

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.15517 of 2017

ORDER:

Heard the learned counsel for the petitioners, learned Government Pleader for Revenue appearing for the respondents 1 to 5, and Sri K.Subrahmanya Narsu, learned Standing Counsel for the 6th respondent.

2. The 1st petitioner was assigned an extent of Ac.5.31 cents in Survey No.192/1 of Kalapakka village. His brother K.Simhachalam was assigned an extent of Ac.5.12 cents in Survey No.192/2 of the same village. These assignments took place in the year 1962.

3. Petitioners 2 and 3 are the sons of the said K.Simhachalam, died subsequently.

4. An extent of Ac.5.31 cents in survey No.192/1 of the 1st petitioner and Ac.2.02 cents belong to his brother, Simhachalam in Survey No.192/2 was taken over for the purpose of utilization by the 6th respondent.

5. When the Revenue Authorities, without following due process of law, resumed the said lands of the petitioners and allotted the same to the 6th respondent, the 1st petitioner and his brother Simhachalam filed

W.P. No.18750 of 2000 in this Court. A learned Single of this Court dismissed the said Writ Petition; then they preferred Writ Appeal No.750 of 2004; the said Writ Appeal was allowed on 13.04.2004 setting-aside the order of the learned Single Judge and a direction was given to the respondents 3 to 5, and the 6th respondent, to work out the amount of compensation in terms of the Land Acquisition Act, 1894 (for short, 'the Act') on the premise that the 1st petitioner and his brother are the owners of the subject land and pay compensation amount to them within six (6) months from the date of receipt of the said order. The Division Bench followed the Larger Bench judgment of this Court in *Land Acquisition Officer Vs. Mekala Pandu*¹ while allowing the said Appeal.

6. The Larger Bench, in *Mekala Pandu (1 supra)*, had taken the view that assignees of land are also entitled to get compensation equivalent to market value of the land and other benefits on par with full owners of the land, apart from consequential benefits under the Act .

7. The respondents then preferred Civil Appeal No.7931 of 2012 in the Supreme Court. The said Civil Appeal was dismissed by the Supreme Court on 04.08.2014.

8. During THE pendency of the Civil Appeal, 1st petitioner's brother Simhachalam passed away.

¹ 2004 (2) ALT 546 (Larger Bench)

9. The 1st petitioner filed C.C. No.1442 of 2015 before this Court seeking implementation of the order passed by the Division Bench in Writ Appeal No.750 of 2004.

10. During the course of pendency of the said Contempt Case, the 2nd respondent addressed a letter R.C. No.11831/1998/E3, Dt.23.06.2016 to the 6th respondent requesting to release compensation amount of Rs.63,71,843/-.

11. The 6th respondent then deposited in the name of the 3rd respondent the said amount and the 3rd respondent in turn addressed a letter dt. 08.08.2016 to the Branch Manager, Corporation Bank, Dwarakanagar Branch, Visakhapatnam requesting to arrange the payment of the said amount to the petitioners.

12. The 1st petitioner received Rs.46,15,892/- and the petitioners 2 and 3, as legal heirs of Simhachalam, received the balance amount of Rs.17,55,951/-.

THE CONTENTIONS OF PETITIONERS

13. The petitioners contend that the assessment of compensation for the subject land ought to have been done as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') which came into force on 01.01.2014; though the compensation amount was paid in the month of August, 2016, the respondents ought

not to have calculated interest on the market value of the land only up to 30.06.2015, and the respondents are also liable to pay interest from 01.07.2015 to August 2016 also.

14. Petitioners therefore seek a Writ of *Mandamus* to declare the action of the respondents in not initiating land acquisition proceedings in terms of Act 30 of 2013, passing an Award, and releasing compensation there under as illegal, arbitrary and contrary to Article 300-A of the Constitution of India, and Act 30 of 2013, and for a consequential direction to the respondents to initiate proceedings under Act 30 of 2013, pass an Award, calculate compensation and pay it to the petitioners.

THE CONTENTIONS OF THE RESPONDENTS

15. The respondents did not dispute the factual averments made in the Writ Petition in relation to Writ Appeal No.750 of 2004 and the order passed therein and the disposal of the Civil Appeal No.7931 of 2012, dated 04.08.2014.

16. In the counter-affidavit it is stated by respondent no.s1-5 that an amount of Rs.23,85,855/- was paid as land value to the solatium and additional market value and interest was calculated from 25.12.1998, (the date of dispossession) to 30.06.2015 which amounted to

Rs.39,85,989/-. They state that the compensation was arrived at Rs.63,71,843/- and was paid to the petitioners

17. It is stated that only Ac.5.31 cents in survey No.192/1 of the 1st petitioner and Ac.2.02 cents belong to his brother, Simhachalam, in Survey No.192/2 was taken over for the purpose of utilization by the 6th respondent.

18. It is denied that Act 30 of 2013 was applicable to the petitioners and it is pointed out that it came into existence only from 01.01.2014 and would not apply to government assigned lands.

19. It is stated that the petitioners are eligible only for the ex-gratia and are not entitled to anything under the Act 30 of 2013. Reliance is also placed on the conditions in the assignment patta which permitted the State to resume the lands without paying any ex-gratia or compensation. . It is contended that so the Writ Petition was liable to be dismissed.

THE CONSIDERATION BY THE COURT

20. It is important to note that the Larger Bench, in *Mekala Pandu (I supra)*, held that an assignee of the land from the State government is entitled to market value of the compensation as if he was the owner of the land notwithstanding any condition in the deed of assignment

permitting resumption for public purpose without paying any compensation. The said judgment has been admittedly followed in Writ Appeal No.750 of 2004 and a specific direction was given to work out the amount of compensation in terms of the Land Acquisition Act, 1894 on the premise that the 1st petitioner and his brother are owners of the land and this order of the Division Bench has been confirmed in Civil Appeal No.7931 of 2012 dated 04.08.2014 by the Supreme Court.

21. Once this contention has been rejected up to the Supreme Court, the respondents are precluded by the doctrine of *res-judicata*, from again relying on any conditions in the deed of assignment given to the 1st petitioner or his brother, to deny the compensation on the basis of market value of the resumed land as per the provisions of the Act of 1894 to the petitioners.

22. It is important to note that the respondents have not placed before the Court material on basis of which they had determined the compensation payable to the petitioners as Rs.23,85,855/- including solatium and additional market value. They have deliberately suppressed from this Court the method by which they arrived at the said figure. It is not known what sale transactions in respect of the lands adjacent to the petitioners' lands on or before 25.12.1998, the date of dispossession of the 1st petitioner and his brother Simhachalam, were taken into account by the 3rd respondent in

arriving at the above figure. Therefore, adverse inference is to be drawn against the respondents that they did not follow the method of determination of the market value of the land of the 1st petitioner and his brother, in accordance with the law governing determination of compensation under the Land Acquisition Act of 1894 and the decisions of the Hon'ble Supreme Court in regard thereto.

23. However, the plea of the petitioners that they are entitled to the compensation as per the Act 30 of 2013 cannot be countenanced since the said statute came into force only on 01.01.2014. It does not have retrospective operation since the subject land has been taken possession from the petitioners on 25.12.1998 long before passing of the said enactment.

24. In this view of the matter, the Writ petition is allowed and the respondents 2 to 4 are directed to take into account sale transactions of the lands adjacent to the lands of the petitioners on or before 25.12.1998 and compute the compensation payable to them as per the provisions of the Land Acquisition Act, 1894, and the decisions of the Supreme Court in regard thereto, after issuing notice to the petitioners and 6th respondent and communicate it to petitioners within four (4) months from the date of receipt of a copy of the order and the 6th respondent shall make available the amount determined within four (04) weeks of such determination, which shall be then paid to petitioners by respondents 2 to 4. The amount already paid to the

petitioners shall be retained by them and shall be given credit to when the compensation is recomputed as per the above directions issued in this order. The 1st respondent shall also pay costs of Rs.10,000/- to the 1st petitioner and Rs.10,000/- to petitioners 2 and 3 together since it is clear that the respondents have not determined the compensation as per the directions in the Order dated 13.04.2004 in Writ Appeal No.750 of 2004 but in clear violation of the same.

25. As a sequel, miscellaneous applications pending, if any, shall stand closed. No order as to costs.

Date: 13.07.2018.
Dsh/*

M.S.RAMACHANDRA RAO, J



HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

255



WRIT PETITION No. 15517 OF 2017

Date. 13.07.2018

DSH