

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10420 OF 2012

Vishwanath S/o Madhav Patil
Age: 55 years, occu:Agriculture,
R/o Kashima-Niwas, Kashima Nagar,
Shahada, Tq. Shahada,
Dist. Nandurbar

Petitioner

Versus

1 The State of Maharashtra
Through: Secretary,
Urban Development Department,
Mantralaya, Mumbai

2 The Collector, Nandurbar

3 The Town Planning officer,
Nandurbar

4 The Chief Officer,
Municipal Council, Shahada,
Tq. Shahada, Dist. Nandurbar

Respondents

Mr.H.V. Tungar, advocate h/f
Mr.C.R.Deshpande advocate for the petitioner
Mr.S.K.Kadam, AGP for Respondent No.1 & 2
Mr. J.R. Shah, advocate for respondent No.4

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 28th January, 2015.

ORAL JUDGMENT
(Per: R.M. Borde, J)

1 Rule. Heard finally with the consent of the parties.

2 The petitioner is seeking declaration that, the acquisition of the land bearing survey No.247/2, plot No.9/1 to 9/7, shall be deemed to have been lapsed in view of the provisions of Sec.24(2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (herein after referred to as 'The Act of 2013).

3 It is the contention of the petitioner that, the property belonging to the petitioner, forming part of Gat No.272/2 has been reserved for garden, under the final development plan, by the Sahahada Municipal Council. The Municipal Council had already taken steps for acquisition of the land by approaching the Land Acquisition Officer, with appropriate proposal. The Land Acquisition Officer declared the Award determining the amount of compensation in 2004. The Municipal Council – Planning Authority, however, failed to deposit the amount of compensation. As such, in spite of declaration of Award, possession of the land belonging to the petitioner, has not been taken over. It is informed by the petitioner that, part of the property prescribed for the same purpose i.e. for development of garden, being Gat No.247/1, has been released from reservation, in view of the decision rendered by this Court, in Writ Petition No.6445/2008 and other writ petitions. It is contended that, since the part of the property

prescribed for development of garden, has been released from reservation or allotment, the planning authority/municipal council cannot develop the cite No.18 i.e. the garden, on acquisition of the remaining property including the plot belonging to the petitioner. In the instant matter, however, the petitioner has not observed procedure prescribed under the provisions of Sec.127 of the Act and as such, the directions in respect of releasing the property from reservation/allotment need not be issued.

4 The fact however, remains that, in spite of passing of an Award by the land Acquisition Officer, the possession of the property has not been taken over, nor the amount of compensation has been paid to the petitioner. As such by virtue of provisions of Sec.24(2) of the Act of 2013, the property under acquisition shall be deemed to have been released from acquisition. The proceedings in respect of acquisition and the final award shall be deemed to have elapsed.

5 The counsel appearing for Municipal Council informs that, since the Municipal Council has expressed its inability to pay the compensation amount, a proposal has been moved to the Commissioner u/s 48 of the old Act to release the land from the acquisition. However, the proposal tendered long back has not

been considered by the Commissioner. Since the provisions of the Act of 2013 have been enforced since 1.1.2014, the proposal tendered by the Municipal Council u/s 48 of the Old Act need not be taken into consideration and the land belonging to the petitioner shall be deemed to have been released from acquisition in view of section 24 of the Act of 2013.

6 In view of the above, petition succeeds and rule is made absolute in above terms.

7 There shall be no order as to costs.

(P.R. BORA, J)

(R.M.BORDE, J)

vbd