

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA
+ W.A.No.1147 of 2018**

% Date: 28-07-2022

The Special Deputy Collector and
Land Acquisition Officer,
International Airport,
Shamshabad, Ranga Reddy District & another

... Appellants

v.

\$ B Narayan Swamy died per LRs
Smt B Laxmamma and others

... Respondents

! Counsel for the Petitioner : Mr. Radhive
learned Government Pleader

^ Counsel for respondents : Mr. J.Ashvini Kumar

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➤ HEAD NOTE:

? CASES REFERRED:

2002(2) ALD 451

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.A.No.1147 of 2018

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Radhive, learned Government Pleader attached to the office of the learned Advocate General for the appellants; and Mr. J.Ashvini Kumar, learned counsel for the respondents.

2. This intra-court appeal assails the legality and correctness of the final order dated 23.03.2018 passed by the learned Single Judge in W.P.No.3254 of 2005 filed by the respondents as the petitioners.

3. In the related writ petition, challenge was made to two communications dated 10.09.2004 and 23.11.2004 of appellant No.1- Special Deputy Collector and Land Acquisition Officer, International Airport, Shamshabad, Ranga Reddy District.

4. By the first impugned communication dated 10.09.2004, appellant No.1 had informed the respondents that after due enquiry, it was found that predecessor-in-interest of the

respondents was not in possession of the assigned land in Survey No.201/6 situated at Chinna Gollapally Village; the said land was already handed over to the Land Acquisition Officer for the international airport project at Shamshabad. Therefore, their request for payment of compensation deserved no consideration.

5. By the second impugned communication dated 23.11.2004, appellant No.1 informed the respondents that as they had sold away the assigned land, Mandal Revenue Officer had initiated the proceedings under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (briefly 'the Act' hereinafter) whereafter, possession of the land was taken over by the Government. Subsequently, the land was handed over to the Land Acquisition Officer for international airport project at Shamshabad. Therefore, request of the respondents for payment of compensation was rejected.

6. The case projected by the respondents before the learned Single Judge was summed up in the following manner:

The petitioner was originally assigned the subject land vide proceedings No.A9/7089/1961 dated 11.12.1961. Since then, he has been in continuous possession and enjoyment of the same. In the year 1982, the petitioner has shifted his residence to Uppuguda due to his sickness. Taking advantage of his absence in the village, his name was deleted in the revenue records. Aggrieved by such deletion, he made an application to the second respondent and the second respondent *vide* letter No.B/1100/98 dated 25.05.2004 held that the transfer of assigned land is void *ab initio* and hit by the provisions of Sections 3 and 4 of The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'Act, 1977') and ordered to vacate the purchasers from the land and resume to the original assignees or their legal heirs. While matter stood thus, the first respondent has taken possession of the subject land along with other lands for the purpose of construction of International Airport at Shamshabad. But, the petitioner was not paid any compensation. Petitioner submitted representation dated 02.06.2004 to the first respondent. The first respondent issued Memo No.B/158/04 dated 10.09.2004 rejecting his claim stating that the matter has been enquired into and

found that the petitioner was not in possession of the land in Survey No.201/6 situated at Chinnagollapalli (V). It is the contention of the petitioner that the second respondent *vide* letter dated 25.05.2004 stated that the land is in occupation of encroachers, purchasers, occupiers and is hit by provisions of Act 9 of 1977 and ordered to evict the encroachers from the land and to resume the land to the original assignees and therefore it shall not be considered that the second respondent has taken possession of the Government land and handed over to the first respondent for formation of International Airport. It is further stated that the assignment of land to the petitioner was not cancelled at any time as per the provisions of Act, 1977 and taken possession of the subject land. Hence, the petitioner is entitled for compensation for the subject land in view of the judgment of Full Bench of this Court in **Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division, vs. Mekala Pandu**¹ wherein it has been held that the assignees are also entitled for compensation as per the market value paid by the government for the acquired lands.

¹ 2002 (2) ALD 451

7. Appellant No.1 filed counter-affidavit on behalf of both the appellants, who were respondents in the writ petition. They objected to the claim of the respondents in the following manner:

The first respondent filed a counter affidavit on his behalf and on behalf of the second respondent stating that the petitioner had sold away the subject land, which was assigned to him, to one Smt.Bharathi Bai through registered document No.316/1999 dated 19.04.1969. In turn, Smt.Bharathi Bai sold the subject land to Smt.Y.Laxmamma through registered sale deed vide document No.6525/82 dated 13.08.1982. The second respondent in his proceedings No.B/1100/98 dated 25.05.2004 stated that the land in question is a government land and thereby ordered for eviction of the occupiers/purchasers and resume to the original assignees or their legal heirs, if the assignee expired. Said order was rectified by the second respondent vide orders No.B/1100/98 dated 04.06.2004, stating about acquisition of subject land for establishment of International Airport and ordered that the possession of the said land need not be resumed to the assignees or their legal heirs. Thereafter, the lands were also taken to the custody of the government and

possession was handed over to the first respondent for formation of International Airport by conducting panchanama duly fixing the boundaries. Accordingly, the petitioner was informed vide Memo No. B/1100/2004 dated 10.09.2004 and Memo No.B/158/2000 dated 29.03.200. The Mandal Revenue Officer, Shamshabad, vide letter No.B/1100/98 held that the assignee, to whom the subject land was assigned, has violated the conditions of assignment. As the petitioner was never in possession of the said land, the petitioner is not entitled for compensation for the assigned land.

8. After hearing the matter, learned Single Judge allowed the writ petition by directing the appellants to pay compensation to the respondents in respect of the subject land as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (briefly 'the 2013 Act' hereinafter).

9. Relevant portion of the order of the learned Single Judge dated 23.03.2018 reads as under:

In the facts and circumstances of the case and in the considered view of this Court, the first petitioner was assigned the subject land in the year 1961. When his name was deleted in the revenue records, he filed an application before the second respondent. On such application, the second respondent vide order dated 25.05.2004 ordered resumption and restoration of the land, thereafter the second respondent passed rectification order dated 04.06.2004 illegally, without any notice, the same was not referred in the impugned memos. The first respondent had taken possession of the subject land along with other lands for establishment of International Airport at Shamshabad, the same is contrary to Sections 3 and 4 of Act, 1977 and rules made thereunder. The first petitioner submitted an application for payment of compensation and the same was rejected vide memos dated 10.09.2004 and 03.11.2004 on the ground that he is not in possession of the subject land. Even though the land is sold to third parties without admitting the same under the provisions of the Act, it shall be deemed never to have been transferred the land to third parties and accordingly no right or title of such assigned land vests in any person by acquiring the land by such transfer. The competent authority is assigned with a duty to

take possession of the assigned land after evicting the purchasers in possession and restore the assigned land to the original assignee or his legal heirs, or where it is not reasonably practical to do so, to resume the same to Government for assignment to landless poor person in accordance with the rules. This is exactly the purpose and intendment sought to be achieved by Act, 1977. The main object of Act, 1977 is to declare such alienations void and restore the assigned lands to the assignees. If the land is resumed without payment of compensation equivalent to the market value of the land, the same is unconstitutional and it violates Article 21 of the Constitution of India besides violating Articles 14 and 31-A of the Constitution of India. In view of the ratio laid down by this Court in **Mekala Pandu** (referred supra), the petitioners are entitled for compensation in respect of the subject land.

Accordingly, the Writ Petition is allowed directing the respondents to pay compensation to the petitioners in respect of the land to an extent of Acs.2.00 guntas in survey No.201/6, Gollapalli Khurdu Village, Shamshabad Mandal, Ranga Reddy, as per the provisions of The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a

period of two months from the date of receipt of
a copy of this order.

10. Mr. Radhive, learned Government Pleader submits that learned Single Judge had overlooked the fact that respondents had alienated the assigned land in violation of Section 3 of the Act. He has referred to the provisions of Section 3 of the Act, which prohibits transfer of the assigned lands. He submits that such prohibition is absolute barring the exception in sub-section (5) which is however, not applicable to the present case. Any transfer of assigned lands in contravention of Section 3 would be deemed to have never been transferred in view of the legal fiction contained in sub-section (1) of Section 3 of the Act. He has also drawn our attention to Section 4 of the Act, which lays down the consequences of breach of the provisions of Section 3 of the Act. He has particularly referred to clauses (a) and (c) of sub-section (1) of Section 4 of the Act, in terms of which if, in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf is

satisfied that the provisions of sub-section (1) of Section 3 have been contravened in respect of any assigned land, he may, by order take possession of the assigned land after evicting the person in possession following such written notice as the Collector or Mandal Revenue Officer may deem reasonable; and in the areas which may be notified by the Government from time to time, lands resumed under clause (a) shall be utilized for public purpose. That apart, he submits that rectification order of appellant No.1 dated 04.06.2004 was not implemented by the respondents. Though the writ petition remained pending before this Court from the year 2005 till 2018, no steps for amendment were taken to challenge the rectification order. As admittedly respondents had alienated the assigned land, they are not entitled to any compensation for acquisition of such land. At the time of land acquisition, the land was under the possession of the Government. These aspects were overlooked by the learned Single Judge.

11. On the other hand, learned counsel for the respondents has taken us to the order dated 25.05.2004 passed by the Mandal

Revenue Officer, Shamshabad Mandal as per which a *suo motu* enquiry was conducted by the said authority on the allegation that some persons had encroached Government land illegally. He has referred to pages 61 and 62 of the paper book to show that on verification of revenue record for the year 1986-87, the pattadar of the land in question was shown as 'Narayana Swamy' *i.e.*, predecessor-in-interest of the respondents though the possessor's name was mentioned as 'Athul Patel'; and revenue record for the year 2000-01 mentions the pattadar and possessor of the subject land as 'Anthul Patel'. In the proceeding dated 25.05.2004, Mandal Revenue Officer, Shamshabad Mandal, Ranga Reddy District *i.e.*, appellant No.2 noted that the encroached lands were actually assigned by the Government to landless poor persons in terms of the Act. Therefore, he ordered eviction of the encroacher and resumption of the land to the original assignees. He submits that subsequently, this order was rectified by order dated 04.06.2004 by holding that those lands were already under the custody of the Government and subsequently handed over to

the Land Acquisition Officer for the international airport project at Shamshabad, therefore, resumption of the land to the original assignees was not necessary. This rectification order was passed without giving any notice or opportunity of hearing to the assignee. He has referred to a Larger Bench decision of this Court in **Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division, vs. Mekala Pandu** (supra) to support the final conclusion of the learned Single Judge that respondents are entitled to fair compensation for acquisition of the assigned land in terms of the provisions of the 2013 Act.

12. In reply, learned Government Pleader submits that the present case stands on a completely different factual footing and therefore, the decision of the Larger Bench in **Land Acquisition Officer v. Mekala Pandu** (supra) would not be applicable. In the instant case, admittedly, the assignees had violated the provisions of Section 3 of the Act and therefore, the consequences provided under Section 4 thereof would be applicable. Possession of the assigned land was taken over by the Government whereafter, those

were handed over to the Land Acquisition Officer. In these circumstances, question of payment of compensation under the 2013 Act to the respondents does not arise. It would amount to putting a premium on the illegal act of the respondents or predecessor-in-interest of the respondents.

13. Submissions made by learned counsel for the parties have been duly considered.

14. We have already extracted the final conclusion of the learned Single Judge. There is no dispute that the land was assigned to the predecessor-in-interest of the respondents in the year 1961. He had alienated the land in favour of third party sometime in the year 1982. It appears that the predecessor-in-interest of the respondents had filed an application thereafter in the year 2004 for resumption of the assigned land in his favour. On such application being made, order dated 25.05.2004 was passed by the Mandal Revenue Officer ordering resumption and restoration of the land in favour of the predecessor-in-interest of the respondents. However,

this was followed by the rectification order dated 04.06.2004 whereby, reassignment of the land was held to be not necessary. Evidently, by the order dated 25.05.2004, predecessor-in-interest of the respondents was conferred the benefit of resumption and restoration of the land. The said benefit was nullified/negated by the Mandal Revenue Officer by the rectification order dated 04.06.2004. Admittedly, no notice or hearing preceded the rectification order dated 04.06.2004, which was thus in violation of the principles of natural justice. It is trite that an order passed in violation of the principles of natural justice is a nullity and cannot be sustained. No independent challenge is required to be made to such an order. Thereafter, learned Single Judge found that appellant No.1 had taken over possession of the land for the international airport project. Relying on the Larger Bench decision of this Court in **Land Acquisition Officer v. Mekala Pandu** (supra), learned Single Judge took the view that respondents are entitled to compensation in respect of the subject land and accordingly,

directed the appellants to pay compensation for the same in terms of the 2013 Act.

15. Interplay of the Act and provisions of the Land Acquisition Act, 1894 was examined by a Larger Bench of seven Judges of this Court in **Land Acquisition Officer v. Mekala Pandu** (supra). The question of law, which was considered by the Larger Bench was, as to whether the claimants were entitled to payment of compensation under the provisions of the Land Acquisition Act, 1894 when the assigned lands were resumed by the Government for a public purpose. In paragraph 52 of the said judgment, this Court held that the Act sought to achieve the object of alleviating oppression, redressing bargaining imbalance, cancelling unfair advantages and generally overseeing and ensuring probity and fair dealing. It seeks to reopen transactions between parties having unequal bargaining power resulting in transfer of title from one to another due to force of circumstances and also seeks to restitute the parties to their original position. It was held that the various conditions imposed in the patta prohibiting transfers and alienations of assigned lands

by the landless poor persons are required to be understood and appreciated in that background; the main object being to declare such alienations void and restore the assigned lands to the assignees. Neither the statutory provisions nor the conditions imposed restricting the alienations were intended to restrict the ownership rights of the assignees. Such restriction cannot be construed as a clog on the right, title and interest of the assignee in the assigned land.

15.1. After due analysis, this Court held that the restriction on the right to alienate the assigned land in no manner operates as a clog depriving the assignee's right, title and interest in the land. The assignee's right over the assigned land is same as that of a full owner. The restriction should be imposed only to protect the ownership rights of the assignee. After holding so, the Larger Bench also posed a question as to whether the clause of 'no compensation' in the patta was an unconstitutional clause ?

15.3. Larger Bench observed that the question which fell for consideration was whether the terms of grant or patta enabling the State to resume the assigned lands for a public purpose without paying compensation equivalent to the market value of the land to the assignees were valid in law? As a corollary, the further question posed was whether such restrictive conditions or covenants suffered from any constitutional infirmity?

15.4. Ultimately after a detailed analysis, the Larger Bench held that 'no compensation' clause, restricting the right of the assignees to claim full compensation in respect of the land resumed equivalent to the market value of the land is unconstitutional; the assignees of government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits at par with the full owners of land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta though such resumption is for a public purpose; and no condition incorporated in 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.

16. In the factual context of the present case, we are of the unhesitant view that the decision of the Larger Bench in **Land Acquisition Officer v. Mekala Pandu** (supra) applies in full force. Consequently, we do not find any error or infirmity in the view taken by the learned Single Judge to warrant interference.

17. Writ Appeal so preferred is misconceived and is accordingly dismissed. No costs.

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

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

Date: 28.07.2022

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