

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.9119 of 2009

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a Writ of Mandamus or any other appropriate writ or order declaring the action of the respondents in not referring the matter to civil Court under Section 18 of the Land Acquisition Act, 1894 [‘the Act’, for short] as illegal, arbitrary and unreasonable and direct the respondents to accordingly refer the matter to the civil Court under Section 18 of the said Act.

2. I have heard the submissions of Sri J. Partha Saradhi, learned counsel appearing for the writ petitioners, and of the learned Government Pleader for Acquisition appearing for the respondent. I have perused the material record.

3. The case of the petitioners is this:

The Government assigned lands under DKT pattas to each one of the petitioners, who are landless poor persons, to enable them to cultivate the lands assigned to them and eke out their livelihoods. Such pattas are granted for socio-economic betterment of the petitioners. After the lands were assigned to the petitioners, they brought their respective extents of lands under cultivation after spending their hard labour and money. The lands assigned respectively to the petitioners vested in them. The Government acquired the lands assigned to the petitioners at Tallapadu village for formation of S.P.V.B.R left canal and resumed the lands of the petitioners *vide* proceedings, dated 12.01.2006, in

Ref.no.E/38/-5, issued by the 1st respondent. The Government also acquired private lands under the provisions of the Act for the said purpose. However, the lands of the petitioners were not acquired and were resumed though they are full owners of their respective assigned lands. The 1st respondent in his proceedings aforementioned passed orders for payment of exgratia as per G.O.Ms.No.1307 Rev (Assgn-I), dated 23.12.1993. Thus, the 1st respondent awarded compensation @ Rs.19,900/- per acre while market value is Rs.45,000/- per acre. The other benefits like additional market value, solatium and interest were not awarded. The 1st respondent issued Form No.9 notice under Section 12(2) of the Act and compensation was paid during the months of March and April, 2006. The petitioners received the said amounts of compensation under protest and filed individual applications for referring the matter under Section 18 of the Act to civil Court for awarding just compensation as per market value. In not referring the matter under Section 18 of the Act to the civil Court, the respondents acted illegally. A Larger Bench of this Court in the decision in **LAO-cum-RDO v. Mekala Pandu**¹ held that the holders of assigned lands are constitutional claimants and their claims cannot be subjected to Governmental restrictions or sanctions except pursuant to the constitutionally valid Rule or law. The Larger Bench also considered the afore-stated G.O.Ms.no.1307 on which the impugned proceedings are based and held that the assignee's right in the land is the same as that of a full owner and that the privilege or largess once granted acquires the status of vested interest. Therefore, the impugned proceedings are opposed to Articles 14 & 21 of the Constitution of India. Deprivation of

¹ 2004(2) ALT 546

assignee's right to just compensation amounts to deprivation of right to livelihood. The petitioners are entitled to payment of compensation equivalent to the full market value of the lands and other benefits on par with full owners even though their lands are assigned lands and possession was taken by the State in accordance with the terms of grant and the resumption is for public purpose. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restrictions on the right of the assignee to claim full compensation as owner of the land. The impugned proceedings are contrary to the second *proviso* to Article 31-A of the Constitution of India. Hence, the writ petition is filed.

4. The case of the respondent as stated in the counter affidavit, in brief, is this:

Thellapadu village of Kalasapadu Mandal is among the compensatory afore-station in lieu of Reserve Forest. The lands in Sy.nos.1A1, 1A2 etcetera of a total extent of Ac.246.43 cents is classified as Government assigned land *vide* letter no.B/218/2004, dated 18.09.2004, of the Mandal Revenue Officer, Kalasapadu. The assignees were assigned the lands in Sy.nos.1A1, 1A2 etcetera of the said village. The said lands are not notified as they are Government (assigned) lands. However, exgratia including 30% solatium was paid as per the terms of G.O.Rt.no.192, dated 02.12.1998, read with G.O.Ms.No.1307, dated 23.12.1993. The said lands were resumed to Government and were transferred to the Compensatory afore-station in lieu of Reserve Forest *vide* Ref.no.E/38/2005, dated 28.03.2006. Exgratia proposals were submitted to the Special Collector *vide* proceedings, dated 28.03.2006. The Special Collector

approved the proposals and sanctioned exgratia @ Rs.15,300/- per acre and 30% solatium to the assigned lands in a total sum of Rs.32,33,120/- in Reach No.I and in a total amount of Rs.16,68,373/- for assigned lands in Reach No.II of the village. All the land owners including the petitioners were paid exgratia. Additional market value and interest are not payable in respect of assigned lands. The petitioners received exgratia amounts for their assigned lands without protest. Therefore, application of the law laid down in Mekala Pandu's case does not arise. The assignment granted to the petitioners is a Government grant with certain conditions. Hence, the Government Grants Act, 1985, is applicable to all grants of Government, which are subject to conditions of non alienation. The petitioners are entitled for compensation if only they are having absolute title/transferable title. In the instant case, the petitioners, who are granted DKT pattas, are not having transferable title over their respective lands and they cannot transfer a better title than what they have and as such the petitioners are entitled to exgratia only. As per policy decision of the Government and as per the decisions of the Supreme Court rendered while interpreting Sections 2 & 3 of the Government Grants Act, the grantee has no enforceable right and provisions of Transfer of Property Act and Specific Relief Act have no application. The assignees are not entitled to make a request for reference under Section 18 of the Act as they are not entitled to any amounts other than exgratia and solatium, which are already paid to them as per the Government policy and Orders. In WP.No.17825 of 2001, this Court opined that if the lands belong to the Government, the question of acquiring the same under the land acquisition proceedings does not arise; however, if structures are erected or any improvements are made, the occupants of

Government lands are entitled for payment of exgratia for structure value only in terms of G.O.Ms.no.1307. Similar orders were passed by this Court in identical cases. In the judgment in W.A.No.170 of 2002 and batch cases and in the judgment of the Supreme Court in Civil Appeal Nos.7904, 7912 of 2004, the provisions of Government Grants Act and their effect on right of grantee are not considered. The petitioners are not entitled to the relief claimed in the writ petition. After lapse of 10 years from the date of receipt of exgratia the present writ petition is filed claiming compensation on par with patta lands. Hence, the claims of the petitioners are against natural justice.

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

6. I have given earnest consideration to the facts & submissions.

7. The first question that falls for consideration and which is no longer *res integra* is this: - 'Whether the claimants are entitled to payment of compensation under the provisions of the Act when the lands assigned to them are resumed by the Government for a public purpose?' The Larger Bench of this Court in the decision in **Mekala Pandu's** case (supra) while answering the said question held 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, and though such resumption is for a public purpose. In that view of the matter, this Court finds that the petitioners are entitled to compensation equivalent to the full market value of the land and other benefits on par with

full owners of the land as held in the Larger Bench decision but not merely exgratia and solatium as was paid by the Government and received by the petitioners.

8. The next important question that falls for consideration is as to whether the petitioners received exgratia paid to them under protest and whether they made request for reference under Section 18 of the Act. The petitioners categorically stated in their writ petition that each individual petitioner made applications for reference under Section 18 of the Act. The said averment is not denied in the counter affidavit. However, it is only stated that the petitioners received exgratia amount for their assigned lands without protest.

8.1 In this backdrop of factual matrix it is advantageous to refer to the decision of the Supreme Court in **Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder vs. M.I.D.C. and Ors.**² In this decision, the facts and ratio are as follows:

The Appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat and Anr.* [AIR 1995 SC 142], it has been held as follows: - 'In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is

² (2013) 1 SCC 253

no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.'

The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram and Ors.: (2007) 10 SCC 448; Amarjit Singh and Ors. v. State of Punjab and Ors.: (2010) 10 SCC 43; Narmada Bachao Andolan v. State of Madhya Pradesh and Anr.: AIR 2011 SC 1989; State of Haryana v. Mukesh Kumar and Ors.: AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. v. State of U.P. and Anr.: AIR 2012 SC 573).

In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the Appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.

Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been

exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 'subject' of medieval India, but not as a 'citizen' under our constitution.

The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one.

8.2 Learned counsel for the petitioners contended that it is impermissible for the Government, being in the position of *parens patriae*, to raise an unholy contest, having not followed the larger bench decision of this Court, which is binding, and that for the deliberate lapses of the Government, the petitioners, who belong to weaker section of the society, cannot be faulted and that they cannot be denied an equitable and discretionary remedy, which, if granted, is likely to remedy the injustice. The petitioners also stated in the writ petition that they received the exgratia/amounts paid to them under protest. The indisputable fact that they made request for reference under Section 18 of the Act itself indicates that they received the compensation amounts under protest. Under law, even an oral protest is sufficient. Further, despite the fact that the Larger Bench decision referred to supra was rendered on 09.03.2004, the respondents failed to follow the settled legal position and denied just compensation to the petitioners, who are persons of the weaker sections of the society as per Government norms. The fact that the petitioners were assigned Government lands is itself proof positive that they are landless poor persons and that they are eligible for economic empowerment.

9. On the above analysis, this Court finds that the writ petitioners are entitled to the relief claimed.

10. In the result, the Writ Petition is allowed as prayed for. The respondent is directed to complete the needful exercise in the matter within six (6) weeks from the date of receipt of a copy of this order and communicate the decision to the petitioners within a week thereafter.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

03.10.2018
Vjl



M.SEETHARAMA MURTI, J