2020:APHC:14931

HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE THIRTY FIRST DAY OF JULY

TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO: 9808 OF 2020

Between:

1. Yatam Bangaru Venkamma, Wife of Chinapullayya, Aged about 75 years,
2. Cheda Alivelu Manga Tayaru, Wife of Narasimha Rao,
   Aged about 49 years,
   Both are residents of Gollavanitippa Village, Bhimavaram Mandal,
   West Godavari District

...PETITIONER(S)

AND:

1. State of Andhra Pradesh, Represented by its Principal Secretary,
   Revenue Department,
   Secretariat Buildings,
   Velagapudi, Amaravathi,
   Guntur District.
3. Tahsildar, Bhimavaram Mandal, Bhimavaram,
   West Godavari District.

...RESPONDENTS

Counsel for the Petitioner(s): C RAMACHANDRA RAJU

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

****

WRIT PETITION No.9808 OF 2020

Between:

Yatam Bangaru Venkamma and another.

... Petitioners

And

State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue Department,
Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District and another

... Respondents.

JUDGMENT PRONOUNCED ON 31.07.2020

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?

2. Whether the copies of judgment may be marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

* **THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ WRIT PETITION No.9808 of 2020

% 31.07.2020

Yatam Bangaru Venkamma and another

....Petitioners

v.

$ State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue Department,
Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District and another

.... Respondents

! Counsel for the Petitioners : Sri C.Ramachandra Raju

Counsel for Respondents: Government Pleader for Revenue

<Gist :

>Head Note:

? Cases referred:

1. (1883) 27 Ed 105, 107
2. AIR 1996 SC 697
3. (1996) 7 SCC 450
4. AIR 1997 SC 503
5. (2017) 11 SCC 601
6. (1914) L.R. 42 I.A. 44
7. AIR 1963 SC 151
8. AIR 1953 Pat 167
9. AIR 1960 SC 1203
10. AIR 1966 SC 1788
11. (1973) 1 SCC 188
12. AIR 1956 SC 294
13. AIR 2004 AP 250
14. 1995 Supp (1) SCC 596
15. AIR 1960 SC 932
16. AIR 1978 SC 597

17. AIR1986SC180
18. (1991)ILLJ395SC
19. AIR 1999 SC 1416
20. AIR 1996 SC 1051
21. AIR 1995 SC 1770
22. AIR 1996 SC 114
23. AIR 2013 SC 565
24. AIR 1956 SC 479
25. AIR 1955 SC 25
26. 1955 (1) SCR 599
27. AIR 1959 SC 149
28. AIR 1967 SC 52
29. AIR 1982 SC 33
30. AIR 2003 SC 250

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.9808 of 2020

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to issue Writ of Mandamus declaring the action of respondent No.2 in passing resumption order vide proceedings Roc.No.1304/2019 dated 13.04.2020 for resumption of the land of the petitioners i.e. an extent of Ac.0.97 cents in R.S.No.438-1D and 438-1F belonging to petitioner No.1 and an extent of Ac.1.63 cents in R.S.No.438-1B belonging to petitioner No.2 of L.G.Padu Village, Bhimavaram Mandal, West Godavari District, is without jurisdiction, highly unwarranted, suffers from non-application of mind, highly arbitrary, malafide, contrary to G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019, contrary to the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "Act 9 of 1977") and contrary to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") and highly irrational, violative of principles of natural justice, and also violative of Articles 14 and 21 of the Constitution of India.

The petitioners are the residents of Gollavanitippa Village, Bhimavaram Mandal, West Godavari District. Respondent No.1 is the State and respondent No.2 is the Tahsildar, Bhimavaram Mandal, Bhimavaram, West Godavari District.

The predecessors of the petitioners were in possession and enjoyment of the subject matter of land for the last 50 years, and after their death, the petitioners are in peaceful possession of the land. In recognition of petitioners long continuous possession and enjoyment of the land as Sivai Jamadars and that the petitioners

being landless poor, the State assigned the land of an extent of Ac.1.63 cents in R.S.No.438-1B of L.G.Padu Revenue village in favour of petitioner No.2 in the year 2005 and an extent of Ac.0.75 cents in R.S.No.438-1D and an extent of Ac.0.22 cents in R.S.No.438-1F, in total Ac.0.97 cents in favour of petitioner No.1. Since the date of assignment, the petitioners are continuing in possession and enjoyment of the property assigned to them in their own right. As the lands are low-lying, being inundated every year and became unfit for cultivation, the petitioners converted the land into fish tanks and carrying pissi-culture to eke out their livelihood.

Respondent No.2 issued notices dated 23.03.2020 proposing to resume the land under the provisions of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act 9 of 1977") without alleging any contravention under Section 3 of the Act 9 of 1977. Therefore, the notices issued by respondent No.2 under the Act 9 of 1977 are bad under law and suffers from non-application of mind.

On receipt of notices dated 23.03.2020 (referred above), the petitioners issued suitable reply dated 26.03.2020 to respondent No.2 appraising that they are landless poor and eking out their livelihood totally depending upon the subject land without having any other source of income and requested not to resume the land. Unfortunately, respondent No.2 passed resumption order dated 13.04.2020 without considering the contents of their reply.

Respondent No.3 issued an endorsement before passing resumption order dated 27.03.2020 to the petitioners stating that the Government is going to take possession of the lands for providing house sites and that the petitioners will be paid compensation as

per the Land Acquisition Act, 2013. Therefore, the resumption order impugned in the writ petition is contrary to G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019. According to it, the District Collector is competent to resume the land, thereby respondent No.2 is incompetent to resume the land.

It is further contended that the resumption order passed by respondent No.2 is contrary to G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019, which contemplates that the lands alienated to Private Individuals, Private Organisations and Government Organisations or Departments, alone shall be resumed for Navaratnalu Scheme for providing house sites, on the ground of violation of conditions or non-utilisation of the allotted lands. The said G.O.Ms.No.510 dated 30.12.2019 does not contemplate resumption of lands assigned to landless poor. Therefore, the impugned resumption order is contrary to G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019.

It is further contended that G.O.Ms.No.259 dated 21.06.2016 contemplates that whenever the assigned lands are required for a public purpose or for alienation to a Government Departments or Corporation, the lands shall be resumed as per conditions of patta and that the compensation shall be paid for the resumed assigned lands on par with the patta lands as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Whereas, G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 was issued exclusively for the purpose of resumption of particular nature of lands, which were alienated to private individuals, private organisations and Government Organisations and Departments for

non-utilisation of land and for violation of conditions of patta. Therefore, G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 contained guidelines for implementation of Navaratnalu Scheme and it overrides the general G.O.Ms.No.259 dated 21.06.2016, as such it has no application for resumption of the land of the petitioners.

As per condition No.17 of the pattas referred to in the resumption order, it does not empower respondent No.2 to resume the lands of the petitioners for providing house sites. In fact, condition No.17 of the pattas issued to the petitioners, contemplates resumption of land only for the purpose of any project or for the self use of the Government, but not for providing house sites. Therefore, resumption of their lands is contrary to the condition No.17, as such the impugned resumption order is illegal.

The object of assignment of small extents of lands in favour of the petitioners and other landless poor itself is a public purpose. One public purpose shall not defeat another public purpose. Any policy of a welfare state for a public purpose should not be at the cost of another public purpose which was already implemented long back. Therefore, the land assigned to the petitioners, as landless poor, for a public purpose, cannot be taken away, under the guise of another public purpose. Any public purpose at the cost of similar public purpose that too which was implemented long back, is highly unwarranted, irrational and violative of Articles 14 and 21 of the Constitution of India and contrary to the very spirit of public purpose, as such the impugned resumption order is illegal.

The assigned lands are governed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013. Under Section 3 (c) (v) and (r) of the New Land Acquisition Act, 2013, the assigned lands shall not be resumed, but shall be acquired by the Government under the Act, if the assigned lands are needed for the Government. Therefore, even if the Government require the assigned lands, the Government shall necessarily initiate the proceedings under the Land Acquisition Act. The State Government or the District Collector did not issue any notification under the Land Acquisition Act in respect of lands of the petitioners. Consequently, the action of respondent No.2 resuming the land by impugned order is illegal, highly arbitrary and contrary to the provisions of the Act, 2013.

It is further contended that when the land is converted into fish tanks as on date, it is not suitable for house sites, therefore, respondent No.2 deliberately ignored the fact that the land is already converted into fish tanks, resumed the lands illegally.

Respondent No.2 is not entitled to resume the land and take possession from the petitioners without following due process of law, as such the order passed by respondent No.2 for resumption of land is illegal, arbitrary, violative of principles of natural justice and Article 300-A and 31 of the Constitution of India besides violation of Articles 14 and 21 of the Constitution of India, requested to allow the writ petition.

Learned Assistant Government Pleader for Revenue reported no counter though this Court directed to file counter, while reserving his right to advance argument.

Sri C.Ramachandra Raju, learned counsel for the petitioners, mainly contended that the petitioners are owners of two different extents referred supra, and they are in possession and enjoyment of

the same. In fact, their forefathers were in possession and after their death, the petitioners are continuing in possession and enjoyment of the property, only in recognition of their long continuous possession being landless poor persons, the revenue department granted pattas in their favour, assigning land and they converted the same into fish tanks since they are not suitable for agricultural operations. Consequently, the land as it is not available in the shape of agricultural lands.

In terms of G.O.Ms.No.259 Revenue (ASSN.I) Department dated 21.06.2016, the Tahsildar is not entitled to resume the land. Even according to the said G.O., the land can be resumed only for public purpose for a project or for alienation to a Government Department or Corporation. When the pattas were issued in favour of the petitioners in fulfilment of public purpose for their livelihood being landless poor, the same cannot be resumed under the guise of 'public purpose', to allot the same to different persons, who are landless poor under the scheme "Navaratnalu – Pedalandariki Illu." One public purpose will not override the other public purpose; hence, the resumption order is illegal and arbitrary

Yet, another contention raised before this Court is that as per G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019, respondent No.2 is not entitled to resume the land and the District Collector is competent to identify the land and resume the same, on this ground also the order impugned in the writ petition is liable to be set aside.

Even otherwise, the assigned land cannot be resumed in terms of provisions of the Act, 2013. Therefore, the resumption order invoking clause 17 of the conditions of patta is arbitrary exercise of

power by respondent No.2 and requested to issue writ of Mandamus declaring the impugned resumption order dated 13.04.2020 passed against the petitioners, as illegal and arbitrary.

Refuting the contentions of the learned counsel for the petitioners, learned Assistant Government Pleader for Revenue while reporting no counter, advanced arguments contending that as per G.O.Ms.No.259 Revenue (ASSN.I) Department dated 21.06.2016, the Government is entitled to resume the land when the assigned land is required for public purpose or for allotment of said land to the Corporation or for own use of the Government. Notices issued under the provisions of G.O.Ms.No.259 Revenue (ASSN.I) Department dated 21.06.2016 are in compliance of principles of natural justice and passed impugned resumption order only after considering the reply submitted by the petitioners. Therefore, the resumption order does not suffer from any legal infirmity and that the G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 has no application to the present facts of the case, consequently, the impugned order cannot be set aside.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are:

(1) Whether the assignment of land to landless poor persons is public purpose?

(2) Whether the resumption of land assigned to the petitioners by the State is violative of Article 21 and 300-A of the Constitution of India? If not, whether the impugned resumption order vide proceedings Roc.No.1304/2019 dated 13.04.2020 passed by respondent No.2 be sustained?

P O I N T No.1:

Admittedly, subject land was assigned to the petitioners by granting D-Form patta as per BSO 15 of the Andhra Pradesh Revenue Board Standing Orders, as the petitioners were landless poor and in discharge of State's obligation to provide livelihood to the petitioners made a grant with certain conditions. Condition No.17 of D-Form patta is as follows:

> "In the event of lands being required for a project or any other public purpose, the land will be resumed and compensation shall be paid for the improvements if any."

The State reserved its right to resume the land for public purpose and incorporated a condition in the D-Form patta itself. In fact, there is no much controversy about the issue regarding grant of patta is for public purpose or not, for the simple reason that the petitioners contended in paragraph No.11 of the affidavit filed along with the writ petition that when the land was assigned to the petitioners by granting D-Form patta to provide livelihood to the petitioners, its resumption for public purpose is contrary to law since grant of assignment by distributing the resources of the State shall not override by any other public purpose. Therefore, it is clear from the allegations made in paragraph No.11 of the affidavit that grant of pattas assigning the land is only for public purpose. However, State by invoking condition No.17 of D-Form patta, passed resumption order. Hence, it is appropriate to advert to the law laid down by various Courts analysing the word 'public purpose'.

'Public purpose' is not defined under BSO 15. The Constitution of India recognized that the power of eminent domain is an essential attribute of sovereignty. This power connotes the legal capacity of the

state to take the private property of individuals for public purposes. (Vide: ***United States Vs.Jones***[1])

The importance of the power of eminent domain to the life of the state need hardly be emphasis. It is so often necessary for the performance of governmental functions to take private property for public use. The power is inalienable, it is based on the two maxims that (1) ***saluspopuliest supreme lex*** i.e., the interest and claim of the whole community is always superior (2) ***Necessitapublic major est quam private*** i.e., public necessity is greater than private interest and claim of an individual. The power of eminent domain has three essential attribute of sovereignty, they are as follows:

(1) The power of the state to take over private land.

(2) This power is to be exercised for public purpose; and

(3) It is the obligation of the State to compensate those whose lands are taken over.

Essentially it deals with power of the state to expropriate lands of individuals who, are not willing sellers, it is based on the principle that interests of the whole community is greater than individual interest. Thus property may be needed and acquired under this power, for government offices, libraries, slum clearance projects, public schools, college and universities, public highways, public parks, railways, telephone and telegraph lines, dams, drainage, severs and water systems and many other projects of public interest, convenience and welfare.

Since independence, land has been acquired from people, particularly from farmers, for the purpose of expanding towns/cities by converting agricultural land into non agricultural land. This has been going on and still goes on at a slow pace. In the name of

[1] (1883) 27 Ed 105, 107

industrialization, larger portion of land has being acquired from people for 'public purpose' and 'development' and was later handed over to private companies. Currently, if the state acquires land on the ground of 'public interest' is a function of its eminent domain, aggrieved parties have little judicial recourse.

Indeed, several such challenges have already been dismissed by the Courts, including acquisitions for sewage treatment plant, planned development for housing scheme and for a co-operative society. (Vide: "***Jai Narain Vs. Union of India***[2]" "***State of Tamil Nadu Vs. L.Krishnan***[3]" "***Venkataswamappa vs. Special Deputy Commissioner (Revenue)***[4] ")

Enormous power available to the government under the doctrine eminent Domain (Land Acquisition Act) state has committed many blatant abuses. For example, the West Bengal Government acquired fertile agricultural lands in West Medinapur for Tata Mataliks in 1992, dispossessing small and marginal farmers, in preference to undulating waste land, that available nearby. Likewise in the case of the Century Textiles, the State Government acquired about 525 acres of land for a Pig Iron Plant in 1996. However, company later decided that Pig Iron production was no longer profitable and refused to pay the compensation.

Singur in West Bengal is another recent example wherein government sought to acquire prime agricultural land for private capitalist for Tata Motors. State governments have not hesitated to take over the land even by employing draconian emergency powers available under the Land Acquisition Act.

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[2] AIR 1996 SC 697
[3] (1996) 7 SCC 450
[4] AIR 1997 SC 503

In "***Kedar Nath Yadav Vs. State of West Bengal***[5]" the Apex Court had an occasion to decide the concept of public purpose to acquire the land for public matters to set up a factory. Land acquisition created political conflict in the State, which eventually forced the project relocated to the State of Gujarat. While the two-judges bench of the Apex Court invalidated the acquisition, both judges assigned different reasons. Interestingly, one of the Judges (Justice V. Gopala Gowda) concluded that the land was acquired at the instance of the company under the guise of 'acquisition is for public purpose.' Therefore, His Lordship invalidated the acquisition for not complying with the requirements. The Apex Court directed the State to follow the procedure strictly where the brunt of this 'development' is borne by the weakest sections of the society, more so, poor agricultural workers who have no means of raising a voice against the action of the mighty state government.

The concept of '***public purpose***' is one of the most entrenched issues in the legal field, what constitutes pubic purpose is an open question subject to interpretation and use. 'Public purpose' is a condition for the exercise of state's power of compulsory acquisition of private property but no definition of the phrase 'public purpose' is given either under repealed Article 31(2), or under Article 300A or under repealed Land Acquisition Act 1894 , nor any limitation prescribed. There are number of cases which have considered the word "public purpose" but none of them have proposed to lay down the definition or the extent of the expression. Black's law dictionary defines the word 'public purpose' as synonymous with governmental purpose."A public purpose or public business" has for its objective to promote public health, safety, morals, general welfare, security,

[5] (2017) 11 SCC 601

prosperity and contentment of all the inhabitants or residents within a given political division.(Black's Law Dictionary 1247(7th edition, 1999).)

Section 3(f) of Land Acquisition (Amendment), Act 1984, gives an inclusive definition of the phrase "public purpose". Public purpose thus includes provision for village sites, town planning, planned development of land from public funds and for further development of land for a corporation owned and controlled by the state carrying out certain schemes of government like education, health, housing, slum clearance any other scheme of development sponsored by government or for locating any public office. Land for companies would not come under the purview of public purpose in section 3(f) of the Act.

A close scrutiny of this clause would reveal that except the provision for land for corporations owned or controlled by state all the remaining broad classifications are welfare functions of the state. Under section 3(f) of the Act after the 1984 Amendment the expression "public purpose" includes –

(i) the provision of village-sites, or the extension, planned development or improvement of existing village sites;
(ii) the provision of land for town or rural planning;
(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;
(iv) the provision of land for a corporation owned or controlled by the state;
(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;
(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by government, or by

any authority established by government for carrying out any such scheme, or, with the prior approval of the appropriate government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to cooperative societies for the time being in force in any state;

(vii) the provision of land for any other scheme of development sponsored by government or, with the prior approval of the appropriate government by a local authority;

(viii) the provision of any premises or building for locating a public office.

Thus, the Act did not define the expression 'public purpose', but it gives an inclusive definition of the word 'public purpose'. This has left the question wide open and subject to interpretation and use. Further, once the publication of declaration under section 6 of the Act is deemed to be adequate proof that the land is needed for public purpose and is final, no civil court can sit as a appellate forum on the question of 'public purpose', therefore, it could not be challenged in a Civil Court. Executive is the final arbiter on the question of public purpose however, it is not the sole judge the Courts have the jurisdiction to determine whether the acquisition is or is not for a public purpose. Court can decide the justiciability of the grounds for arriving the decision of public purpose by Courts in proceedings under Article 226 of the Constitution of India.

The concept of "public purpose" connotes public welfare. With the onward march of the concept of socio economic welfare of people, notions as to the scope of general interest of the community are fast changing and expanding. The emphasis is unmistakably shifting from the individual to the community. The concept of 'public interest' is thus elastic and not static, and varies with time and needs of the society. Whatever furthers the general interest of the community, as opposed to particular interest of the individuals, may be regarded as

'public purpose' certain general considerations or guidelines relating to the meaning of the expression deducible from the following cases.

In "***HamabaiFramjee Petit Vs. Secretary of State***[6]" government had given certain land in Bombay on lease. Under the terms of the lease, the government had the right to resume the possession, subject to paying compensation, it is desired to use it for a public purpose. The government gave notice of their intention to resume possession with the object of using the land for providing residential accommodation to government servants at reasonable rates. Privy council held that the resumption of land was for a public purpose and therefore valid. ***J. Bachelor*** approved the following observation in this judgment. The Phase 'public purpose' means general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned.

In "***Somavathi Vs. State of Punjab***[7]", the Supreme Court observed as follows :

> "Broadly speaking, the expression 'public purpose' would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals, is directly and vitally concerned".

In "***Kamshwar Singh v. State of Bihar***[8]", the Court observed that the phrase 'public purpose' has to be construed according to the spirit of the times in which the particular legislation is enacted. 'Public Purpose' is bound to vary with the times and the prevailing conditions in a given locality. That the meaning is elastic and a change with time is nowhere better illustrated than in the interpretation of the phrase 'pubic use' in America. The power of State to acquire private property for public purpose is referred in America as eminent domain. The requirements of eminent domain

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[6] (1914) L.R. 42 I.A. 44
[7] AIR 1963 SC 151
[8] AIR 1953 Pat 167

are (1) authority of law (ii) public use and (iii) just compensation in lieu thereof.

In "***BabuBarkya Thakur Vs. State of Bombay***[9]" where the requisition of accommodation was for the workers engaged by an industrial company, the Court held that the requisition was for a public purpose because in an industrial concern engaging a large number of workmen away from their homes, it is a social necessity that there should be proper accommodation available for such workmen.

In "***Arnold Radericks Vs. State of Maharashtra***[10]" the petitioner contended that the validity of law as being beyond the concept of public purpose. It was no purpose since the state would be acquiring the land from one set of individuals and disposing it off to another set of individuals after development. The Court refused the contention of the petitioners.

"Public purpose varies with the time and the prevailing conditions in localities" and in some towns like Bombay the conditions are such that it is imperative for the state should do all it can to increase the availability of residential and industrial sites. The main idea in issuing the impugned notification for acquisitions of land was not to think of the private comfort or advantage of the members of the public but the general public good. In other view, the welfare of large proposition of persons living in Bombay is a matter of public concern and the notifications served to enhance the welfare of this section of the community is public purpose.

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[9] AIR 1960 SC 1203
[10] AIR 1966 SC 1788

In "***Venkatamma Vs. City Improvement of Trust Board, Mysore***[11]" an improvement scheme was drawn on the basis of several merchants to deposit the costs of acquisition for shopping sites. It was held that even if the scheme was that the shopping sites would be let out to provide individuals who would erect shops thereon, it cannot be contended that the land for shopping sites was not being acquired for a public purpose. Any purpose, which directly benefits the public or a section of the people, is a public purpose, moreover, development dealing with the improvement of cities in this country. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the state should not be permitted to see that further development of the land takes place in the directions for which the land is acquired even though it may be through private agencies. The judicial trend discernible from these cases has been that even a purpose which benefits individuals does not lose the character of public purpose, if such individuals are benefited not as individuals but in furtherance of some scheme or plan aiming at welfare or utility.

Since the existence of 'public purpose' was essential condition for acquiring or requisitioning property under eminent domain power, a law enacted for the purpose, but having no 'public purpose' to support it, was constitutional, whether a public purpose existed or not was a justiciable matter. As stated by the Supreme Court in "***State of Bombay Vs. Nanji***[12]" prime facie the Government is the best judge as to whether 'public purpose' is served by issuing a requisition order, but it is not the sole judge. The Courts have jurisdiction and it is their duty to determine the matter whenever

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[11] (1973) 1 SCC 188
[12] AIR 1956 SC 294

question is raised whether a requisition order is or not for a 'public purpose'. The Courts, however, adopted a very liberal attitude on the question of public purpose, and it was rare indeed for a Court to hold that an acquisition of land was not for public purpose.

Thus, in view of the judicial interpretation of the word 'public purpose' even providing house site or providing livelihood to landless poor can be held to be public purpose. Therefore, there is absolutely no controversy about the definition of 'public purpose' and even the contention of the learned counsel for the petitioners and learned Assistant Government Pleader for Revenue is that the assignment of the land is for the public purpose only. However, it is needless to redefine the word 'public purpose' for deciding the real controversy in the present case. Hence, I hold that the assignment of land to the petitioners to eke out their livelihood is also public purpose. Similarly, the proposed assignment of land by granting D-Form patta converting the agricultural land into non-agricultural land would constitutes public purpose in view of the law laid down in the above judgments.

Section 3 (za) of the Act, 2013 defined the word "public purpose", it means the activities specified under sub-section (1) of Section 2 of the Act, 2013, they are as follows:

> "(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—
>
> (a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
>
> (b) for infrastructure projects, which includes the following, namely:—
>
> (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure

Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State."

Even if the definition of 'public purpose' as enshrined under the Act, 2013, proposed assignment of the land for house site to the house less poor falls within the ambit of public purpose. Accordingly, the point is answered accordingly.

P O I N T No.2:

One of the basic contentions of the learned counsel for the petitioners is that when the land was assigned to the petitioners by issuing D-Form patta, the same cannot be identified for resumption, conversion of the same from agricultural land into non-agricultural land, divide the same into plots and assign the same to the landless

poor under the scheme “Navaratnalu - Pedalandariki Illu” in terms of G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019. In view of the contention of the learned counsel for the petitioners, condition No.5 of the said G.O. is relevant and it is extracted hereunder:

> “Accordingly, Government hereby authorize the District Collectors of the respective districts to resume the unutilised Government lands on the grounds of violation of conditions or non-utilisation of the allotted land which was earlier alienated in favour of private individuals/private organisations/ Government Organisations/ Government Departments/ Public Sector undertakings/ State Government Corporations/ Urban Development Authorities and Urban Local Bodies on the grounds of violation of conditions or non-utilisation of the alienated lands in terms of G.O.Ms.No.57, Revenue (Assn.I) Department, dated 16.02.2015 and they are further authorised to utilise the lands acquired by various Government departments/ organisations for any public purpose but not put into use for the same purpose. These lands shall be utilised for providing House sites to eligible beneficiaries under the flagship programme “NAVARATNALU – PEDALANDARIKI ILLU”.

A bare reading of the said condition, it is clear that if the land allotted to any private individual on any conditions, if such conditions are violated, District Collectors are authorised to identify such lands and resume the same for providing house sites under the scheme “Navaratnalu - Pedalandariki Illu”. But, in the present case, State invoked its power of eminent domain conferred on it by virtue of G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016. According to the said G.O., on examination of the letter dated 06.05.2015 addressed by Chief Commissioner of Land Administration, the Government issued the following orders.

(i) Whenever the assigned lands are required for a public purpose for a project or for alienation to a Government Department or Corporation, the lands shall be resumed as per Conditions of Patta.

(ii) The compensation for the resumed assigned lands shall be paid on par with Patta lands as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 or any other L.A. Act in force in the State."

As per earlier G.O.Ms.No.1307, Revenue (Assn.I) Department dated 23.12.1993 power is conferred on the State to resume the land on payment of lumpsum ex-gratia equivalent to the market value to the assignees whose lands are resumed for the projects and other public purposes and equivalent to valuation for other private orchards structures, wells etc., subject to certain conditions like that they are not entitled for payment of interest or additional market value under the Land Acquisition Act and also precluded from seeking reference to Court under Section 18 and 28-A of Land Acquisition Act, 1894. Thus, the Chief Commissioner of Land Acquisition addressed a letter Ref.No.LA.1-2/1420/2013 dated 06.05.2015 to the State expressing certain difficulties and requested to protect the interest of assignees. On examination of situation prevailing on that day, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 was issued authorising the authorities to resume the land subject to compliance of conditions 1 and 2 referred above.

Taking advantage of the word 'public purpose', learned Assistant Government Pleader for Revenue contended that when the assigned land is permitted to be resumed for public purpose subject to payment of compensation in terms of the Act, 2013, the resumption of land by the Tahsildar under the impugned proceedings is legal.

Whereas Sri C.Ramachandra Raju, learned counsel for the petitioners, contended that when the assignment of land to the petitioners is to provide livelihood to them by issuing D-Form patta, they cannot be deprived of their livelihood since the G.O. expropriates the land owner i.e. beneficiary under the assignment.

The subject land was assigned to the petitioners on 27.04.2005 in D.Patta No.77/LD/1414. Though, the Government reserved its right to resume the land by incorporating Condition No.17, it has to be examined whether such condition is permissible under law to resume the land in terms of the Andhra Pradesh Revenue Board Standing Orders (BSO).

Board Standing Order 15 specifies the procedure for grant of lands for occupation subject to payment of assessment and the procedure prescribed therein in different paragraphs. BSO 15 deals with various steps for grant of pattas. Part – B of BSO 15 Para 6 deals with assignment of land in favour of a person, who is in occupation of assessed land, preparation of memorandum etc., whereas para – 12 BSO – 15 deals with communication of orders including conditional assignment vide G.O.Mis.123 Revenue dated 18.01.2028 and B.P.No.5 dated 31.01.2028; terms and conditions of assignment, consequences of violation vide G.O.Ms.No.1142 Revenue dated 18.06.1954. Conditions of assignment and terms and conditions of assignment are relevant for the purpose of deciding the present issue, which are extracted hereunder:

"BSO 15 – P.12

(2) Conditional Assignment: In the case of each conditional assignment the Tahsildar should specify in the order communicating to the Karnam the fact that the assignment has been made, and he should specify all the special conditions relating to it that are to be entered in the village register of conditional grants. The Tahsildar should also see that the file in the Taluk Office is not closed until a report supported by the Revenue Inspector's certificate that the entry has been made in the village register has been received by him.

(3) Terms and Conditions of assignment:- The assignment of lands shall be subject to the following conditions.

(a) Land assigned shall be heritable but not alienable.

(b) Lands assigned shall be brought under cultivation within three years.

(c) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however be charged if the lands are irrigated with Government water; and

(d) Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.

According to G.O.Mis.No.123 Revenue dated 18.01.2028 in the case of each conditional assignment the Tahsildar should specify in the order communicating to the Karnam the fact that the assignment has been made, and he should specify all the special conditions relating to it that are to be entered in the village register of conditional grants. The Tahsildar should also see that the file in the Taluk Office is not closed until a report supported by the Revenue Inspector's certificate that the entry has been made in the village register has been received by him.

According to G.O.Ms.No.1142 Revenue dated 18.06.1954 the following terms and conditions for assignment are specified.

(a) Land assigned shall be heritable but not alienable.

(b) Lands assigned shall be brought under cultivation within three years.

(c) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought

under cultivation. Water rate shall, however be charged if the lands are irrigated with Government water; and

(d) Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.

Note (i): - For breach of any of the conditions (a), (b), (c) above, the Government will be at liberty to resume the land and assign it to whomsoever they like.

Thus, the resumption is permitted only for violation of the above conditions (a), (b) and (c), but the resumption is not permissible for any other reason.

As per G.O.Ms.No.1137 Revenue dated 04.07.1963, Tahsildars and Deputy Tahsildars in independent charge who are the assigning authorities shall be authorities competent to order resumption in case of a breach of the conditions of grant. In regard to appeals and revisions against such orders, the provisions in BSO 15 relating to the orders of the assignment shall apply also to the orders relating to resumption. As such, the contention of the learned counsel for the petitioners that the Tahsildar is not competent to resume land is without any substance and the same is rejected.

Yet, the learned counsel for the petitioners pointed out that as per G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 the Collector alone is competent to resume the assigned land. G.O.Ms.No.510 Revenue (Lands-I) Department dated 30.12.2019 is only instructions to Collectors to identify certain lands, but not dealing with the power of resumption. Hence, the contention of the learned counsel for the petitioners that the Collector alone is competent to resume the land in terms of G.O.Ms.No.510 Revenue

(Lands-I) Department dated 30.12.2019 is hereby rejected, as such the said contention is devoid of merit.

Thus, as per the Government Order (referred above) only four conditions are incorporated while granting D-Form Patta in favour of landless poor persons. But, in the present case several conditions were incorporated in D-Form patta. One such condition is resumption for public purpose or breach of conditions etc. But, learned Assistant Government Pleader for Revenue could not bring to the notice of this Court whether incorporation of such conditions is based on any Government Order or amendment to the Andhra Pradesh Board Standing Orders. Consequently, imposition of condition No.17 on the beneficiary/assignee in D-Form patta i.e. petitioners herein is not in consonance with G.O.Ms.No.1142 Revenue dated 18.06.1954.

In any view of the matter, State assigned the land of an extent of Ac.0.75 cents in R.s.No.438-1D and an extent of Ac.0.22 cents in R.S.No.438-1F, in total Ac.0.97 cents in favour of petitioner No.1 and an extent of Ac.1.63 cents in R.S.No.438-1B of L.G.Padu Revenue village in favour of petitioner No.2 for agricultural purpose subject to certain conditions. Since the petitioners are landless poor or persons in distress, the intention to assign the land by way of D-Form patta is to eke out their livelihood by providing means of livelihood in discharge of State's obligation under Article 39 clause (b) of Constitution of India i.e. distribution of ownership and material resources of the community as best to subserve the common good. Therefore, assignment of agricultural land by distributing the material resources is to subserve the need of landless poor or persons in distress to eke out their livelihood and to live with dignity.

When livelihood is provided to the petitioners by assigning land, issuing D-Form Patta, they cannot be deprived of their livelihood by resumption of land in the absence of violation of any of the conditions of grant. Initially, right to livelihood was not recognised as fundamental right under Article 21 of the Constitution of India. But, later it was recognised as Fundamental Right by judicial interpretation to Article 21 of the Constitution of India.

The Constitutional Bench of erstwhile High Court of Andhra Pradesh at Hyderabad in "***LAO-cum-Revenue Divisional Officer, Chevella Division and Others Vs. Mekala Pandu and Others***[13]" referred to a judgment of Supreme Court in "***Jilubhai Nanbhai Khachar Vs. State of Gujarat***[14]". In the said judgment, the Supreme Court observed as follows:

> "Those without land suffer not only from an economic disadvantage, but also a concomitant social disadvantage. In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribution of agricultural land. Agrarian reforms therefore require, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic consideration. We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social, economic and political, equality of status and of opportunity; and, last but not the least, dignity of the individual.....Indeed, if there is one place in an agriculture dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity of their person by providing to them a near decent means of livelihood."

It is further held:

> "Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person.....Property in a comprehensive term is an essential guarantee to

[13] AIR 2004 AP 250
[14] 1995 Supp (1) SCC 596

> lead full life with human dignity, for, in order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. The economic and social justice, equality of status and dignity of person are assured to him only through properly."
>
> (Emphasis is supplied).

The purpose of assignment of land either under the Board Standing Orders or under the land reforms legislations to the weaker sections of the society by the State is obviously in pursuance of its policy to empower the weaker sections of the society. Having assigned the land, the State cannot deprive him of the welfare benefit or public assistance. Deprivation of assignee's right to enjoy the property assigned to him may affect his dignity and security. It may adversely affect the equality of status and dignity.

Article 21 of the Constitution of India guarantees right to life. The right to life includes the right to livelihood. Time and again the Courts in India held that Article 21 is one of the great silences of the Constitution. The right to livelihood cannot be subjected to individual fancies of the persons in authority. The sweep of the right to life conferred by Article 21 is wide and far reaching. An important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.

In ***Re: Sant Ram***[15] a case which arose before "***Maneka Gandhi Vs. Union of India***[16]", the Supreme Court ruled that the

[15] AIR 1960 SC 932
[16] AIR 1978 SC 597

right to livelihood would not fall within the expression "life" in Article 21. The Court observed:

> "The argument that the word "life" in Article 21 of the Constitution includes "livelihood" has only to be rejected. The question of livelihood has not in terms been dealt with by Article 21."

In "***Olga Tellis Vs. Bombay Municipal Corporation***[17]" the Apex Court held as follows:

> "If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21."
>
> (Emphasis is supplied).

The right to live with human dignity, free from exploitation is enshrined in Article 21 and derives its life breadth from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the right to live with human dignity, the right to take any action which will deprive a person of enjoyment of basic right to live with dignity as an integral part of the constitutional right guaranteed under Article 21 of the Constitution of India.

In "***Delhi Transport Corporation Vs. D. T. C. Mazdoor Congress***[18]", the Supreme Court while reiterating the principle observed that the right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. Income is the foundation of many fundamental rights.

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[17] AIR1986SC180
[18] (1991)ILLJ395SC

Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

The Apex Court in various judgments interpreted the right to livelihood is a part of right to life under Article 21 of the Constitution of India. In "***M. Paul Anthony Vs. Bharat Gold Mines Limited***[19], the Apex Court held that when a government servant or one in a public undertaking is suspended pending a departmental disciplinary inquiry against him, subsistence allowance must be paid to him. The Court has emphasized that a government servant does not use his right to life and other fundamental rights in this case. However, if a person is deprived of such a right according to the procedure established by law which must be fair, just and reasonable and which is in the larger interest of people, the plea of deprivation of the right to livelihood under Article 21 is unsustainable. The Court opined that the state acquires land in exercise of its power of eminent domain for a public purpose. The landowner is paid compensation in lieu of land, and therefore, the plea of deprivation of the right to livelihood under Article 21 is unsustainable.

In "***Chameli Singh Vs. State of Uttar Pradesh***[20]" a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

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[19] AIR 1999 SC 1416
[20] AIR 1996 SC 1051

The Court further observed that:

"Shelter for a human being, therefore, is not mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. The right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but the right to all the infrastructure necessary to enable them to live and develop as a human being."

In "***M. J. Sivani Vs. State of Karnataka and Others***[21]", the Supreme Court held that right to life under Article 21 does protect livelihood but added a rider that its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morals or public order. It was, therefore, held that regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair, or unjust.

In "***U.P. Avas Evam Vikas Parishad v. Friends Co-operative. Housing Society Limited***[22]", the right to shelter has been held to be a fundamental right which springs from the right to residence secured in Article 19(1)(e) and the right to life guaranteed by Article 21. To make the right meaning to the poor, the state has to provide facilities and opportunities to build houses.

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[21] AIR 1995 SC 1770
[22] AIR 1996 SC 114

Thus, in view of the law laid down by the Apex Court in various judgments (referred supra), widening the meaning of word 'right to life' includes 'right to livelihood', right to livelihood is a fundamental right, and it is a part of right to life guaranteed under Article 21 of the Constitution of India.

The Constitutional Bench of erstwhile High Court of Andhra Pradesh at Hyderabad in "***LAO-cum-Revenue Divisional Officer, Chevella Division and Others Vs. Mekala Pandu and Others***" (referred supra) held that the assignees of the Government lands are entitled to compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. Even in cases where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. 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.

No doubt, as discussed above, right to livelihood of a person can be deprived in accordance with law.

Article 300-A of the Constitution of India, protects right of an individual, but such right in the property can be deprived of save by authority of law.

The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension (Vide: ***Tukaram Kanna Joshi Vs. M.I.D.C.***[23])

Right to property of a private individual, though, permitted to be deprived of, it must be by authority of law. Still, Article 25 (1) of the Universal Declaration of Human Rights recognized such right in property as human right, which reads as follows:

> "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

India is a State Party to the declaration, but the right to property is not being considered as human right till date by many Courts.

Right to property in India at present protected not only under Article 300-A of the Constitution of India, but also recognized as human right under Article 25 (1) of the Universal Declaration of Human Rights. A liberal reading of these two provisions, the intention to protect the land owners only from Executive fiat, imposing minimal restrictions on the power of the State to acquire

[23] AIR 2013 SC 565

land. This is in sharp contrast to the language adopted in the Indian Constitution.

Hence, the only authority of law to deprive a person from his property is acquisition of land under the provisions of relevant law.

Earlier, the Land Acquisition Act, 1894 permits acquisition of land of a private individual for various purposes. The land Acquisition Act, 1894 is repelled enacting the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The said Act is a complete code governing the procedure for acquisition of land of a private individual and for payment of compensation to the private land owners. Therefore, by invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the right of a private owner in property can be deprived of and the violation of fundamental right guaranteed under Article 21 i.e. right to livelihood will not come in the way of State to acquire such land in view of the law laid down by the Apex Court in "***Chameli Singh Vs. State of Uttar Pradesh***" (referred supra).

Turning to the facts of present case, the petitioners are the beneficiaries of assignment i.e. D-Form patta in their favour subject to certain conditions.

As per Section 2 of the Government Grants Act, 1895, the provisions of the Transfer of Property Act, 1882 shall not apply to any grant or other transfer of land or of any interest therein created in favour of public by the Government.

According to Section 3 of the Government Grants Act, 1895, all provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the legislature to the contrary notwithstanding.

As per condition No.17 of the D-Form Patta, the land can be resumed when it is required for a project or any other public purpose. Whether such condition is based on any law or at least Board Standing Order is to be examined.

Learned Assistant Government Pleader for Revenue relied on G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 to contend that the assigned land can be resumed for public purpose, but not in a position to explain whether Condition No.17 (extracted above) is based on any enactment or Board Standing Order or not?

When such condition is imposed, though protected by Sections 2 and 3 of the Government Grants Act, still, it must have some statutory foundation to impose such condition to uphold such contention of learned Assistant Government Pleader for Revenue. In the absence of any statutory foundation, mere reserving right to resume the land other than violations of conditions, is against intention of the State in providing livelihood by issuing D-Form patta assigning agricultural land in favour of the petitioners. Therefore, depriving the petitioners' livelihood by resuming the land based on conditions of D-Form patta is nothing but violation of fundamental right guaranteed under Article 21 of the Constitution of India and such deprivation of right in land is also violation of Article 25 (1) of Universal Declaration of Human Rights.

Such deprivation is permissible only by authority of law like the Land Acquisition Act, 1894 or the Act, 2013.

The next question is "What is authority of law?". Whether G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 can be construed as law?

G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is only an executive order passed under Article 162 of Constitution of India, such order cannot be construed as law. Therefore, resumption of land by exercising executive power based on G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is impermissible under law.

Time and again, the Apex Court construed the meaning of word "Law" not only with reference to Article 13 of the Constitution of India, but also with reference to Article 300-A and 31C of the Constitution of India. The Apex Court in "***Bidi Supply Co. Vs. Union of India***[24]" and "***Edward Mills Co.Ltd. Vs. State of Ajmer***[25]" held that the law, in this Article, means the law made by the legislature and includes *intra vires* statutory orders.

The orders made in exercise of power conferred by statutory rules also deemed to be law. (Vide: ***State of M.P. Vs. Madawar G.C.***[26]"

The Law does not, however, mean that an administrative order which offends against a fundamental right will, nevertheless, be valid because it is not a "law" within the meaning of Article 13 (3) of the

[24] AIR 1956 SC 479
[25] AIR 1955 SC 25
[26] 1955 (1) SCR 599

Constitution of India (Vide: ***Basheshar Nath Vs. C.I.T.***[27] and "***Mervyn Coutindo Vs. Collector, Customs Bombay***[28]")

Therefore, whatever legislation made by the legislature alone can be said to be law within the meaning Article 13 (3) of the Constitution of India. At the same time, the Apex Court in "***Bishambhar Dayal Chandra Mohan Vs. State of Uttar Pradesh***[29]" while deciding the issue with reference to Article 300-A of the Constitution of India defined the word "authority of law", held that Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive flat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law.

In "***Hindustan Times Vs. State of U.P.***[30]" the Apex Court while referring to "***Bishambhar Dayal Chandra Mohan Vs. State of Uttar Pradesh***" (referred supra) held as follows:

> *"By reason of the impugned directives of the State the petitioners have been deprived of their right to property. The expression 'law', within the meaning Article 300A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law."*

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[27] AIR 1959 SC 149
[28] AIR 1967 SC 52
[29] AIR 1982 SC 33
[30] AIR 2003 SC 250

Thus, in view of the law laid down by the Apex Court in the judgments (referred supra), law means the legislation passed by the parliament or State Legislation or Statutory rules or orders.

In the present case, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is only an executive order or fiat, and the same cannot be considered as authority of law used in Article 300-A of the Constitution of India. Consequently, deprivation of petitioners from their property by taking advantage of G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 or expropriates the petitioners is contrary to Article 300-A of the Constitution of India. At best, the State is entitled to acquire the property in terms of the Act, 2013, or any other law dealing with land acquisition, but not by Government Order.

One of the contentions of learned Assistant Government Pleader for Revenue is that the grant of patta or assignment of land is only permitting the assignee to enjoy the fruits or benefits of the land, while retaining the ownership to the property by the State. But, this contention cannot be accepted for the simple reason that in view of the amendment to sub-section (2A) of Section 3 of the Act 9 of 1977, the assignee is entitled to sell the property after expiry of 20 years period and also permitted the assignee to mortgage the property to Co-operative banks, Primary Agricultural Credit Societies or National Banks. If the assignees are unable to discharge the debts, the property is being sold in the auction. In such a situation, the question of retaining ownership over the property after assignment does not arise. Hence, the contention of the learned Assistant Government Pleader for Revenue is hereby rejected.

In view of my foregoing discussion, exercise of power by the Executive in the guise of G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 to resume the land for public purpose is contrary to Article 300-A of the Constitution of India.

Yet, Article 31A of the Constitution of India permits the State to acquire the property even against the consent of the owner i.e. compulsory acquisition as the State has got eminent domain over the property in the State. At the same time, Article 31C of the Constitution of India saves certain laws giving effect to certain directive principles. According to it, no law giving effect to the policy of the state towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and [no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

The immunity is extended only to law but not to any Government Order issued by exercising power under Article 162 of the Constitution of India. The word 'law' used in Article 31C is only with reference to Article 13 of the Constitution of India and it can be construed as legislation passed either by Parliament or State Legislature. But in the present facts of the case, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is not a law made by the legislation, as discussed above. But the said G.O. was issued in exercise of power conferred by Article 162 of the Constitution of India. Therefore, protection under Article 31C of the Constitution of

India is not available to such acts of the State to deprive a right in the property of a citizen of the State in the guise of eminent domain.

The power of the State under G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is to be exercised by the Executive, such exercise is contrary to Article 21 of the Constitution of India as resumption would deprive the right in property of assignee, that means expropriating the assignee. If any law is passed to expropriate or deprive the assignee his right in property by the State legislature, such legislation is valid. But, as on date, no legislation is passed by the State Legislature to expropriate or deprive the assignee to exercise right in the property assigned to him under BSO 15 of the Andhra Pradesh Board Standing Orders. G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 violates Article 21 of the Constitution of India as right to livelihood is part of right to life guaranteed under Article 21 of the Constitution of India as discussed in the earlier paragraphs. When such act of the State violates fundamental right of a citizen, such act can be declared as ultravires.

Article 39 (b) of the Constitution of India permits the State to distribute the natural resources, which is as follows:

> "39 (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good"

Taking advantage of Article 39 (b) of the Constitution of India, the State, now, intended to distribute its resources in different means i.e. available assessed waste lands, by acquisition of property and by resuming the land assigned to the landless poor by exercising power under Article 162 of the Constitution of India. No doubt, State is competent to distribute such natural resources i.e. land etc. within its available resources.

Learned counsel for the petitioners made a feeble attempt to demonstrate that though the land was assigned, it has to be acquired, but cannot be resumed for public purpose drawn the attention of this Court to Section 3 (c) (v) and Section 3 (r) (iii) of the Act, 2013.

Section 3 (c) of the Act, 2013 defined "affected family" and sub-clause (i) to (iv) of clause (c) of Section 3 are not necessary for the purpose of this petition. However, sub-clause (v) says that affected family includes a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition.

Similarly, Section 3 (r) of the Act, 2013 defined "land owner". Section 3 (r) (iii) of the Act, 2013 includes any person, who is entitled to be granted Patta rights on the land under any law of the State including assigned lands.

Taking advantage of these two provisions, he would contend that the land owner includes a person, who is entitled to claim patta, such assigned land can be acquired, but cannot be resumed for public purpose. But, these two provisions are not sufficient to hold that the land assigned to these petitioners can be acquired and cannot be resumed.

In any view of the matter, it is made clear that when the land was assigned, it is always subject to Article 21 and 300-A of the Constitution of India.

In the instant case, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is totally in conflict with Article 21 of the Constitution of India, since it is not a law and the protection under Article 31C of the Constitution of India has no application. On

the other hand, it violates Article 300A of the Constitution of India. Therefore, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is violative of Article 21 and 300-A of the Constitution of India. However, this Court cannot declare G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 as unconstitutional since the relief claimed in the present writ petition is only to declare the action of the respondents in passing resumption order vide proceedings Roc.No.1304/2019 dated 13.04.2020 in respect of the lands of the petitioners i.e. an extent of Ac.0.97 cents in R.S.No.438-1D and 438-1F belonging to petitioner No.1 and an extent of Ac.1.63 cents in R.S.No.438-1B belonging to petitioner No.2 of L.G.Padu Village, Bhimavaram Mandal, West Godavari District, is without jurisdiction, highly unwarranted, suffers from non-application of mind, highly arbitrary and malafide.

Sri C.Ramachandra Raju, learned counsel for the petitioners, contended that one public purpose cannot defeat the other public purpose. No doubt, assignment of land to the petitioners is keeping in mind clause (b) of Article 39 of the Constitution of India i.e. distribution of natural resources. Thus, it is the benefit conferred on two individuals assigning agricultural land, whereas State proposed to resume the land under the guise of G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 on payment of compensation in terms of Act, 2013, but without following procedure.

As discussed above, G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is violative of Article 21 and 300-A of the Constitution of India, but the question as to defeat the public

purpose by another public purpose remains purely academic issue. Hence, I need not record any finding on this issue.

According to Act 9 of 1977, alienation is prohibited initially. Now, in view of amendment to sub-section (2A) of Section 3 of the Act 9 of 1977, prohibition is only up to 20 years and not a absolute prohibition.

The word “transfer” is defined under Section 2 (6) of the Act 9 of 1977, which means any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction. Whereas, Section 3 of the Act 9 of 1977 prohibits transfer of assigned lands, but in view of the amendment, prohibition is limited to 20 years.

The language used in sub-section (1) of Section 3 of the Act 9 of 1977 is clear that when a land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house site then, notwithstanding anything to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

This Court is conscious about disposal of similar writ petitions questioning the authority of the Government to resume the land invoking G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016. But, those petitions were disposed of mostly without any contest or on concession. When the earlier writ petitions were disposed of without touching the merits of those cases with reference to the law laid down by various Courts referred above, those judgments are not binding precedent. Therefore, it is difficult to follow the judgments in the earlier writ petitions for the above reason.

Therefore, there was a complete prohibition of transfer of assigned land. The word “transfer” in sub-section (6) of Section 2 strictly construed. The last word of the same provision i.e. “other transaction” assumes importance.

Now, the State proposed to resume the land by payment of compensation. When the State is proposing to resume the land by paying compensation, does it not amount to transfer within the meaning of sub-section (6) of Section 2 of the Act 9 of 1977, remains as a question.

The definition of word “transfer” in sub-section (6) of Section 2 of the Act 9 of 1977 is inclusive definition; it covers different transactions including transfer of title of the property by the assignee to others. Still, the resumption of assigned land by invoking G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is involuntary transfer of ownership in the assigned land for consideration i.e. compensation payable to the assignee in terms of Act, 2013. Hence, it is doubtful whether such resumption of

assigned land on payment of compensation is contrary to Section 3 of the Act 9 of 1977, but no finding need be recorded at this stage in view of my findings recorded in earlier paragraphs that G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is violative of fundamental rights guaranteed under Article 21 and 300-A of the Constitution of India, leaving it open to the parties to raise such issue in any other proceedings for decision.

When the Government recognised the petitioners as landless poor, assigned land to eke out their livelihood and relieved them from their poverty, if for any reason, the land is resumed by the State by paying compensation, they will again be termed as "landless poor persons", and it is an endless process of distribution of natural resources in compliance of Article 39 (b) of the Constitution of India.

In view of my foregoing discussion, I find that the resumption of land assigned to the petitioners by invoking G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is violative of Article 21 and 300-A of the Constitution of India and the protection under Article 31C of the Constitution of India will not apply since the G.O.Ms.No.259 Revenue (Assn.I) Department dated 21.06.2016 is not a law. Consequently, impugned proceedings are liable to be set aside.

In the result, the writ petition is allowed declaring the action of respondent No.2 in passing resumption order vide proceedings Roc.No.1304/2019 dated 13.04.2020 in respect of the lands of the petitioners i.e. an extent of Ac.0.97 cents in R.S.No.438-1D and 438-1F belonging to petitioner No.1 and an extent of Ac.1.63 cents in R.S.No.438-1B belonging to petitioner No.2 of L.G.Padu Village, Bhimavaram Mandal, West Godavari District, as illegal and

arbitrary, and the resumption order passed by respondent No.2 vide proceedings Roc.No.1304/2019 dated 13.04.2020 is hereby set aside. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

31.07.2020
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Note: Mark L.R. Copy.
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