THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.1903, 1904 and 1905 of 2017

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

These appeals are preferred against the order passed by the Learned Single Judge in W.P.Nos.35981, 39983 and 40002 of 2015 dated 24.07.2017. The relief sought in the Writ Petitions, by the respondent-writ petitioners, is for a mandamus to declare the action of the Land Acquisition Officer-cum-Revenue Divisional Officer, Nellore, in granting only *ex gratia* for the lands and structures held by them, as illegal, void, arbitrary, against the principles laid down in **Land Acquisition Officer-cum-Revenue Divisional Officer vs. Mekala Pandu and others**[1], as confirmed by the Supreme Court in Civil Appeal Nos.7904-7912 of 2012 dated 04.08.2014, and against the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act 30 of 2013"). A consequential direction was sought to the Deputy Executive Engineer, A.P. State Housing Corporation Limited, Rapur, SPSR Nellore District, to pay compensation to the respondent-writ petitioners in accordance with law.

In the order under appeal the Learned Single Judge had, relying on the judgment of a Larger Bench of this Court in **Mekala Pandu**[1] and a Division Bench of this Court in W.A.No.1604 of 2005 dated 06.02.2017, observed that no proceedings were initiated for land acquisition, and no award was passed, under the premise that the Government was the owner of the land, the patta holders were only assignees, the Government had the right as per the conditions

[1] AIR 2004 AP 250

in the pattas, and the Government was entitled to resume the land. The Learned Single Judge held that the subject lands should be taken from the assignees initiating proceedings for land acquisition which was mandatory for their entitlement to just compensation. All the writ petitions were disposed of directing the appellants herein to issue notification under Section 11 of Act 30 of 2013, and to consider any requirement of rehabilitation and resettlement with infrastructural facilities, including to consider those who were earlier cultivating under group cultivation as being persons affected, as on the date possession was resumed by the Government under the premise that it is the owner of the land.

Learned Government Pleader for Land Acquisition, appearing on behalf of the appellants, would submit that the Section 4(1) notification, under the Land Acquisition Act, 1894 Act (for short "the 1894 Act"), was issued on 15.02.2012; the Section 6(1) declaration was issued on 19.04.2012; awards were passed in November 2012 and 15.03.2013; all the respondent-writ petitioners are assignees of Government land; *ex gratia* was granted to them vide proceedings dated 30.05.2015 which is not under challenge in these writ petitions; and the Learned Single Judge had erred in directing the appellants to acquire the subject lands under Act 30 of 2013 by issuing a preliminary notification under Section 11 thereof.

It is not in dispute that the subject lands are either assigned lands or lands given for community joint forming, and title over these lands vests in the Government. A Larger Bench of this Court, in **Mekala Pandu**[1], held that assignees of Government land were 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 the grant or patta, though such resumption was for a public purpose; 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 1894 Act, the assignees shall be entitled to compensation as owners of the land, and for all other consequential benefits under the provisions of the 1894 Act; and no condition, incorporated in the 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. The Larger Bench expressed its inability to agree with the view that the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as owner but as an interested person for the interest he held in the property.

The law declared by the Larger Bench, in **Mekala Pandu**[1], is that assignees of Government lands are entitled to payment of compensation equivalent to the full market value of the land, and other benefits which full owners of the lands were entitled to, on their lands being acquired by the Government. The Law declared by the Larger Bench cannot be construed either as assignees being conferred absolute title over the subject lands on these lands being assigned in their favour, or that the Government is obligated to acquire its own land. All that the Larger Bench, in **Mekala Pandu**[1], has held is that, on resumption of assigned land for a public purpose, the assignees are entitled to payment of compensation, and all other consequential benefits on par with others whose lands were acquired in accordance with the provisions of the Land Acquisition Act.

Reliance placed by Sri A.Sudarshan Reddy, learned Senior Counsel, on the judgment of a Division Bench of this Court, in

W.A.No.170 of 2002 and batch dated 28.08.2017, is also misplaced. The Division Bench merely held that in all those cases where the subject lands have been resumed for a public purpose, without initiating proceedings under the 1894 Act, the assignees were entitled to be paid compensation equivalent to what they are entitled to under the 1894 Act as on the date of resumption of the land. The Division Bench had, in issuing the said directions, followed the law declared by the Larger Bench of this Court in **Mekala Pandu[1].** A stray sentence in the said judgment, that the respondents shall pass an award and pay compensation to the assignees, cannot be read out of context or be understood as requiring the appellants to initiate proceedings for land acquisition, or to pass an award in terms of the Land Acquisition Act, even on resumption of assigned lands for a public purpose, for it is well-settled that the Government cannot acquire its own land. The order under appeal, whereby the appellants were directed to issue a preliminary notification under Section 11 of the Act 30 of 2013, cannot, therefore, be upheld and is, accordingly, set aside.

We must, however, take note of the submission of Sri A. Sudershan Reddy, learned Senior Counsel appearing on behalf of the respondent-writ petitioners, that, since possession of the subject land was taken only after 01.01.2014 on which date, Act 30 of 2013 came into force, and compensation was admittedly paid only in the year 2015 long after the said Act came into force on 01.01.2014, the respondent-writ petitioners would be entitled for compensation as prescribed in Act 30 of 2013, even if no award is required to be passed with respect to the subject lands; the Larger Bench of this Court, in **Mekala Pandu[1]**, had directed that the assignees be paid all consequential benefits, which would include not only the market

value of the land and solatium, but also the additional market value under Section 23(1A), and interest under Section 34 of the 1894 Act; these amounts have, admittedly, not been paid; and, atleast to this limited extent, the appellants should be directed to pay additional market value under Section 23(1A), and interest under Section 34 of the 1894 Act to the respondent-writ petitioners.

While this submission, of the learned Senior Counsel, cannot be said to be without merit, the fact remains that none of these contentions have even been noted, much less considered, in the orders under appeal. Since these questions also necessitate examination in the Writ Petitions, we consider it appropriate to set aside the orders under appeal, restore the Writ Petitions to file, and request the Learned Single Judge to pass orders afresh, in these Writ Petitions, in accordance with law. Sri A.Sudarshan Reddy, Learned Senior Counsel, would request us to fix a time frame for the Writ Petitions to be heard and decided afresh. While it would be wholly inappropriate for us to do so, we have no reason to doubt that, on a request being made for these Writ Petitions to be finally heard early, the Learned Single Judge would give such a request its due consideration.

All these Writ Appeals are, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

08th February, 2018
JSU

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AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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Writ Appeal Nos.1903, 1904 and 1905 of 2017

Date: 08.02.2018

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