

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.969 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

We have heard the learned counsel appearing for the parties.

The respondents in W.P.No.25403 of 2008 are the appellants. The parties are referred to as shown in the writ petition.

The writ appeal is directed against the order dated 08.02.2017 in W.P.No.25403 of 2008. The learned Single Judge through the order under appeal held that Acs. 5.19 cents in Survey No.1004/1 of Chinna Chowk Village, Kadapa Mandal and District assigned in favour of writ petitioner/respondent herein was cancelled behind the back of 1st respondent's husband and that on account of deprivation of proprietary right of 1st respondent, the 1st respondent is entitled to compensation in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013). The order under appeal directed costs at Rs.25,000/- as payable to respondent.

The case of writ petitioner is as follows:

The writ petitioner is the wife of late Bathala Subba Rayudu. The 6th respondent assigned an extent of Acs. 5-19 cents in Survey No.1004/1 at Chinna Chowk Village, Kadapa Mandal, vide DKT Patta No.350/76 dated 16.08.1967. The assignment was followed by

sanctioned orders B1.DKT.350/76 dated 24.08.1967 in favour of Bathala Subba Rayudu. The assigned land was not fit for cultivation, but it was made cultivable by the toil and sweat of writ petitioner's husband, apart from spending sufficient money for leveling the land etc. The husband of petitioner contributed to digging a community well in Survey No.477/2/1 by taking loan from Kadapa District Central Cooperative Bank. Late Subba Rayudu was identified as small farmer and was also given financial assistance through banks for doing agriculture in petition land. The assignee cultivated seasonal and commercial crops in assigned land. The husband of writ petitioner with a view to availing financial assistance from B.C. Corporation approached the Corporation with the details of assigned land and requested for financial assistance. The Corporation called upon the assignee to produce pattadar pass books and title deeds for assigned land to process assignee's request for financial assistance. The efforts of late Subba Rayudu for getting pattadar pass book/title deed resulted in dismay with the communication of endorsement Ref.No.SDT/56/99 dated 26.02.1999 by the 6th respondent.

The endorsement dated 26.02.1999 states that the subject land was resumed to Government vide proceedings Rc.No.B10/1447/88 dated 28.02.1988 and the subject matter was alienated in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa. The 6th respondent claims to have handed over possession of assigned land along with other survey numbers in the neighborhood to Non-Gazetted Officers' Cooperative House Building Society. The assignee (late Subba

Rayudu) assailed the endorsement dated 26.02.1999 by filing appeal and also W.P.No.14887 of 1999 questioning resumption proceedings No.B10/1447/88 dated 28.02.1998. The writ petitioner or her husband was constrained to file W.P.Nos.26298 of 2001 and 14887 of 1999 either challenging the resumption order or complaining against the inaction of respondents in disposing of the appeal already filed challenging the resumption order etc. In spite of orders of this Court, it is specifically alleged that the respondents did not move in the matter or passed orders, within the time stipulated by this Court. Finally, the 5th respondent through proceedings Rc.E/1256/99 dated 25.02.2004 rejected the appeal filed by assignee against the endorsement dated 26.02.1999. The saga of writ petitioner continued with the abstinence shown by the respondents in all aspects including furnishing copies of resumption order. It is admitted and undisputed that the respondents firstly alienated the subject matter or assigned land in favour of Non-Gazetted Officers' Cooperative House Building Society and in turn the Society allotted house plots to its members/Government employees. The writ petitioner filed appeal before the 2nd respondent questioning the legality of orders of R.D.O. dated 25.02.2004. The 2nd respondent through proceedings No.BCW5/131/2004 dated 22.04.2004 called upon the writ petitioner to approach the Joint Collector, Kadapa for suitable relief against the order of Revenue Divisional Officer dated 25.02.2004. On appeal filed by the husband of writ petitioner before the Joint Collector, the Joint Collector issued proceedings R.Dis.(E2) 1979/2004 dated 18.05.2006 holding that the assignment in favour of

writ petitioner's husband was not made, but was made in favour of SMd. Khasim in DKT/350/76 dated 16.08.1967. The respondents claim to have resumed land from SMd. Khasim (alleged assignee) through proceedings No.B1/2712/84 dated 02.11.1984. The resumption of assigned land from SMd.Khasim is alleged to be on account of violation of assignment conditions viz., for not bringing the assigned land under cultivation. The writ petitioner filed appeal against the order of Joint Collector dated 18.05.2006 and the appeal was numbered as Case No.BCW5/469/2007 dated 22.01.2008. The 2nd respondent through order dated 22.01.2008 set aside the order of Joint Collector dated 18.05.2006 and remanded the case of Joint Collector for fresh disposal in accordance with law. Finally, the Joint Collector through order dated 23.06.2008 held that Bathala Subba Rayudu the husband of the writ petitioner was the assignee and the inclusion of SMd.Khasim as assignee is erroneous. To conclude the narration, it is sufficient to note that finally the Joint Collector accepted the assignment in favour of Bathala Subba Rayudu and directed that an amount of Rs.62,500/- be paid to Bathala Subba Rayudu as compensation towards alleged improvement of assigned land. Hence, the writ petition is filed challenging the order of resumption dated 02.11.1984 and also G.O.Ms.No.815 Revenue (Asn.4) Department dated 09.08.1984.

The respondents filed counter affidavit and the gist of the counter affidavit reads thus:

The husband of petitioner was one of the DKT Pattadars. The notices were served on the DKT Pattadars by substituted service

of affixing to sticks on their respective lands when their lands were resumed by the Government for alienation to N.G.Os Cooperative House Building Society. The husband of petitioner failed to produce documentary evidence within a reasonable period to prove that the subject land was assigned to him. Since Chinna Chowk Village of Kadapa Mandal was changed into Kadapa Municipal Corporation, the land is divided into house sites and it is not possible to allot alternative land to petitioner for agriculture purpose. The case of petitioner can be considered by paying compensation as per law.

We have taken note of submissions of Mr.Korrapati Subba Rao, learned Government Pleader for respondents and Mr.K.Staram for writ petitioner.

The admitted and undisputed circumstances of the case after the prolonged litigation and perseverance shown by writ petitioner and her husband are that the assignment of subject matter in an extent Acs. 5.19 cents in Survey No.1004/1 in favour of Bathala Subba Rayudu is accepted by respondents. The respondents claim to have resumed subject matter/assigned land through proceedings No.B1.2712/84 dated 02.11.1984 and thereafter alienated in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa vide G.O.Ms.No.815 Revenue (Asn.4) Department dated 09.08.1984. The complaint of writ petitioner is that without putting the writ petitioner or her husband on notice, the resumption orders are passed and also given effect to. Thus, the right of property and enjoyment is denied.

The respondents keeping in view the assignment in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa created third party interest. The Joint Collector through his order dated 23.06.2008 finally held that resumption order does not satisfy the requirement of fair play and that resumption of land on the ground of not bringing the assigned land under cultivation is not justifiable. This Court records that the respondents have not placed file B1.2712/84 dated 02.11.1984 for inspection by any of the authorities. The respondents on the strength of resumption order have alienated the land in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa. The reasons or motivating circumstances for the respondents to act in manner not known to law and why the writ petitioner has been getting raw deal at the hands of respondents are not difficult to discern. Under these circumstances, the learned Single Judge held as follows:

“ 26. The petitioner's husband moved against the State in different forums to seek restoration of the land. In spite of the fact that the assignment of the land to the petitioner's husband was accepted by the Joint Collector, Kadapa in proceedings in R.Dis.E2/4300/07, dt.23.6.2008, it was stated that the Tahsildar, Kadapa was misled by the report of Revenue Inspector that the land was assigned to one S.Md.Khasim and not to petitioner's husband, that the said error caused cancellation of assignment of land to the petitioner's husband and its resumption by the Government without any fault on the part of the petitioner's husband and the petitioner.

27. Gross injustice has been done to the petitioner by the respondents in not rectifying this in spite of order dt.26.2.2008 of the Joint Collector, Kadapa that the assignment was made to the petitioner in 1967 and that resumption order was passed behind his back. However, since respondents have

indeed taken the land admeasuring Ac.5.19 cents in Sy. No.1004/1 of Chinna Chowk Village of Kadapa Mandal, since it merged with Kadapa Municipal Corporation it is not possible to restore the said land since it was already assigned to Kadapa District NGO's Cooperative House Building Society on payment of market value without considering paying compensation to the petitioner pursuant to G.O.Ms.No.43, Rev. (B) Department, dated 23.1.1988.

28. In my considered opinion since the land was assigned to petitioner's husband and the assignment was cancelled behind his back, petitioner and her husband were forced to approach various revenue authorities including this Court right from 1999 till filing of this writ petition several times. So the respondents cannot be allowed to get away by merely offering to pay compensation to the petitioner for the said land pursuant to above G.O.

29. In **Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others** (2004 (2) ALD 451 (LB), larger bench of this Court held that assignees of Government lands are entitled to payment of compensation equivalent to full market value of the land in case Government wishes to resume the land. This was reiterated in G.O.Ms.No.259, Revenue (Assn. 1) Department, dated 21.06.2016.

30. For the aforesaid reasons, this Writ Petition is allowed; the respondents are directed to pay compensation to the petitioner for the land to extent of Ac.5-19 cents in Sy.No.1004/1 of Chinna Chowk Village, Kadapa mandal & District as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,2013. They shall determine the compensation treating the land as having been acquired today, and pay the same within twelve weeks from the date of receipt of a copy of this order. Respondents shall also pay costs of Rs.25,000/- to the petitioner."

Hence the appeal.

Mr.Subba Rao contends that way back 1984, assuming without admitting that the land was resumed without following the procedure of fair play or principles of natural justice, the writ petitioner is entitled to *ex gratia*, but not compensation under Act 30 of 2013. According to respondents, direction to pay compensation under Act 30 of 2013 is unsustainable. Therefore, the Court, if is not in agreement with the determination of compensation payable to the writ petitioner at Rs.62,500/- for the alleged deprivation of right in property, ought to have directed payment of *ex gratia* as per the Government policy in vogue. Therefore, direction to pay compensation is erroneous and prays for setting aside the order under Appeal. The learned Government Pleader fairly accepts, by referring to the findings recorded by the Joint Collector, that respondents assumed that procedure was followed and hence possession of assigned land could be taken from a person other than the assignee.

Mr.Staram, appearing for writ petitioner, contends that the respondents do not have choice in the matter inasmuch as in the anxiety to provide land to Non-Gazetted Officers' Cooperative House Building Society, Kadapa, the respondents have in a highhanded manner claim to have resumed the assigned land of Bathala Subba Rayudu. The said resumption order is void and *non est* in the eye of law. The respondents through their sheer strength and dominance have taken over possession of the land from the small farmer, divided the same into house plots and allotted to members of Non-Gazetted Officers' Cooperative House Building Society. The action of the respondents is contrary to Article

300-A of the Constitution of India. The respondents, if are unable to satisfy that their action is tenable in judicial review, have no option except to compensate the writ petitioner for the loss suffered by writ petitioner on account of deprivation of property right by referring to a proceeding to which the petitioner is not a party. The ground now introduced by respondents that the assigned land was not brought under cultivation within three years from the date of assignment is a pretext and use not available after 15 years from the date of assignment. According to him, the respondents have acted in a highhanded manner. The principles of law laid down in **LAND ACQUISITION OFFICER-CUM-R.D.O., CHEVELLA DIVISION, HYDERABAD V. MEKALA PANDU**¹ case is applicable and so also **P.MALLAIAH V. GOVERNMENT OF A.P.**² case. **MEKALA PANDU** case was assailed in Civil Appeal, which was dismissed. Hence, he prays for dismissing the appeal.

We have perused the record and have noted the submissions made by the learned counsel appearing for the parties. Our consideration is prefaced with the observation that with the order passed by the Joint Collector dated 23.06.2008, the mistake committed in claiming possession of subject matter/assigned land by the subordinate officers in Revenue Department is admitted or concluded. On account of the anxiety or the interest developed by the officers in revenue department for allotment of assigned land in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa, the respondents cannot ignore the

¹ (2004 (2) ALD 451 (LB)

² 2006 (3) ALD 148

requirement of fair procedure or safeguard, to which the writ petitioner is entitled in the matter of resumption or cancellation as assignment. In the case on hand, it is apparent that to give land to Non-Gazetted Officers' House Building Society, Kadapa, alleged orders of resumption have been passed even without verifying whether the orders are served on the assignee or not, possession was taken, assigned land alienated in favour of Non-Gazetted Officers' Cooperative House Building Society, Kadapa. The Society changed physical features of assigned land and allotment to members was made. The respondents, since have provided house sites to their employees, are under obligation to follow the requirement of law namely paying compensation for deprivation of rights of petitioner. The argument that directing payment of compensation under Act 30 of 2013 is unsustainable, is noted and this Court is of the view that the determination of compensation is depending on the time and date on which the compensation is determined and paid to a party whose rights have been adversely affected. The respondents cannot, after prolonged litigation, now initiate proceedings under Repealed Land Acquisition Act or come forward to pay ex-gratia. No Government Order is brought to our notice, wherein the policy decision is taken to meet the situation like the present. The order under appeal has followed the binding precedents on the topic. Under those circumstances, direction for payment of compensation shall be in accordance with law governing the field. The imposition of costs is also noted and is justified, since the respondents have acted contrary to law to create interest in favour of Non-Gazetted Officers' Cooperative

House Building Society, Kadapa. The petitioner has to litigate for nearly two decades for enforcement of the right recognized by law and the Constitution.

For the above reasons, we are convinced that as no ground is made out warranting interference of this Court, writ appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:29.08.2018
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