

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.417 OF 1999

Bhaurao s/o Rajaram Tarde
(Died), through L.Rs.

1A) Sopanrao Bhaurao Tarde,
Age 60 years, Occ. Agri.

1B) Sudam Bhaurao Tarde,
Age 58 years, Occ. Agri.

1C) Vitthal Bhaurao Tarde,
Age 56 years, Occ. Agri.

1D) Dattatraya Bhaurao Tarde,
Age 54 years, Occ. Agri.

Nos.1A to 1D R/o Brahmani,
Tq. Rahuri, Dist. Ahmednagar.

1E) Subhadrabai w/o Dattatraya Lambe,
Age 58 years, Occ. Agri.,
R/o Pimpri Avaghad, Tq. Rahuri,
Dist. Ahmednagar.

... PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Deputy Director of Resettlement
(Land), Collector's Office Compound,
Ahmednagar.
3. The Special Land Acquisition Officer
No.8, Ahmednagar.

(Copy for respondent No.1 to 3 be
served on Govt. Pleader, High Court
of Bombay, Bench at Aurangabad) ...

RESPONDENTS

.....
Shri S.L. Bhapkar, Advocate for petitioner
Shri G.K. Thigale, A.G.P. for respondents
.....

CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 31st March, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. The petition challenges the award dated 23.3.1974 and/or also seeks directions to drop the 5 acres land of the petitioner out of Gat No.762/II of village Brahmani, Taluka Rahuri, District Ahmednagar from the land acquisition award dated 23.3.1974.

2. We have heard the learned counsel for the petitioner and the learned A.G.P. According to the petitioner, he holds land admeasuring 7 acres 6 gunthas. 5 acres of the land is acquired. According to the petitioner, if the land is below 10 acres, the same cannot be acquired as per the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

3. It is submitted that, the possession is with the

petitioner. Earlier the suit was filed bearing Regular Civil Suit No.89/1988 before the Civil Judge, Senior Division, Ahmednagar. In the said suit, injunction was in operation till the disposal of the suit. The suit is dismissed on 3.5.1997 on the ground that Civil Court does not have jurisdiction. During the pendency of the writ petition, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 came into force. The petitioner relies on the provisions of Section 24(2) of the said Act and submits that, if the possession is not taken within five years from the date of the award or the compensation is not paid within five years from the award, the award lapses. According to the petitioner, pursuant to the prohibitory order passed, possession is not taken by the respondents and even the compensation amount has not been paid to the petitioner. As such, the present acquisition proceedings lapse. Learned counsel relies on the judgment of the Apex Court in the case of Magnum Promoters Pvt. Ltd. Vs. Union of India & ors., reported in 2015(3) SCC 327.

4. The learned A.G.P. submits that, as there was stay, the possession could not be taken. In view of Ordinance promulgated in December 2014, Section 24(2) is substituted and

a proviso has been inserted. As such, the award does not lapse.

5. We have considered the submissions canvassed by the learned counsel for the parties. Considering the subsequent enactment, it is not necessary to go to the factual aspects about the holdings of the petitioner or otherwise. Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 as it stood then, reads as under :

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases :-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), ---

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply, or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate

Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

6. The ordinance promulgated on 14.12.2014 makes a deviation from sub-section (2) of section 24, which reads as under :

“Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded.

7. In the case of Magnum Promoters (referred supra), the Apex Court has observed that, the period during which land acquisition proceedings might have remained stayed on account of stay or injunction granted by the Court, cannot be excluded. The same is impermissible. Sub-section (2) sought to be amended, introduced by way of an Ordinance is also considered

by the Apex Court in a case of Karnail Kaur Vs. State of Punjab, decided on 22.1.2015 and in a case of Radiance Fincap (P) Ltd. Vs. Union of India (UOI), decided on 12.1.2015, wherein the Apex Court observed thus :

“5. The right conferred to the landholders/ owners of the acquired land Under Section 24(2) of the Act is the statutory right and, therefore, the said right cannot be taken away by an Ordinance by inserting proviso to the abovesaid Sub-section without giving retrospective effect to the same. Taking into consideration the fact that we have allowed similar matters in C.A. No.4284/2011 titled Magnum Promoters P. Ltd. v. Union of India and Ors., vide order dated 27.11.2014 and in other appeals also by following the earlier decisions of this Court with regard to taking physical possession of the acquired land by the Land Acquisition Collector, which are extensively referred in the above judgment, promulgation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was made on 31.12.2014, which is prospective in nature and, therefore, it cannot be applied to their cases.”

8. In the present case, the right of the petitioner stood crystalized before the Ordinance was promulgated. It is also not disputed that the compensation amount has not been paid to the petitioner nor has been deposited in the Court. The same is clear as per the letter dated 10.6.2014 issued by the Deputy Collector, which states that the said amount is with the Tahsildar.

9. In light of the above, the petition succeeds on the grounds other than what have been agitated. Writ Petition is allowed accordingly. Rule made absolute in terms of prayer clause (C). No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)