessing him.

86. In **Charan Dass v. H.P. Housing & Urban Development Authority**⁹ and in several other cases, the Supreme Court had held that comparable sales instances of similar lands in the neighborhood at or about the date of notification under Section 4(1) of the Act are considered to be the best evidence for determining the market value of the acquired land to arrive at a fair estimate of the amount of compensation payable to a landowner.

87. In **Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others**¹⁰, the Supreme Court held that when several sale deeds are available with reference to similar lands, it is the general rule that highest of the sales, if they are bona

⁹ (2010) 13 SCC 398

¹⁰ (2012) 5 S.C.C 432

fide sales, has to be considered and accepted; and the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different value.

88. In **Kasturi v. State of Haryana**¹¹ it was held that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes.

89. These are the fundamental legal principles which ought to be applied for determining market value of the land as per the Land Acquisition Act, 1894 and also the Act 30 of 2013. These are not disputed by the Special Government Pleader.

90. In the counter-affidavit it is stated that 16 sale transactions of lands for the period 17-10-2012 to 16-10-2015 were considered, but all were discarded on the ground that they did not relate to the same type of land as the lands of the petitioner, and were not in the vicinity of the said land (para-9 of the counter of the Sub-Collector) and only the basic value of the land obtained from the Sub-Registrar, which was Rs.2,00,000/- per acre, was adopted as the market value.

¹¹ (2003) 1 SCC 354

91. According to Section 26(1) of Act 30 of 2013, the *higher* of the values between (a) market value specified in the Stamp Act, 1899 for registration of sale deeds *and* (b) average sale price for similar type of land situated in the nearest village or nearest vicinity area, has to be considered. Therefore, only on the basis of basic value register maintained under the Stamp Act, 1899, the respondents cannot determine market value of the lands of the petitioner by ignoring the sale transactions in the vicinity.

92. In my opinion, the 16 sale transactions include sales within 2 Kms from the lands assigned to the petitioner as well, for example, the sale transaction being document No.805/2013 dt.23-11-2013 in Sy.No.28/2B and 28/3B where Ac.1.44 cents was sold for Rs.7,00,000/- per acre (Transaction No.15). But, this is rejected on the ground that the sold land is adjacent to National High way and village site while the lands assigned to the petitioner are not adjacent to the National High way.

93. In my considered opinion, it was not open to the Joint Collector to rely upon the basic value register and ignore the above sale transaction of larger extent of Acs.1.44 cents which is within 2 Kms from the lands assigned to the petitioner. The principles in the above decisions were not followed by the Joint Collector when he arrived at the market value of the petitioner's land as Rs.2,00,000/- per acre.

94. Also, since according to the Tahsildar's counter, possession of the land of the petitioner was taken in 2016 (para-9 of the counter), it was incumbent on the part of the respondents to consider sale transaction even in the year 2016 proximate in time to the date of dispossession of the petitioner. This has also not been done.

95. This Court had dealt with several matters from the Chittoor District dealing with non-payment of compensation to assignees, whose lands were acquired for projects by APIIC, and has time and again found fault with the manner in which the respondents have ignored **Mekala Pandu** (1 supra) and deliberately either deprived the assignees of compensation totally or paid them very meager amount ignoring every settled principle of law governing the fixation of compensation for lands acquired. Strictures were passed against the District collector, Chittoor and the Joint Collector, Chittoor. The said matters are :

- (i) Order dt.24.10.2017 in WP.No.18152 of 2012 ;
- (ii) Order dt.29.08.2017 in WP.No.3102 of 2012;
- (iii) Order dt.06.12.2018 in Rev.I.A.No.2 of 2018 in WP.No.18152 of 2012 and C.C.No.1329 of 2018
- (iv) Order dt.05.12.2018 in Rev.I.A.No.2 of 2018 in WP.No.3102 of 2012 and C.C.No.1809 of 2018;
- (v) Order dt.09.03.2017 in WP.No.20140 of 2011;

- (vi) Order dt.04.10.2018 in CC.No.1471 of 2017;
- (vii) Order dt.28.04.2016 in WP.No.5727 of 2016;
- (viii) Order dt.30.04.2018 in CC.No.2304 of 2016;
- (ix) Order dt.23.02.2017 in WP.No.20953 of 2015.

96. In **CAG v. K.S. Jagannathan**¹², the Supreme Court declared that in exercise of jurisdiction under Article 226 of Constitution of India, this Court has also got power to do what the State Government authorities are supposed to do. It observed :

“ 20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the

¹² (1986) 2 SCC 679

government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

97. Therefore, in the interests of justice, instead of relegating the matter again to the respondents to do an exercise afresh, which would have been totally futile, having regard to their conduct in the cases mentioned above in para no.95, I deem it appropriate to determine the compensation to be paid to the petitioner in exercise of the jurisdiction conferred on this Court under Art.226 of the Constitution of India.

98. I have already noted that as per the Counter affidavit of the Sub-Collector, Tirupathi there is the sale transaction being document No.805/2013 dt.23-11-2013 in Sy.No.28/2B and 28/3B where Ac.1.44 cents was sold for Rs.7,00,000/- per acre (Transaction No.15). This land is 1.92 Km from the lands assigned to petitioner according to the respondents.

99. The Supreme Court in **Jage Ram v. Union of India**¹³ has held that normally 15% escalation is being taken per year by the Supreme Court in recent times while quantifying the compensation. So 15% value should be added to value of the sale consideration per year keeping in mind the escalation of price of the lands day by day.

100. Applying this principle the value would be Rs.8,05,000/- in the first year(2014), Rs.9,25,750/- for the 2nd year (2015) and Rs.10,64,613/- per acre for 2016, the year when the petitioner were dispossessed according to the Tahsildar.

¹³ (2017) 13 SCC 570

101. From this some deduction is to be made for the distance of 1.92 km from the land which is subject of the above sale transaction. Taking such deduction as 20%, the market value is determined as Rs.10,64,613/- minus Rs.2,12,923/- , which comes to Rs.8,51,690/- per acre.

102. Thereafter 1/3rd deduction is applied as per **Kasturi** (11 supra) towards development charges i.e Rs.8,51,690/- minus Rs.2,83,897/- = Rs.5,67, 793/- per acre.

103. Applying the principles for determination of compensation under Act 30 of 2013, the total amount of compensation per acre would be as under:

Market Value	=Rs.5,67,793/-
Add :	
(a) Rs.5,67,793/- x 1.25 (Multiplying factor Specified in I Schedule)	= Rs.7,09,741
(b) 100% solatium under Section 30(1)	= Rs 7,09,741
Total :	Rs.19,87,275 per acre

Petitioner is also entitled to interest under Sec.80 of Act 30 of 2013 between the date of dispossession till payment @ 9% p.a.

104. Accordingly the respondents are directed to pay within four (04) weeks from the date of receipt of copy of this order compensation at the above rate of Rs.19,87,275/- per acre to the petitioner for resuming her assigned lands in 2016 with interest at 9% p.a from date

of dispossession till date of payment; and till such payment is made, the respondents are directed to ensure that no development activity is carried out on petitioner's lands which were resumed.

105. The amounts admittedly deposited with the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by respondents 1-5 shall be taken back by the respondents. I.A.No.2 of 2018 and 3 of 2018 are disposed of as above and the Writ Petition is allowed with the above directions.

106. The 1st respondent shall pay costs of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) to petitioner within four (04) weeks.

JUSTICE M.S.RAMACHANDRA RAO

Date:31-12-2018

kvr

