
(2001) 11 AP CK 0066
In the Andhra Pradesh High Court
Case No : AS No. 697 of 1985

State of Andhra Pradesh

APPELLANT

Vs

Bondapalli Sanyasi and Others

RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 34
Constitution of India, 1950 — Article 19(1), 226, 300A
Government (Crown) Grants Act, 1895 — Section 4, 5
Land Acquisition Act, 1894 — Section 18, 23, 3, 4, 4(1)
Limitation Act, 1963 — Article 162, 5
Specific Relief Act, 1963 — Section 6

Citation : (2002) 2 ALD 1 : (2002) 1 ALT 543

Hon'ble Judges : S.B. Sinha, C.J; Motilal B. Naik, J; Goda Raghuram, J; Bilal Nazki, J; B. Sudershan Reddy, J

Bench : Full Bench

Advocate : Government Pleader, V.V. Narasimham, V.L.N.G.K. Murthy and C. Poornaiah, for the Appellant;

Judgement

Bilal Nazki, J.—A decree was passed in OS.No. 90 of 1981 declaring that plaintiffs are entitled to possession and enjoyment of the suit land until evicted by due process of law. The Government was also ordered to pay Rs. 47,786/- towards damages for use and occupation of suit land for three years, and Rs. 15,562/- towards subsequent damages. The plaintiff as well as defendant both filed appeals in this Court. The plaintiffs appeal was numbered as A.S.No. 2541 of 1986 and the appeal filed by the State was numbered as A.S. No. 697 of 1985. Unfortunately only the appeal No. 2541 of 1986 was listed before a Division Bench of this Court and it was not pointed out to the Division Bench by either of the parties that another appeal challenging the same judgment has been filed by the State and was pending in the Court. The Division Bench delivered the judgment on 17-7-1996. It allowed the appeal and granted compensation of Rs. 2,700/- per acre with interest @ 4%. Thereafter the appeal No. 697 of 1985 was listed before the learned single Judge of this Court on 10-6-1999. The learned

single Judge found that the Division Bench had not been informed about the Full Bench judgment reported in *State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others*, , therefore he referred the matter to the Division Bench. When it came before the Division Bench the Division Bench was of the opinion that, since already there is a judgment between the same parties on the same issue therefore it could not be appropriate for the Bench to pass any orders in the appeal and therefore referred the matter to the Full Bench with a direction that the record of A.S.No. 2541 of 1986 be also placed before the Full Bench. When the matter came up before the Full Bench on 20th September, 2001 the Full Bench referred it to the larger Bench. The order of reference is important as it lays down the parameters within which this reference is to be answered. The order is reproduced.

"Having heard the learned Counsel for the parties, we are of the opinion that although the Division Bench was bound by the Full Bench judgment, the effect thereof in this appeal is required to be determined. Further more, we are prima facie of the opinion that that part of the law laid down by the judgment of the Full Bench that the plaintiffs would be entitled to the market value together with interest may not be correct, particularly, in view of the fact that the right of assignee of the Government land is subordinate to the State. The lands assigned under such patta are resumable. In that view of the matter, they may not be treated to be owners of the lands so as to claim entire compensation calculated at the market value for acquisition thereof under the Land Acquisition Act.

We are therefore of the opinion that the matter should be referred to a larger Bench."

2. Now the only question before this Court is, whether persons who are dispossessed from assigned lands are entitled to compensation on market rates, or, are they at all entitled to any compensation or not and if they are entitled, are they entitled to the market rates of the land on the date of requisition of the land. There were certain contradictory judgments on this issue and the matter was placed earlier before a Full Bench and the Full Bench decided the issue by a judgment in *State of A.P. v. P. Peda Chinnayya* (supra).

3. Before answering the question whether the Full Bench judgment needs reconsideration or not, it will be pertinent to note that it is not open for this Court to pass any judgment in Appeal A.S.No. 697 of 1985 on the well settled principles of *res judicata*. However, a review petition hasten filed in AS No. 2541 of 1986. Although this review petition has been filed after a very long delay but in order to lay down the law correctly we are allowing the condonation delay application and the application for review of the earlier judgment passed in AS No. 2541 of 1986.

4. Many judgments have been cited before us, but in our view the issue has been settled by the Supreme Court, therefore, we will refer only to three judgments of the Supreme Court which will clinch the issue. The first judgment in *Special Land*

Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, . Though this judgment is a short judgment but certain principles have been laid down in the judgment which have been followed later on. The relevant facts are necessary to be mentioned in order to appreciate the principle of law laid down, On April 15, 1952 the Government of Mysore granted an area of 11 acres 38 guntas of land situated in village Hebbyle to the grantees. The grant was made in a Form which was appended to the Mysore Land Revenue Rules with the added condition that, in the event the Government requiring the land for any reason whatsoever the grantee shall surrender the land to the Government without claiming any compensation. Without resorting to this covenant on January 11, 1958 the Government of Mysore published a notification u/s 4 of the Land Acquisition Act that land granted was likely to be needed for a public purpose. The Land Acquisition Officer thereafter made enquiry and took possession of the land, but did not award any compensation for the land to the grantees but awarded Rs. 1495/- for improvements claimed to have been made by the grantees. In the reference u/s 18 of the Land Acquisition Act the District Court agreed with the Land Acquisition Officer but in appeal the High Court of Mysore set aside the award and remanded the case to the District Court to determine the compensation payable to the grantees and to dispose of the case according to law. The High Court observed that, since the Government had failed to exercise the right which it had under the terms of the grant and had adopted the procedure prescribed by the Land Acquisition Act, compensation for acquisition under the Land Acquisition Act and the process by which the grantees were to be deprived of the land must be followed. This judgment was challenged in the Supreme Court. The Supreme Court referred to an earlier judgment of House of Lords in Attorney General v. De Kayser "s Royal Hotel Limited 1920 AC 508. After considering the various arguments the Supreme Court laid down in para-5 :

"5. We are unable to agree with the High Court of Madras that when land is notified for acquisition, and in the land the State has an interest, or the ownership of the land is subject to a restrictive covenant in favour of the State, the State is estopped from setting up its interest or right in the proceedings for acquisition. The State in a proceeding for acquisition does not acquire its own interest in the land, and the Collector offers and the Civil Court assesses compensation for acquisition of the interest of the private persons which gets extinguished by compulsory acquisition and pays compensation equivalent to the market value of the interest. There is nothing in the Act which prevents the State from claiming in the proceeding for acquisition of land notified for acquisition that the interest proposed to be acquired is a restricted interest."

5. The other judgment is Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others, . This is a case on which reliance has been placed by the earlier Full Bench judgment also. This is also a very short judgment, but in order to appreciate the controversy that facts will have to be mentioned. Certain Government lands were granted to the respondents subject to the condition that if the Government needs the lands for public purpose and it takes

the possession of the land then no compensation would be paid to them. The Government did not resort to this covenant but issued a notification u/s 4 of the Land Acquisition Act. The Collector enquired, fixed the compensation, but thereafter refused to pay the compensation on the ground that there was a condition attached to the grant that land could be requisitioned back without payment of any compensation. The matter was referred u/s 18 of the Land Acquisition Act to the District Judge. The District Judge concluded that the claimants were entitled to compensation determined under the Land Acquisition Act. The revision preferred by the Government was dismissed by the High Court and the matter went to the Supreme Court. In this judgment the Supreme Court again relied on Sheshagiri Rao's case (*supra*) and held that the decision of the Land Acquisition Officer that the claimants were not entitled to any compensation in respect of lands acquired could not be sustained.

6. Then, the third judgment is *Union of India and others Vs. A. Ajit Singh*, . This was a case where the claimants were the admitted lessees of the Government. The Government had granted lease of land for 30 years with a right to further renewal from time to time upto maximum of 99 years. The land was required by the Government for a public purpose. They issued notice terminating the tenancy of the claimant. The claimant filed as appeal before the competent Court. The appellate Court held that the lease subsisted and therefore the claimant could not be evicted on determination of tenancy. Thereafter the Government issued a notification u/s 4(1) of the Land Acquisition Act. Thereafter disputes arose as to apportionment of the compensation. The Supreme Court granted 60% of compensation to the tenant and 40% to the Government and held that in such cases the Courts were expected to take into consideration relevant factors such as duration of the lease, the nature of the right to enjoyment of the leased property and the improvements the tenant had made on the land. After holding so, it emphatically declared. "It is equally settled law that if the Government is the owner of the land, before initiating the acquisition, it is entitled to terminate the lease and take possession of the lands in terms of the lease. Necessarily in the above case tenant cannot have any right to compensation as he is bound by the terms of the lease." But, however, the Supreme Court observed in a case where the Government in spite of the covenant contained in the lease chooses to acquire the land necessarily the tenancy right of a tenant is required to be assessed and the compensation has to be awarded suitably.

7. Going through by these three Supreme Court judgments, starting from 1968 to 1997 the Supreme Court has almost taken a consistent view that in case of a grant or the lease if the grant or lease is determined by the State before taking over the land no compensation is payable if in the grant or in the lease there is such a covenant. On the other hand, if the covenant is not exercised and the lease or the grant/ assignment is not determined and land is sought to be acquired through Land Acquisition Act, then the Land Acquisition Act has to be followed and compensation would have to be paid with respect to the interest of the possessor of the land. In any case, the possessor of the assigned land or

leased land shall not be entitled to compensation as owner thereof. It is well settled that under the Land Acquisition Act it is not only the owner who is entitled to compensation but all interested persons are entitled to the compensation. At best an assignee or a lessee becomes an interested person in terms of the Land Acquisition Act.

8. The Full Bench in *State of A.P. v. P. Peda Chinnayya* (supra) laid down the law correctly when it stated that where the Government resorts to the provisions of the Land Acquisition 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 and such compensation would be only the value of the interest of the owner or assignee of the land subject to clog, but, it was not correct in laying down that in case where the patta lands were resumed by the Government the assignees can also claim compensation equal to the market value of their interest in the lands subject to the clog. It further stated that in such cases no solatium may be payable but interest may be claimed on the amount of compensation from the date of dispossession till the date of payment of compensation. So, in a way in both the case the compensation would be almost the same, however, in view of the latest judgment of Supreme Court i.e., *Union of India v. A. Ajit Singh* (supra) it is equally settled law that if the Government is the owner of the land before initiating the acquisition it is entitled to terminate the lease and take possession of the land in terms of the lease and necessarily in the above case tenant cannot have any right to compensation as he is bound by the terms of the lease. Therefore, in our view the Full Bench did not lay down the law correctly in cases where the land assigned is taken possession of by the Government in terms of the assignment/patta. So, we summarise our conclusions in answer to the reference as follows:

9. Where the assigned land is taken possession of by the State in accordance with the terms of the grant or patta that right of the assignee to any compensation will have to be determined in accordance with the conditions in patta itself and where the State does not resort to the covenant of the grant and resorts to the Land Acquisition Act the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as an owner but as an interested person for the interest he held in the property.

10. The reference is accordingly answered.

11. The appeal AS.No. 1226 of 1987 is an appeal filed by the claimants against the judgment and decree in OS No. 49 of 1984. In this case, compensation has been paid for the land on the basis of land value, solatium and interest have not been paid as according to the trial Court the land was not acquired in accordance with the provisions of the Land Acquisition Act. Therefore, the questions raised by the Full Bench are relevant for this case as well.

12. Now, coming to the appeals AS No. 697 of 1985 and 2541 of 1986, the judgment passed by the Division Bench in AS No. 2451 of 1986 is not even in

accordance with the judgment of Full Bench, therefore, there is a mistake apparent on the face of the record which is accordingly set aside. Normally, we would have referred both the appeals back to the learned single Judge for disposal but we have been told at the Bar that the compensation in terms of the Division Bench judgment has already been paid to the claimants, several years have passed and the amount was also not a big amount, therefore, it would be unjust if the claimants are asked at this stage to pay back the amount to the Government. Therefore, we direct that the compensation already paid to the claimants be not recovered from them. With these directions, both the appeals are disposed of.

13. The appeal AS No. 1266 of 1987 is remitted back to the learned single Judge for disposal on merits.

S.B. Sinha, C.J.—Although I agree with the conclusions arrived at in the judgment prepared by my learned brother Bilal Nazki, J., I would like to assign additional reasons in support thereof.

2. Briefly noted, the facts are: In the year 1969 Government assigned certain lands covered by S.No. 49,106, 24/5 and 8 situated in Kambavalasa village, Vizianagram district by way of D Form pattas in favour of certain persons subject to certain terms and conditions. One of the conditions is that the land shall be liable to be acquired for constructing projects or any public utilities without paying any compensation. On 1-2-1977, however, the said lands were taken over by Government for the purpose of Janjhavati Reservoir Project. Aggrieved by the said action, the assignees filed a suit in the Court of the Subordinate Judge, Parvathipuram marked as OS No. 90 of 1981 for a declaration that they are deemed to be in continuous possession and enjoyment of the lands until evicted by due process of law and for damages to the tune of Rs. 2,79,290/- for use and occupation and for subsequent damages with interest. The trial Court decreed the suit with the declaration as prayed for and for recovery of Rs. 47,786/- towards damages for use and occupation for three years prior to suit and Rs. 15,562/- towards subsequent damages per year from the date of suit with interest at 6% per annum till realisation. Aggrieved by the same, the plaintiffs as well as the State preferred appeals being AS Nos. 2541 of 1986 and 697 of 1985 respectively before this Court.

3. A Division Bench of this Court disposed of AS No. 2541 of 1986 on 17-7-1996 granting compensation at the rate of Rs. 2,700/- per care, with solatium at 15% and interest at 4% from 1-11-1978 till date of payment treating the appellants-plaintiffs as absolute owners and adopting the provisions under the Land Acquisition Act as if the lands were acquired under the provisions of the said Act. It may be relevant to notice here that a Full Bench of this Court rendered a decision on 7-2-1996 in State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others, , holding that when the patta lands were resumed by the Government for public purpose, 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. Unfortunately, neither the pendency of the appeal AS No. 697 of 1985 filed by the State nor the Full Bench judgment of this Court were brought to the notice of the Division Bench. Subsequently, when AS No. 697 of 1985 came up for hearing before a learned single Judge of this Court, the learned Judge noticing the conflict between the Division Bench judgment in AS No. 2541 of 1986 and the decision of the Full Bench (supra) referred the matter to a Division Bench. When the matter came before the Division Bench, the learned Judges taking the view that since already there was a judgment between the same parties on the same issue, it would not be appropriate for the Bench to pass any orders in the appeal and accordingly by order dated 27-3-2001 referred the matter to the Full Bench with a direction to the Registry that the record of AS No. 2541 of 1986 shall also be placed before the Full Bench. When the matter came up before the Full Bench, the Full Bench considered it appropriate to refer the matter to a larger Bench by order-dated 20-9-2001, the relevant portion of which reads thus:

Having heard the learned Counsel for the parties, we are of (he opinion that although the Division Bench was bound by the Full Bench judgment, the effect thereof in this appeal is required to be determined. Furthermore, we are prima facie of the opinion that that part of the law laid down by the judgment of the Full Bench that the plaintiffs would be entitled to the market value together with interest may not be correct, particularly, in view of the fact that the right of assignees of the Government land is subordinate to the State. The lands assigned under such patta are resumable. In that view of the matter, they may not be treated to be owners of the lands so as to claim entire compensation calculated at the market value for acquisition thereof under the Land Acquisition Act.

4. While things stood thus, the State now filed review application in AS No. 2541 of 1986 to review the judgment of the Division Bench dated 7-2-1996 with application to condone the delay in filing the application for review and to dispense with the filing of the certified copy of the judgment in AS No. 2541 of 1986. Having regard to the peculiar facts and circumstances as noticed hereinbefore, we are inclined to condone the delay in filing the review application. Accordingly, the delay condonation application as also the application to dispense with the filing of the certified copy of the order are allowed.

5. It may also be noticed herein that some other assignees similarly situated belonging to Banjukuppa village have also filed a suit being OS No. 49 of 1984 in the Court of the Subordinate Judge, Parvathipuram for recovery of damages at Rs. 8,62,470/- and the trial Court below on 23-4-1985 decreed the suit for Rs. 2,53,098/-being equal to the value of the suit lands with future interest at 6% p.a. from the date of the suit till realisation, fixing the market value of the land at Rs. 2,700/- per acre. It appears that the Government issued G.O. Ms. No. 180 Revenue (B) Department dated 9-2-1984 directing payment of compensation on compassionate grounds to persons whose lands granted under D form pattas

have been resumed by the Government at the market value fixed for similar patta lands in the villages for which draft notification u/s 4(1) of the LA Act 1894 was first published. In the latter suit, the trial Court followed the said Government Order and decreed the suit fixing the market value at Rs. 2,700/- per acre. Hence AS 1266 of 1987.

6. When AS No. 1266 of 1987 came up hearing before a Division Bench, noticing that the connected matter AS No. 697 of 1985 was referred to the larger Bench the said appeal has also been referred to this Bench.

7. That is how the matters have been listed before this Bench.

8. Admittedly, D Form patta was granted in favour of the plaintiffs. Clause 17 of the said D Form patta postulates that no compensation shall be paid if the lands are resumed by the State. In terms of the said D form patta the assigned lands are heritable but not transferable. They were given to the assignees for their personal cultivation and were liable to be resumed by the Government if any of the conditions of the assignment are violated, without paying any compensation. They were also liable to be resumed for construction of projects of public utility without payment of any compensation. The plaintiffs admittedly were dispossessed on or about 1-2-1977 by the Government in respect of Janjavathi reservoir project. The said project undisputedly is of public utility.

9. It does not appear that there exists any prescribed procedure for resumption of land. But, however, the minimum requirement to be followed is issuance of a reasonable notice. Even such a notice had not been issued. It is now trite that nobody can take forcible possession of land except in accordance with law. In *Lallu Yeshwant Singh v. Rao Jagdish Singh* AIR 1968 SC 620, the Apex Court held that the Government cannot take possession of the land except in accordance with the procedure prescribed under the statute.

10. The plaintiffs, therefore, were entitled to damages only. A plea had been raised in the written statement having regard to the provisions of Articles 162 of the Limitation Act that the suit having been filed on 2-12-1981, the claim for damages was barred by limitation. Possessory title, however, can be claimed against the whole world except the real owner.

11. However, for the views we propose to take, the question of limitation need not be gone into.

12. The grant by the State Government is governed by the Government Grants Act. Such grants would be governed by the conditions laid down in the grants including the right of resumption reserved therefore by the State. The parties being bound by the terms and conditions of the grant, the plaintiff could not claim any right or privilege in derogation to the terms of such assignment. A question has arisen as to what would be the procedure for resumption. The learned Counsel appearing on behalf of the plaintiffs have referred to Board Standing Order (BSO) No. 15. Para 1 thereof which is relevant for the purpose of

this case is in the following terms:

Before making an assignment the Officer, who is competent to order the assignment, should consider whether the land is likely to be required for public purpose in the near future or whether a permanent grant may be made. In the former case, or when any special reasons exist which make it inadvisable for Government to commit themselves to a permanent grant, the assignment should be on a temporary basis and power should be reserved to Government to resume the land at their pleasure at any time, unless and until the assignment has been declared absolute by them. When such a power of resumption is reserved to Government, the order of assignment should indicate clearly what compensation, if any, would be payable in the event of resumption. When no such power has been reserved, the land would, if required for a public purpose, have to be acquired under the Land Acquisition Act and compensation paid to the grantee in accordance with the provisions of that Act.

(ii) Unless the assignment is definitely temporary, or unless it is subject to conditions intended to limit permanently the assignee's property right over the surface soil, the grant should, for purposes of acquisition, be treated as an outright assignment and the land acquired under the Land Acquisition Act, if it is required for any public purpose. Where the assignment is definitely temporary, or where it is subject to conditions permanently limiting the assignee's property rights over the surface soil, suitable provision should be inserted in the order of assignment for resumption of the land and the payment of equitable compensation in the event of the land being required for public purposes. Case in which special conditions have been imposed, not for the purpose of limiting the grantee's property rights over the surface soil but solely for the purpose of safeguarding his ownership of the land, must be treated in the same manner as outright assignment in which there are no conditions restricting the grantee's powers of disposal over the land.

13. However, the BSO is not statutory in nature. No right flows therefrom in favour of the plaintiffs, in any event, it has been stipulated therein that when such a power of resumption is reserved by the Government, the order of assignment should indicate clearly what compensation, if any, would be payable in the event of resumption. D form Patta stipulates that no compensation is payable, it reads thus:

In the event of the land being required for a project or any other public purpose, the land will be resumed and no compensation shall be paid to the assignee. The decision of the Government or other authority empowered by them in this behalf shall be final on the question, whether the purpose for which the land is to be resumed is a public purpose or not.

14. It is neither in doubt nor in dispute that the condition for resumption by the State existed.

15. Referring to BSO 15, a Division Bench of this Court in Anji Raju v. State of

Andhra Pradesh 1960 An.WR 272, held:

There is no provision at all for making a temporary assignment either in the Board's Standing Orders or in any instructions issued by the Government. To make a permanent assignment, the procedure laid down in BSO No. 15 has to be followed and a patta has to be issued which would give a right to the assignee. Therefore, a person to whom lands have been given for temporary use could not complain of any violation of principles of natural justice if no notice was issued to him before making a permanent assignment of the lands.

16. Before the learned trial Judge a contention had been raised that the members of Scheduled Tribes are entitled to Special D form pattas in terms whereof, lands cannot be resumed. But no such case was made out by the plaintiffs in the plaint.

The parties being bound by the terms of the grant and no case having been made out that the grant itself was illegal, the learned trial Judge erred in deciding the said question in favour of the plaintiffs. It is trite that no evidence is admissible which has not been pleaded. Having regard to the fact that the assignment was made in D Form patta, it does lie in the mouth of the plaintiffs to state that the grant was an absolute one or for that matter the BSO in this behalf would apply in the instant case.

17. We may now consider the decision of the Full Bench of this Court in State of Andhra Pradesh v. Peda Chinnayya, (supra). The Full Bench held:

1. 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, however, would be the market of the interest of the owner or the assignee of the land subject to the clog.

2. The claimant in such cases would also be entitled to consequential reliefs, such as those of solatium and interest etc., under the Act.

3. In a case where 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 is payable but interest may be claimed on the amount of compensation from the date of dispossession till the date of payment of compensation.

4. In a case where the assignees are disposed 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.

18. In the instant case, the provisions of the Land Acquisition Act are not applicable. The lands had not been notified under the said Act. The learned trial

Judge, therefore, erred in holding that the plaintiffs are persons aggrieved within the meaning of. Section 3(b) of the Land Acquisition Act. It is also not a case of transfer.

19. With utmost respect, in our opinion, the Full Bench committed error insofar as it held that where patta lands are resumed by the Government, the assignee would be entitled to compensation which would be equal to the market value of their interest in the land subject to the clog. Quantum of damages have to be ascertained having regard to the fact situation of each case. The right of the State to resume land is conditional only to the extent referred to in D form patta. Once such conditions are fulfilled, which have been done in the instant case, no grant of compensation would be payable towards resumption of land. Compensation may, however, be payable if lands have not been resumed by following due process of law. The act of the State in such cases would be tortuous in nature.

20. Yet again whether interest would be payable or not would depend upon the fact situation of each case. Interest can be granted only in terms of Section 34 of the Code of Civil Procedure. No interest is payable by way of damages or under the Interest Act as a claim for damages in a suit would not be an ascertained claim.

21. The Court was bound to decide the issue as to whether the State has exercised its power of resumption and/or has a right to do the same, although it might have issued a reasonable notice therefore or filed a suit for obtaining possession, but, it is beyond any cavil of doubt that grant of compensation has to be determined having regard to the damages suffered by the plaintiffs for non-observation of the procedure alone. Damages may have to be determined having regard to the fact whether there had been standing crops on the land in question or not.

22. Where the stand of the Government is that it has resumed land in accordance with the terms and conditions of the patta, the question of issuance of any direction upon the State to initiate proceedings under the Land Acquisition Act would not arise at all. The provisions of Section 6 of the Specific Relief Act, 1963 are not applicable in the case of State. Having regard to the fact that the lands cannot be restored back even in a suit filed by the plaintiffs, what would be payable is the amount of compensation to which the plaintiffs may be found to be entitled to, but the grant of compensation by no stretch of imagination can be equivalent to the market value of the land in view of the fact that the interest of the assignees in the land was limited. The State while acquiring lands can exercise its power of eminent domain. Solatium is paid only in terms of the provisions of the Land Acquisition Act. There do not exist provisions for payment of solatium if acquisition or requisition of the land is made in terms of the provisions of an Act other than the Land Acquisition Act. It is one thing to say that having regard to Article 300-A of the Constitution of India that no citizen should be deprived of his right to property without payment [of compensation if

the State exercises its power of eminent domain, but, it is another thing to say that they would be entitled to the market value of the land as if they are the full owners thereof despite the fact that they are not. Grant of compensation, therefore, must be determined having regard to the nature of rights and other circumstances attending thereto. To the said extent, the Full Bench decision, in our opinion, has not laid down correct law and must be overruled.

23. The Full Bench referred to the decision of the Apex Court in *Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another*, and *Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others*, wherein despite existence of condition in the grant that the Government will take possession of the lands for any public purpose whenever required by the Government and in such an event no compensation would be paid to the assignee, Government has not availed of such condition but acquired the land taking recourse to the provisions of the Land Acquisition Act. Under those circumstances, it was held Government cannot refuse compensation under the provisions of the Land Acquisition Act. Therefore, those cases arose in different circumstances. Here, the Government has availed of the condition provided in D Form patta and resumed the land. In such circumstances, the question of taking recourse to the provisions of the Land Acquisition Act would not arise. Therefore, the decision of the Full Bench of this Court in *State of A.P. v. Peda Chinnaryya* is not correct insofar as it held that recourse can be had to the provisions of Land Acquisition Act. Similarly, the decision of the Division Bench of this Court in AS No. 2541 of 1986 also does not lay down correct law.

24. In *Darbar Shri Vira Vala Surag Vala, Vadia Vs. The State of Saurashtra (Now Bombay)*, the Apex Court held:

If the grant is not an absolute grant in the sense in which the petitioner contends, but is a grant which by its very nature contains a defeasance clause, then the petitioner cannot found his claim on any violation of his fundamental right.

25. In *The Collector of South Satara and Another Vs. Laxman Mahadev Deshpande and Others*, it was held:

Undoubtedly the power of resumption of a watan may be exercised u/s 22 of the Watan Act and such a resumption may destroy the right of the holder both to the office and the watan land, and in the absence of any provision in that behalf no right to compensation may arise.

26. Dealing with the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Act, the Apex Court held:

The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(g) of the Constitution.

27. In *Chittoor District Co-op., Milk Products Union Limited v. C. Rajamma* 1996

(2) ALD 239 (DB), dealing with the provisions of the A.P. Assigned lands (Prohibition of Transfers) Act, 1977, a Division Bench of this Court held that where the land is resumed by the Government for a public purpose in exercise of the power reserved in them in terms of Clause 17 of the D Form patta, High Court cannot go into the question of rights of assignees in the land under Article 226 of the Constitution. It was held:

What rights under assignment the writ petitioner got, however, is an issue, which has nothing to do with the public purpose aforementioned. No assignee can get a right to transfer and in that no transferee can get a right. The document of assignment has incorporated a condition and that condition always remained alive irrespective of the duration of possession of land by the assignee or those who inherited from the assignee. The principle of derivative title is not at all attracted in the case of an assignment because the proprietary right remains with the person who assigns and does not vest in the assignee.

28. In *K. Narayanaswami Naidu and Another Vs. State of A.P. and Others*, , again a Division Bench of this Court dealing with BSO 15 held:

In any case, the concept of vested right in respect of assignment of land cannot be acknowledged. Assignee at the best has the possessory right which is good against the whole world But not against the real owner.

29. In *Amor Singh v. Custodian, E.P.*, dealing with the provisions of East Punjab Evacuee's (Administration of property) Act, 1947, Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Supreme Court held:

The above detailed consideration of the various incidents of a quasi-permanent allotment show clearly that the sum total thereof does not in any sense constitute even qualified ownership of the land allotted. At best it is analogous to what is called *jus in re aliena* according to the concept of Roman Law and may be some kind of interest in land. The basic feature of that interest are that the ultimate ownership of the land is still recognised to be that of the evacuee and the allotment itself is liable to resumption on cancellation with reference to the exigencies of the administration of evacuee law. The interest so recognised is in its essential concept, provisional, though with a view to stabilisation and ultimate permanence.

30. In a case where lease had been granted to a person and the land had been acquired during the subsistence of the lease under the Land Acquisition Act, compensation was apportioned between the tenant and the landlord at 60 : 40 respectively. (*See Union of India and others Vs. A. Ajit Singh*, .

31. In *M/s. Anamallai Club Vs. Government of Tamil Nadu and others*, , whereupon Mr. V.LN.G.K. Murthy has placed strong reliance, the Supreme Court referring to its earlier decisions in *Lallu Yeshwant Singh v. Rao Jagdish Singh* (supra), *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, while disapproving the manner in which

possession had been taken forcibly in that case after determination of the licence, however, held that possession cannot be restored back. In equity, it was held:

The Government having determined the licence, the Estate officer cannot go into the question of legality of the termination of the licence under the Crown (Government) Grants Act to take further steps under Sections 4 and 5 of the Act. In that view of the situation in this case, we think that it is not necessary for the State Government to nominate the Estate officer and for the Estate officer to give notice under Sections 4 and 5. There is no need for the State to file a suit for eviction. But notice in compliance of principles of natural justice should have been given reasonable time of 10 or 15 days to vacate the premises and to deliver vacant and peaceful possession; thereafter, the Government would be free to resume possession. Since possession was already taken, though we are not approving of the manner in which the same was taken, we do not think that in this matter notice afresh needs to be given to the appellant. It may be open to the appellant to avail of any remedy available in law.

32. Thus, even in that case, it was not held that the licensee would be entitled to compensation to the extent of market value of the land as if the lands had been acquired under the Land Acquisition Act.

33. The learned Counsel appearing for the plaintiffs, however, placed reliance on G.O. Ms. No. 180 Revenue dated 9-2-1984. Para 3 of the said G.O. reads as follows:

Government lands which have been assigned on "D" form patta to landless poor persons and which are coming under submersion of any Major, Medium irrigation and power projects shall be resumed by the Government. The assignees of such land shall be paid compensation on compassionate grounds at the market value fixed for similar patta lands in the villages for which draft notification u/s 4(1) of the LA Act 1894 were first published and thereafter. The payment of this compensation shall entitle the occupants to the cash grants payable to displaced families in terms of G.O. Ms. No. 59, Irrigation and Power Department dated 19-3-1980.

34. The said policy decision has no retrospective effect. The rights of the parties would be determined on the date of filing of the suit and not by reason of a subsequent policy decision taken by the (government. Even thereunder, the market value of the land is not to be given but only compensation is required to be payable compassionate grounds at the market value fixed for similar patta lands in the villages for which draft notification u/s 4(1) of the LA Act was first published or thereafter. When the Court has to determine the compensation in a given set of facts, question of grant of passing a decree on compassionate grounds in terms of a policy taken by the Government subsequent to the filing of the suit would not arise. At best the same may be treated as a guideline in cases where such policy decision is held to be applicable. In our view, therefore, the

learned trial Judge erred in holding that the aforementioned G.O. Ms. No. 180 has retrospective effect.

35. It is really a matter of regret that before the Division Bench neither the fact that the State preferred an appeal (AS No. 697 of 1985) nor the decision of the Full Bench of this Court had been brought to the notice of the Court. We have no words to express our anguish, which has led to the complexity. We are although ordinarily would not have entertained a review application after inordinate delay, but, keeping in view the fact that this Court exercises its power of review not only in terms of order 47, Rule 1 of the CPC but also to meet the ends of justice, we are of the opinion that the review petition should be allowed having regard to the fact that a question of public importance had arisen for consideration in this appeal.

36. The Apex Court in *M.M. Thomas Vs. State of Kerala and Another*, clearly held that the High Court being a Court of record and having plenary power, it can exercise its power of review relating to errors apparent on the face of the record. The decision of the Division Bench in AS No. 2541 of 1986 as also the decision of the Full Bench thus could not be sustained and the review application should be allowed *Ex. Debito Justitiae*.

37. However, such review petition was required to be allowed to do complete justice to the parties. In any event, the plaintiffs do not suffer any prejudice in view of the directions contained in the judgment rendered by my learned Brother Bilal Nazki, J.

38. Accordingly I agree with the conclusions arrived at by my learned brother Bilal Nazki, J.

Motilal B. Nadk, J.—The draft common order prepared by my learned Brother Bilal Nazki, J and the draft concurring judgment prepared by the Hon''ble the Chief Justice are circulated to me. Having perused the said two draft judgments, I find some difficulty in lending my concurrence to the view taken by Brother Bilal Nazki, J and the Hon''ble the Chief Justice.

2. These matters have been referred to a larger Bench of this Court on the basis of a reference made by a Full Bench of this Court comprising the Hon''ble the Chief Justice, Brother Bilal Nazki, J and Brother V.V.S. Rao, J, in AS No. 697 of 1985 dated 20-9-2001. It would appear to me, these matters are referred primarily to examine the correctness or otherwise of the ratio laid down by the Full Bench of this Court in *State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others*, wherein it was held thus:

"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 of 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 patla 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."

3. This is clear from page-3 of the reference order dated 20th September, 2001 which reads thus:

".....We are prima facie of the opinion that that part of the law laid down by the judgment of the Bull Bench that the plaintiffs would be entitled to the market value together with interest may not be correct, particularly in view of the fact that the right of assignee of the Government land is subordinate to the State. The lands assigned under such patta are resumable. In that view of the matter, they may not be treated to be owners of the lands so as to claim entire compensation calculated at the market value for acquisition thereof under the Land Acquisition Act".

4. The occasion chosen to examine the correctness of the Full Bench decision (supra), is the review petition filed by the Government seeking review of the judgment rendered by a Division Bench of this court on 17-7-1996 in AS No. 2541 of 1986. AS No. 697 of 1985 filed by the Government against the judgment and decree in OS No. 90 of 1981 and another appeal filed by other parties in AS No. 1266 of 1987 are not connected with OS No. 90 of 1981.

5. The relevant facts relating to the said appeal proceedings are that in the year 1969, the Government of Andhra Pradesh assigned certain lands covered under S.Nos.49, 106, 24/5 and 8 situated in Kambavalasa village of Vizianagaram district by way of D-Form Pattas in favour of landless poor persons subject to fulfilment of certain terms and conditions. Pursuant to the assignment of D-Form pattas, the assignees made the lands cultivable and enjoying the fruits of it by doing cultivation. While so, on 1-2-1977, the said lands were taken over by the Government for the purpose of Janjahavati Reservoir Project. Aggrieved by the said taking over of lands, the assignees filed a suit in OS No. 90 of 1981 on the file of the Subordinate Judge, Parvathipuram for a declaration that they are deemed to be in continuous possession and enjoyment of the lands until evacuated by due process of law for damages to the tune of Rs. 2,79,290/- for use and occupation and for subsequent damages with interest. The trial Court decreed evicted the suit with the declaration as prayed for and for recovery of Rs. 47,786/- towards damages for use and occupation for three years prior to suit and Rs. 15,562/- towards subsequent damages per year from the date of suit with interest at 6 per cent per annum till realisation.

6. Aggrieved by the judgment, the plaintiffs-assignees as well as the State preferred appeals in AS No. 2541 of 1986 and 679 of 1985 respectively before this

Court. A Division Bench of this Court disposed of the appeal in AS No. 2541 of 1986 on 17-7-1996 granting compensation at the rate of Rs. 2,700/- per acre with solatium at 15% and interest at 4% from 1-11-1978 till the date of payment treating the appellants-plaintiffs as absolute owners while adopting the provision under the Land Acquisition Act. However, the appeal filed by the State in AS No. 697 of 1985 remained pending on the file of this Court, undecided.

7. While so, a Full Bench of this Court rendered a decision in State of Andhra Pradesh v. P. Peda Chinnaiah (*supra*) on 7-2-1996 holding that when the patta lands were resumed by the Government for public purpose, 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, as indicated above. However, the appeal filed by the Government in AS No. 697 of 1985 arising out of OS No. 90 of 1981 came up for hearing before the learned single Judge of this Court, the learned single Judge having noticed the decision rendered by the Division Bench in AS No. 2541 of 1986 dated 17-7-1996, found some difficulty in deciding the said AS No. 697 of 1985 and referred the matter to the Division Bench.

8. When the said AS No. 697 of 1985 came up before the Division Bench, the learned Judges took a view that since already there was a judgment between the same parties on the same issue, it would not be appropriate for the Bench to pass another order in the appeal and accordingly by an order dated 27-3-2001 referred the matter to the Full Bench directing the Registry to place record in AS No. 2541 of 1986 also before the Full Bench. The Full Bench, as indicated above, took a view on 20-9-2001 to refer the matter to a larger Bench to examine the correctness of the ratio laid down by the Full Bench in the decision (*supra*) as is reflected in page 3 of the reference order dated 20-9-2001.

9. The order of reference dated 20-9-2001 by the Full Bench to the larger Bench of examining the correctness or otherwise of the ratio and relevant factors, is made in AS No. 697 of 1985 which also arises out of the judgment and decree made in OS No. 90 of 1981. The said order of reference is dated 20-9-2001. Thereafter, on 5-10-2001, an effort is made by the State to file a review petition against the judgment and decree made in AS No. 2541 of 1986 dated 17-7-1986. Along with the review petition, CMP No. 19044 of 2001 is filed u/s 5 of the Limitation Act seeking to condone the delay of 2030 days in filing the review CMP. Thus, the said CMP No. 19044 of 2001 and the Review CMP (SR) No. 70327 of 2001 and CMP (SR) No. 70329 of 2001 which is filed to dispense with the filing of the certified copies and the typed copies of the judgment and also AS No. 697 of 1985 and another AS No. 1266 of 1987 filed by another party, are referred to this Larger Bench for a decision.

10. It would appear to me, the State has taken a clue on the basis of a reference order made by the Full Bench of this Court in AS No. 697 of 1985 on 20-9-2001 seeking to examine the correctness or otherwise of the judgment passed by the Division Bench in AS No. 2541 of 1986 and the ratio laid down by the Full Bench

in the decision cited supra. In the affidavit filed along with the petition (CMP No. 19044 of 2001) u/s 5 of the Limitation Act to condone the delay of 2030 days in seeking review of the judgment in AS No. 2541 of 1986 dated 17-7-1996, the deponent has failed to give any satisfactory reasons for the abnormal delay in seeking to review the judgment rendered by the Division Bench of this Court in AS No. 2541 of 1986 dated 17-7-1996. The deponent, however, averred at page-3 of the said affidavit that he is working as a Special Deputy Collector since more than one month and recently he received a communication from the office of the Government Pleader to come down to Hyderabad and after understanding the implication, efforts are made to file the review petition. The deponent has sworn to the affidavit on 1st day of October, 2001 which was presented in the Registry on 5-10-2001. The other petition in CMP (SR) No. 70329 of 2001 and the Rev. CMP (SR) No. 70327 of 2001 are all presented in the Registry of the High Court on 5-10-2001. It is thus clear that the State has taken a decision to file a petition to review a judgment rendered by a Division Bench of this Court in AS No. 2541 of 1986 dated 17-7-1996, nearly after five years, only on the basis of a reference order made by the Full Bench on 20-9-2001.

11. I am not convinced with the reasons assigned in the affidavit filed in support of CMP No. 19044 of 2001 which is filed u/s 5 of the Limitation Act seeking to condone the delay of 2030 days in filing Rev. CMP (SR) No. 70327 of 2001 to review the judgment rendered by the Division Bench of this Court in AS No. 2541 of 1986 on 17-7-1996. It is not the case of the State that the plaintiffs in OS No. 90 of 1981 have obtained the decree by playing fraud on the Court. Having obtained some relief, the plaintiffs filed appeal in AS No. 2541 of 1986 against the judgment and decree in OS No. 90 of 1981. The Division Bench decided the said appeal by granting certain relief by judgment dated 17-7-1996. It is no doubt true the appeal filed by the Government in AS No. 697 of 1985 could not be decided along with the appeal filed by the plaintiffs. For that, the plaintiffs cannot be blamed. Equally so, the Full Bench decision (supra) was though available, but that was not brought to the notice of the Division Bench at the time of deciding AS No. 2541 of 1986 and as such the Division Bench could not examine the ratio laid down in the said Full Bench decision. Even otherwise, the Full Bench has also recognised the rights of the assignees who were granted pattas, for entitlement of compensation in different forms depending upon few factors. I am, therefore, of the view, the implication arising out of the binding nature of the decision of the Full Bench (supra), could be examined in a given case.

12. For the above reasons, the unexplained delay of 2030 days in seeking to review the judgment dated 17-7-1996 made in AS No. 2541 of 1986 cannot be condoned and accordingly, I dismiss the CMP No. 19044 of 2001 which is filed for to condone the said delay. Since I have dismissed CMP No. 19044 of 2001, the petition in Rev. CMP (SR) No. 70327 of 2001 also shall stand dismissed.

13. The other appeal in AS No. 697 of 1985 arising out of the judgment and

decree in OS No. 90 of 1981 is between the same parties to the judgment and decree dated 17-7-1996 in AS No. 2541 of 1986 which has become final, the principle of res judicata would apply against the appellant in AS No. 697 of 1985 and therefore, in my considered view, AS No. 697 of 1985 has to be dismissed and I accordingly dismiss the same.

14. The only question then remains is the correctness or otherwise of the ratio laid down by the Full Bench in the Decision in State of A. P. v. P. Peda Chinnayya, (supra). Since there are no other relevant matters before us for consideration, I am of the view, this is not an appropriate occasion to examine the correctness or otherwise of the ratio laid down by the Full Bench in the said decision and the same can be examined at an appropriate time.

15. The other appeal in AS No. 1266 of 1987 arising out of a judgment and decree in OS No. 49 of 1984 dated 23-4-1985 could be posted before the appropriate Bench for rendering a decision, separately.

B. Sudershan Reddy, J.—I agree with the conclusions reached in the judgment prepared by my learned Brother Dr. Motilal B. Naik, Justice.

2. According CMP No. 19044 of 2001 shall stand dismissed. Consequently, CMP (SR) No. 70329 of 2001 also shall stand dismissed.

3. The correctness of the law laid down by the Full Bench in State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others, , need not be gone into for the present.

4. The Appeal in AS No. 1266 of 1987 arising out of the judgment and decree in OS No. 49 of 1984 dated 23-4-1985 may be posted before the appropriate Bench for hearing and disposal in accordance with law.

Goda Raghuram, J.—AS No. 697 of 1985 is an appeal by the Defendants-State directed against the decree and judgment in OS 90 of 1981 on the file of the Subordinate Judge, Parvathipuram, aggrieved by the declaration that the plaintiffs are in possession and enjoyment of the suit land until evicted by the due process of law and that the defendant-State shall pay Rs. 47,786/- towards damages for use and occupation and Rs. 15,562/- towards subsequent damages.

2. Aggrieved by the quantum of damages awarded, the plaintiffs filed AS 2541 of 1986. A Division Bench of this Court allowed the plaintiffs appeal AS 2541 of 1986 on 17-7-1996 granting Rs. 2,700/- per acre and interest to be computed at 4% from the date of dispossession i.e., 4-11-1978. The pendency of the State's appeal AS 697 of 1985 was not brought to the notice of the Court which disposed of AS 2541 1986.

3. Assuming the pendency of AS 2541 of 1986, in view of the representation by the learned Government Pleader, this Court by the docket order dated 15-7-1997 in AS 697 of 1985, directed that the two appeals be listed for hearing, on 17-7-1997. On 24-10-1997 it was noticed by this Court that AS 2541 of 1986

has been disposed of and accordingly AS 697 of 1985 alone was directed to be listed for hearing. When this appeal came to be heard before a Division Bench on 1-9-1999, time was sought on behalf of the State for filing a review petition seeking review of the order dated 17-7-1996 allowing AS 2541 of 1986 on the stated ground that the decision is in conflict with the decision of a Full Bench of this Court in State of Andhra Pradesh and Another Vs. P. Peda Chinnayya and Others, . This Court accordingly directed (on 1-9-1999) that AS 697 of 1985 be listed along with a review petition, if any filed, after four weeks. When the matter was listed for hearing again on 7-10-1999 a further time of 12 weeks was granted for filing a review.

4. It is thus clear that the appellant-State in AS 697 of 1985 was fully conscious of the other appeal As 2541 of 1986 (against the same OS No. 90 of 1981) having been allowed, at least, on 1-9-1999 when it sought time to file a review in AS 2541 of 1986. It should also be presumed to be cognizant of the basic principles of res judicata, in particular, represented as it was by Counsel.

5. No sense of urgency is apparent even thereafter. No review petition had been filed either within the four weeks granted on 1-9-1999, or within the further 12 weeks sought and granted on 7-10-1999, or when AS 697 of 1985 was part heard by a Division Bench on 23-8-2001, or when a Division Bench referred the appeal to a Full Bench on 27-3-2001 or even by 20-9-2001 when a Full Bench of this Court referred AS 697 of 1985 to be listed before a Larger Bench along with AS 2541 of 1986.

6. The review petition CMP (SR) 70327 of 2001 was filed on 5-10-2001 along with CMP No. 19044 of 2001 seeking condonation of 2030 days in filing the review. An analysis of the circumstances set out above demonstrates a casual and negligent conduct even after the disposal of AS 2541 of 1986 came to the notice of the State specifically on 1-9-1999. The review petition CMP SR No. 70329 of 2001 came to be filed on 5-10-2001, much after the matter was referred to the Larger Bench, by the orders of the Full Bench dated 20-9-2001.

7. The reasons, if they may be called so, recorded for seeking condonation of delay are as under:

".....Now our appeal has separately come up for hearing. By way of abundant caution, we are now filing this review petition in AS No. 2541/86, so that the judgment in AS No. 2541/1986 may not come in our way from presenting our arguments, in the present appeal.

1 am working as Special Deputy Collector of Bobbili, since one month. Prior to me, the post of Special Deputy Collector, Bobbili was held by the previous incumbent (Sri T. Appa Rao) on in-charge basis for about 4 months. Prior to him one Mr. K. Balram Murthy worked for one year and retired. Recently we have received communication from the office of the Government Pleader, to go over for filing review petition. Earlier this review petition was not filed due to improper understanding of the legal implications. As our appeal is still pending, we pray

that the judgment in AS No. 2541 of 1986, may not be treated as having become final.

In the circumstances, the delay in filing this review petition may be condoned in the interests of the justice as otherwise the Government will be put to serious and irreparable loss....."

8. We follow an adversarial system for adjudication of disputes. Parties arrayed in a lis are represented by Counsel. In the case on hand the party seeking condonation of delay is the State. It is represented by the Government Counsel in both the appeals AS 697 of 1985 filed by the State as well as AS 2541 of 1986 filed by the plaintiffs in OS No. 90 of 1981. True it is that certain decisions as to the principles of condonation of delay have vouchsafed a measure of latitude to be accorded to the State when considering its delays on account of an impersonal bureaucracy, inherited and nurtured dilatory decision making process, almost interminable locomotion of the files and the like. Decisions have however not gone so far as to suggest or lay down that such latitude should extend to condone a casual and careless approach or apparent negligence conclusively demonstrated in a given case, as in the case on hand.

9. As a neutral arbiter of disputes the Court is required to keep the scales even including in cases where the citizen is pitted against the State. While latitude ought to be shown for delay if a modicum of explanation or sufficient cause is shown for it, we are not called upon to totally ignore abnormal and unexplained delays in the State action of not prosecuting its legal business with any seriousness of purpose. Condoning such long and unexplained delay without sufficient cause shown would undermine the confidence of the citizen in the neutrality of the judicial branch and might foster in the public, an apprehension that it has been unevenly dealt with. The Law of limitation does not carve out any specific exemption in favour of the State.

10. As is apparent from the "reasons" adduced for seeking condonation of a delay of 2030 days for preferring the review petition, there is demonstrated wanton carelessness and clear negligence in the conduct of the State. The reasons are inadequate and set out no sufficient cause. I am unable to persuade myself that the abnormal delay should be condoned.

11. Brother Justice Bilal Nazki has recorded a conclusion, with which My Lord the Chief Justice has concurred, that the compensation already paid to and drawn by the claimants, qua the judgment dated 17-7-1996 in AS No. 2541 of 1986, be not recovered. In the circumstances, there is no failure of justice, in material terms, between the parties in either AS Nos. 697 of 1985 or 2541 of 1981, that requires to be corrected, warranting condonation of the abnormal delay on 2030 days in filing the application for review in AS No. 2541 of 1986 even without a sufficient cause-shown for the delay. I am unable to persuade myself that the delay should be condoned and the review application allowed for the limited purpose of enunciating a legal principle. Accordingly CMP No. 19044 of 2001 is

dismissed and consequently the application for review, CMP SRNo. 70323 of 2001.

12. As a result the judgment in AS 2541 of 1986 dated 17-7-1996, would bar the consideration of the issues urged AS 697 of 1985 on the principles of res judicata. Accordingly AS 697 of 1985 is dismissed.

13. Analysing the decisions of the Apex Court in Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, ; Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others, and Union of India and others Vs. A. Ajit Singh, , my learned Brother Justice Bilal Nazki has, with utmost respect, accurately summarised the ratio as under:

"Where the assigned land is taken possession of by the State in accordance with the terms of the grant or patta the right of the assignee to any compensation will have to be determined in accordance with the conditions in patta itself and where the State does not resort to the covenant of the grant and resorts to the Land Acquisition Act the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as an owner but as an interested person for the interest he held in the property."

14. Questions might arise whether the conditions and covenants of a grant or assignment, in particular fact situations, having regard to the length of time the land has been held by the grantee or assignee, the purpose of social objective for which the assignment had been made by the State, the improvements or developments upon the land made by the grantee on any legitimate expectation of continuance of the tenure, the heritable nature of the rights under the grant and like circumstances, would permit a successful challenge to such restrictive conditions or covenants on available constitutional or other grounds. As and when such questions are urged they may fall to be considered in an appropriate case, No such questions have however, been urged nor a foundation exists therefore in the appeal before us.

15. In the circumstances I am in respectful agreement with the opinion of my brother Justice Bilal Nazki as concurred with by My Lord the Chief Justice, to the extent, that the principles and ratio of the Apex Court Judgments in Seshagiri Rao, (surpa), K.S.R. Rao (supra) and Ajit Singh (supra) as are summarised in the opinion of my brother Justice Bilal Nazki, extracted in paragraph 13 herein above, would govern the disposition of AS No. 1266 of 1987. This appeal is accordingly relegated to be heard and disposed of on merits, by a learned single Judge.

16. In conclusion I hold as under:

(A) There is no sufficient cause-shown for condoning the delay of 2030 days in filing the application for review of the judgment dated 17-7-1996 in AS No. 2541 of 1986. The application CMP 19044 of 2001 for condonation of delay is, therefore, rejected. Consequently CMP SR No. 70327 of 2001 for review of the

judgment dated 17-7-1996 in AS No. 2541 of 1986 also stands rejected.

(B) The judgment in AS No. 2541 of 1986 bars the consideration of AS No. 697 of 1985 on application of the principles of res judicata. AS No. 697 of 1985 is therefore, dismissed.

(C) As the appellants in AS No. 1266 of 1987 (plaintiffs in OS No. 49 of 1984)

have not pleaded or sought any relief as to the invalidity of any of the restrictive covenants contained in the orders of assignment made to them, this appeal is to be considered in accordance with the principles and ratio in the judgments of the Supreme Court in M.S. Seshagiri Rao (supra), K.S.R. Rao (supra) and Ajit Singh (supra), the core principles of which have been summarised in the judgment of Brother Justice Bilal Nazki (extracted at Para 13 supra).

(D) AS No. 1266 of 1987 is remitted to a learned single Judge of this Court for hearing and disposal on merits.

Satya Brata Sinha, C.J.—In view of the majority opinion, CMP (SR) Nos.70327, 70329 of 2001 and CMP No. 19044 of 2001 in AS No. 2541 of 1986 are dismissed. Consequently, the appeal AS No. 697 of 1985 is dismissed, and the appeal AS No. 1266 of 1987 is remitted to the learned single Judge for consideration of the same in the light of the majority opinion.