
(1996) 02 AP CK 0058
In the Andhra Pradesh High Court
Case No : A.S. No. 452 of 1986

State of Andhra Pradesh and Another	APPELLANT
Vs	
P. Peda Chinnayya and Others	RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1997) 1 ALT 498 : (1996) 2 APLJ 405 : (1996) 1 APLJ 405

Hon'ble Judges : V. Raja Gopala Reddy, J; Neelam Sanjiva Reddy, J; K.M. Agarwal, J

Bench : Full Bench

Advocate : Govt. Pleader for Land Acquisition, for the Appellant; C. Poornaiah, for the Respondent

Judgement

K.M. Agarwal J.

1. In all these various types of cases, such as Appeal Suits, Letters Patent Appeals and Writ Petitions etc., the nature of the dispute is common and is covered by the common question referred to the Full Bench by a Division Bench of this Court in its order of reference, which is as follows:-

"In all these cases the common question of law that arises for consideration is: Whether the claimants are entitled to compensation under Land Acquisition Act when the lands are resumed by the Govt., particularly when the lands resumed are assigned lands? In this regard there are conflicting views of Division Benches.

"In W.P. Nos. 6032 and 6727 of 1988 a Division Bench of this Court consisting of V. Sivaraman Nair, J. and D. Reddeppa Reddi, J. held that the claimants are entitled to compensation only on compassionate grounds as per Govt. Orders but not under the Land Acquisition Act. In W.A. No. 631/93 another Division Bench consisting of the Hon. the Chief Justice and Syed Shah Mohd. Quadri, J., held that the claimants are entitled for compensation under Govt. Orders and the provisions of Land Acquisition Act have no application. In W.P. No. 1048 of 92

disposed of by a learned single Judge of this Court, it was held that the claimants are entitled to compensation under Land Acquisition Act against which an appeal W.A. No. 1066/93 was filed. A Division Bench of this Court consisting of the Hon. the Chief Justice and Syed Shah Mohd. Quadri, J., held that the claimants are entitled to compensation under the Land Acquisition Act.

"In view of the conflicting decisions of the Division Benches referred to above, we think it just and proper to have an authoritative pronouncement in this matter by a Full Bench. Accordingly, the matter is referred to a Full Bench.

"The Office is directed to place the papers before the Hon. the Chief Justice for obtaining necessary orders for posting the cases before a Full Bench."

It would, thus, appear that the claimants in all these various types of cases are persons who were assignees of Government lands. When these assigned lands were needed by the Government for public purpose, they were either resumed or sought to be acquired by publication of notifications u/s 4 of the Land Acquisition Act, 1894 (in short, the "Act"), but without payment of any compensation to the assignees of the lands, or after payment of some compensation as per certain G.O.Ms. Nos. issued by the Government from time to time. The assignees of lands disputed the course adopted by the Government and claimed compensation in accordance with the provisions of the Act. Similar question came up for consideration before a Division Bench of this Court in W.P. No. 6032 of 1988, Pandikayala Nagaiah and Ors. v. Government of A.P. and Ors., decided on 24-1-1994 and it was held that such claimants were not entitled for compensation under the Act, because no proceedings under the Act were initiated in respect of their lands. The Division Bench observed:-

".....we are of the opinion that there is no warrant to assume that in the absence of proceedings under the Land Acquisition Act, the Court can award compensation, Solatium, interest, additional compensation, etc., to persons in occupation of Government lands on D.K.D. pattas, which were granted with the specific condition that the lands could be resumed for any public purpose."

While holding so, the Division Bench also came to the conclusion that the claimants were entitled "to compensation on compassionate grounds as per the Government orders, and not to any other amount under the Land Acquisition Act or any other statute". With due respect and for the reasons to follow, we are of the view that the decision of the Division Bench in W.P. No. 6032 of 1988 does not lay down correct law, in so far as it goes to say that in such cases, the claimants are entitled to compensation on compassionate grounds as per the Government Orders.

2. In W.A. No. 631 of 1993, Yengala Venkayamma and Ors. v. District Collector, Land Acquisition and Ors., decided on 27-1-1994, a Division Bench of this Court considered a case where compensation was claimed under the Act in respect of "D" form patta lands, which were resumed by the Government after payment of market value to the assignees of Government lands. The Court found that it was

a case of "D" form patta lands "which were resumed in terms of the concerned Government Order. In such a contingency, it is not possible to put forth a plea for payment of solatium and interest as if the lands have been acquired strictly in terms of the Land Acquisition Act. Furthermore, the appellants did receive the compensation as per market value voluntarily and gave up the lands". We are of the view that though this case does not lay down incorrect law, it requires some clarification, which we shall be doing hereafter.

3. The last case referred to in the order of reference is W.A. No. 1066 of 1993, Government of A.P. and Ors. v. Daravath Dakya and Ors., decided on 27-1-1994. In this case, without resumption of the patta land or initiation of any proceeding for acquisition under the Act, the assignees were dispossessed from their patta lands. In a petition filed by the assignees of lands, the Government was directed by a learned single Judge of this Court to initiate proceedings under the Act and to pay compensation to the assignees of the lands in accordance with the provisions of the Act. Aggrieved by these directions of the learned single Judge, the Government filed Writ Appeal, which was dismissed by the Division Bench holding that the direction made by the learned single Judge could not be said to be unjustified or against any principle of law, justice or equity. This decision of the Court in W.A. No. 1066 of 1993 does not appear to be in conflict with the other decision of the Court in W.A. No. 631 of 1993, because the facts in the two appeals were quite distinguishable. In one case, the assignees were rejected (sic. dispossessed) from their patta lands without resuming the same in accordance with the terms of the grant and without payment of any compensation to such assignees of lands. In the other case, the patta lands were resumed and the assignees were paid market value of their patta lands. The market value was also voluntarily accepted by them. In this background, the question that survives for consideration by this Full Bench may be reformulated as follows:-

"Whether the assignees of Government lands are entitled to compensation under the Land Acquisition Act in a case where the patta lands are needed by the Government for any public purpose?"

4. The question cannot be answered abruptly without taking into consideration other relevant facts. Say for instance, in a case where certain land is needed for any public purpose, the Government may either acquire the land by private negotiation, or acquire the same by resorting to the provisions of the Act. In the former case, the land owner would only be entitled to the negotiated price of the land, whereas in the latter case, he would be entitled to compensation as determined in accordance with the provisions of the Act. Similarly in a case where the patta land is sought to be acquired by the Government and instead of exercising the power to resume the patta land reserved by the terms of the grant, the Government adopts the procedure prescribed by the Act, it has to pay compensation for acquisition of the land in accordance with the provisions of the Act. However, in assessing compensation payable to the assignees of Government land, the existence of the Condition which severally restricted their

right cannot be ignored. In *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, , the Supreme Court considered a similar nature of dispute and held:

"The Government of Mysore did not purport to exercise the power reserved by the terms of the grant, and adopted the procedure prescribed by the Land Acquisition Act. The High Court observed, relying upon the decision of the House of Lords in *Attorney-General v. De kayser's Royal Hotel Ltd.* 1920 AC 508 that the Government could not, after adopting the procedure prescribed by the Land Acquisition Act, seek to resort to the conditions of the grant and claim that no compensation for acquisition of the land was payable. It is true that after obtaining possession of the land in pursuance of statutory authority u/s 17, the Government of Mysore could not seek to exercise the option conferred by the terms of the grant. But on that account in assessing compensation payable to the grantees, existence of the condition which severely restricted their right could not be ignored. The grantees were entitled to compensation for the land of which the ownership was vested in them. The measure of that compensation is the market value of the land at the date of the notification, and the measure of that market value is what a willing purchaser may at the date of the notification u/s 4 pay for the right to the land subject to the option vested in the Government.

".....The Act contemplates acquisition of land for a public purpose. By acquisition of land is intended that purchase of such interest outstanding in others as clog the right of the Government to use the land for the public purpose. Where the land is owned by a single person, the entire market value payable for deprivation of the ownership is payable to that person: if the interest is divided for instance, where it belongs to several persons, or where there is a mortgage or a lease outstanding on the land, or the land belongs to one and a house thereon to another, or limited interests in the land are vested in different persons, apportionment of the compensation is contemplated. The Act is, it is true, silent as to the acquisition of partial interests in the land, but it cannot be inferred therefrom that interest in land restricted because of the existence of rights of the State in the land cannot be acquired. When the land is notified for acquisition for a public purpose and the State has no interest therein market value of the land must be determined and apportioned among the persons entitled to the land. Where the interest of the owner is clogged by the right of the State, the compensation payable is only the market value of that interest, subject to the clog."

Similarly in *Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others*, , the Supreme Court considered a case where certain Government lands were granted to the respondents subject to the condition that if it became necessary for Government to take possession of the lands for any public purpose, then no compensation would be paid to them and despite that condition, the Government notified those lands for acquisition u/s 4 and the Land Acquisition Officer valued the rights of the respondents in the lands acquired and

determined the compensation payable to the respondents and it was held that the view that the respondents were not entitled to any compensation in respect of the lands acquired could not be sustained. We are, thus, supported in our aforesaid view by these two decisions of the Supreme Court.

5. Reverting to the order of reference, we understand that though in terms of the grant, the patta lands were resumed by the Government, the assignees were claiming compensation under the Act and, therefore, the question is, whether they are entitled to claim such compensation under the Act? Further, in some of the cases before us, the assignees were dispossessed from their patta lands without resuming the lands in terms of the grant and/or initiation of proceedings under the Act. They were also alleged to have been paid no compensation before or after such dispossession. In one of the other cases before us, the grievance was that though there was notification u/s 4 of the Act in respect of the patta land of the claimant along with those of others and though others were paid compensation under the Act, the claimant before us was not paid any such compensation by the Government. We are, therefore, further required to answer if such categories of claimants are also entitled to compensation under the Act. Before we proceed to answer these questions, it may be seen that in W.P. No. 6032 of 1988, this Court found that there was no proceeding under the Act for acquisition of the patta land under the Act, yet the assignees were claiming compensation under the Act. In this background, we are of the view that it was rightly held that in the absence of initiation of proceedings for acquisition under the Act, no claim for compensation under the Act was tenable. But we find it difficult to subscribe to the further view that in such cases, the assignees were entitled to compensation on compassionate grounds as per the Government orders", because in the absence of any covenant to the contrary, or terms in the grant empowering the Government to adopt such a course, the entitlement of assignees of Government land for compensation cannot be left to the mercy of or to the arbitrary fiction of compensation by the Government. The question then arising about the remedy of such persons may find its solution in what we are going to summarise hereafter.

6. Having considered the main question under reference to the Full Bench, we now look to the incidental questions and record our findings so as to avoid any misgiving or confusion in interpreting our conclusions.

7. The gist of our conclusion is that where the Government resorts to the provisions of the Act for acquisition of the patta lands without resorting to the terms of the grant for resumption, it is liable to pay compensation under the Act, but such compensation will be only the market value of the interest of the owner or the assignee of the land, subject to the clog. In such cases of acquisition, the claimant would also be entitled to consequential reliefs, such as those of solatium and interest etc., under the Act. In a case where the patta lands are resumed by the Government, the assignees cannot claim compensation under the Act, but can claim compensation equal to the market value of their interest in the land,

subject to the clog. In such cases, no solatium may be payable but interest may be claimed on the amount of compensation from the date of dispossession and till the date of payment of compensation. In a case where the assignees are dispossessed from their patta lands without resuming the lands in terms of the grant and/or initiation of proceedings under the Act, the Government may be directed to initiate proceedings under the Act and to pay compensation under the Act as indicated. This would be in conformity with the directions made by this Court in some of the cases of similar nature. The answers to the other incidental questions arising out of the order of reference are covered by the answers given by us to the questions specifically mentioned.

8. Accordingly, the question referred to the Full Bench is answered. Let the papers be placed before appropriate Division Bench for further hearing and/or disposal in accordance with law and in the light of the answer given by us to the question referred.