

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**WRIT PETITION No.517 OF 2009**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the action of the official respondents in not paying *ex gratia* to the petitioner in respect of the land admeasuring Ac.1-14 cents in Survey no.610/6 of Cherivi Village, Satyavedu Mandal, Chittoor District, as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and consequently, direct the official respondents to pay *ex gratia* to the petitioner in respect of the above said land.

**2.** I have heard the submissions of *Sri T.C.D. Sekhar*, learned counsel for the petitioner, of the learned Government Pleader for Land Acquisition, appearing for respondents 1 to 4, and of *Sri G.R. Sudhakar*, learned counsel for the 5<sup>th</sup> respondent. I have perused the affidavit filed in support of the writ petition and the counter affidavit of the 4<sup>th</sup> respondent/Tahasildar filed on behalf of respondents 2 and 3 as well. No counter is filed by the 5<sup>th</sup> respondent.

**3.** From the pleadings and submissions, the following facts are discernable:

“The subject land was originally assigned under a DKT Patta, dated 19.12.1987, to the petitioner. The Andhra Pradesh Industrial Infrastructure Corporation (APIIC) made a request to the Government of Andhra Pradesh for acquisition of the lands in the entire Cherivi Village, as the Government declared the entire village as a Special Economic Zone (SEZ), for the purpose of establishing Industrial Park. For the said

public purpose, the Government acquired the lands in the said village. In so far as the private/patta lands, a notification under Section 4 (1) of the Land Acquisition Act, 1894 ('the Act', for brevity), was said to have been issued, on 18.03.2006 by the Government. However, insofar as the lands, which are assigned to various persons under DKT Pattas, the Government proposed to take possession and resume such assigned lands by paying *ex gratia* to the DKT Patta holders of the assigned lands. According to the petitioner, though the subject land was assigned to him under a DKT Patta, *ex gratia* is not paid to him. Therefore, he filed the present Writ Petition."

4. In this backdrop the case of the Government is this:

"It is true that the subject land was originally assigned to the petitioner under DKT Patta no.34/4/1395, dated 19.12.1987, and that the name of the petitioner was entered in 10 (1) Account. However, during the course of field inspection, it was noticed that the said land was alienated by the petitioner to one C.V. Ramaiah, S/o.Veeraraghavulu of Cherivi Village, the 5<sup>th</sup> respondent herein, who belongs to SC Community. The petitioner also gave a written statement, on 28.08.2007, stating that he alienated the subject land, which was assigned to him, to the said Ramaiah and that he has no objection for resumption of the land and to give the *ex gratia* to the said Ramaiah, as he had spent huge amounts for making the land fit for cultivation after alienation in his favour. Subsequently, the 4<sup>th</sup> respondent/Tahasildar vide proceedings in Roc.no.B/335/07, dated 01.10.2007, issued a notice to the petitioner calling for his explanation, within seven days, as to why the land shall not be resumed to the Government after cancellation of the DKT Patta of the petitioner for violating the conditions of the DKT Patta

and alienating the assigned land. Thereafter, the Tahasildar vide proceedings, dated 10.10.2007, passed orders cancelling the DKT Patta granted in favour of the petitioner for violation of the conditions of grant and resumed the land. The said orders became final. As the petitioner, in his statement, dated 28.08.2007, has already given consent and stated no objection to pay the *ex gratia* to the purchaser/Ramaiah-the 5<sup>th</sup> respondent, the Tahasildar vide DKT Patta No.616/4/1417, dated 20.01.2008, had assigned the subject land to the said Ramaiah, who is the enjoyer of the subject land and is a poor person belonging to SC Community. Later, the Tahasildar vide proceedings, dated 06.02.2008, in Roc.no.B/335/07, cancelled the above said DKT Patta issued to the said Ramaiah as per condition no.10 of the DKT Patta issued to the said Ramaiah; and, the land was resumed to the Government for public purpose i.e., for establishment of Industrial Park. The ryots of the village and residents of the Colony of the village also gave statements, on 01.03.2008, stating that the petitioner has sold away the subject land to Ramaiah, the 5<sup>th</sup> respondent. After obtaining necessary orders from the District Collector, *ex gratia* was paid to the said Ramaiah in respect of the subject land. The Writ Petition is filed by suppressing the facts and is hence, liable for dismissal.”

**5.** I have given thoughtful consideration to the facts and submissions. I have perused the material record.

**6.** The incontrovertible fact is that the subject land was originally assigned to the petitioner under a DKT patta. However, the reasons assigned by the respondents for denial of payment of *ex gratia* to the petitioner are as follows: ‘At the time of inspection it was found that the petitioner having transferred the assigned land was not in possession of

the same. The petitioner had alienated the assigned land to the 5<sup>th</sup> respondent. The said transferee is in possession and enjoyment of the subject land. Hence, and for violating the conditions of the assignment patta/the grant, his DKT patta was cancelled, however, after issuing a show cause notice and on his admission in the statement given by him that he alienated the subject assigned land and that he has no objection to pay the *ex gratia* to the transferee. Later, the subject land was assigned by the Tahasildar to the transferee-5<sup>th</sup> respondent under a DKT patta. In a while, his DKT patta was also cancelled and, the land was resumed by the Tahasildar for the purpose desired by the APIIC. Since the *ex gratia* was thus paid to the 5<sup>th</sup> respondent, the petitioner is not entitled to make the instant claim.'

**7.** Admittedly, as on the date of the requisition given by the APIIC for the acquisition of the lands in the village and also as on the date of the initiation of the acquisition proceedings and further, as on the date of notification under section 4 (1) of the Act issued in so far as the acquisition of the private/patta lands in the village, the petitioner was the holder of the DKT patta in respect of the subject assigned land, which is not in dispute, and his DKT patta was not cancelled. Though it is the case of the respondents that at the time of field inspection it was noticed that the petitioner transferred the assigned land to the 5<sup>th</sup> respondent, the counter affidavit is conspicuously silent about the names of the officers who made the field inspection and the date of inspection. No inspection report, if any, is produced with the counter. Further, though it is the case of the respondents that the DKT patta of the petitioner was liable for cancellation on the ground that he transferred the assigned land, yet, the date of transfer and the details like mode &

manner of transfer are nowhere mentioned. No document evidencing such transfer is produced. Even the 5<sup>th</sup> respondent, who is said to be the transferee, has not filed any counter. In this regard, it is profitable to refer to Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity, 'Act 9 of 1977').

"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."

As per the provision of the said section, land assigned by the Government to a landless poor person for the 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, even if it is to be assumed that there was a transfer of the assigned land by the assignee to a third party, yet, it shall be deemed that the land has never been transferred; as a consequence, it follows that the right or title in the assigned land

continued to vest in the original assignee, despite such transfer, if any. Though one of the contentions of the respondents is that the original assignee/writ petitioner gave consent for paying *ex gratia* to the purchaser-5<sup>th</sup> respondent, no record in support of the said contention is produced before this Court.

**8.** Further, for consequences of breach of the provisions of Section 3, the competent officer shall take appropriate action under Section 4 of the Act 9 of 1977, which reads as under:

**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 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.'

In the case on hand, even according to the case of the respondents, show cause notice was issued to the petitioner to show-cause within seven days as to why the DKT Patta issued in his favour shall not be cancelled and why the land shall not be resumed for violation of conditions of patta/grant namely transfer of the assigned land to third parties. Further, a time of seven days was given to the petitioner as per the contentions of the respondent. No notice was given to the transferee stating that possession of the land would be taken as the transfer in his favour in breach of the provisions of the Act 9 of 1977 is void and invalid. Further, Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977, contemplates that the District Collector or the authorised officer shall, before taking action under the provisions of Act 9 of 1977, issue a notice in Form I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the said Act 9 of 1977 and shall take further action after expiry of 15 days specified in the notice. Thus, while cancelling the patta allegedly of the writ petitioner/original assignee, the procedure

contemplated under Section 4 of the Act 9 of 1977 was not followed. Further, as per the provision of Section 4, in case of contravention of provision of Section 3, the competent 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 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 competent officer admittedly has not considered the entitlement of the original assignee for restoration of the assigned lands to him. Even without waiting for the statutory period of 15 days, the DKT patta of the petitioner/original assignee was allegedly cancelled that too without following the procedure established by law and, thereafter, the land was allegedly assigned to the 5<sup>th</sup> respondent that too after the initiation of the acquisition proceedings. The facts narrated supra reflect that in post haste the DKT patta was cancelled and fresh DKT patta was granted to the 5<sup>th</sup> respondent and in a while the said patta issued to the said respondent was also cancelled and the land was resumed for the purpose desired by APIIC and *ex gratia* amount was said to have been paid to the 5<sup>th</sup> respondent. The whole exercise is thus contrary to the settled legal position and is hence, illegal. As on the crucial dates, that is, as on the date of requisition given by the APIIC for acquisition of the lands in the village and also as on the date of initiation of acquisition proceedings and the date of notification under Section 4(1) of the Act issued insofar as acquisition of private/patta lands in the village, the petitioner was the holder of DKT patta in respect of the subject assigned land, which is not in dispute, and his DKT patta was not cancelled; and

only after the acquisition proceedings were initiated, the proceedings for cancellation of the DKT patta were undertaken. For all the above reasons, the action of the official respondents in paying *ex gratia* to the 5<sup>th</sup> respondent cannot be treated as payment of compensation for the subject land to the rightful/original claimant. Accordingly, this Court finds that the writ petitioner is entitled to the relief claimed in the writ petition.

9. A Larger Bench of this Court in **Land Acquisition Officer – cum – R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others (LB)**<sup>1</sup>, held that even if assigned lands are acquired for public purpose, the assignees have to be treated as full owners of the land and they are entitled to compensation equivalent to the full market value of the land along with other benefits on par with full owners. It was also held that no condition incorporated in Patta or Deed of Assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as an owner of the land. In that view of the matter, the writ petitioner/original assignee is entitled to compensation equivalent to full market value of land along with the other benefits on par with full owners.

10. On the above analysis, this Court holds that the contentions of the petitioner merit consideration and the Writ Petition deserves to be allowed.

11. In the result, the Writ Petition is allowed and the respondents 1 to 4 are directed to pay compensation, equivalent to the market value of the land, and extend other benefits to the petitioner in respect of the subject

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<sup>1</sup> 2004 (2) ALD 451

land assigned to him under DKT patta as per the provisions of the Act, as if he is the full owner of the subject land. The necessary exercise in the above regard shall be completed within three months from the date of receipt of a copy of this order. However, liberty is given to the respondents 1 to 4 to recover the amount paid to the 5<sup>th</sup> respondent, if they so desire.

There shall be no order as to costs.

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

September 28, 2018  
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**M.SEETHARAMA MURTI, J**



**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**



**WRIT PETITION No.517 OF 2009**

**September 28, 2018**

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