

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7575 OF 2012

Balu Tatyaba Chormale. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
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Shri P.K. Hushing for the Petitioner.
Shri V.S. Gokhale, AGP for the Respondents.
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CORAM : A.S. OKA &
VLACHLIYA, JJ
DATED : 5TH OCTOBER 2015

P.C.

1. Heard the learned counsel appearing for the Petitioner and the learned AGP for the Respondents.

2. The Old Survey No.238 corresponding to New Survey No.67 of Lingali of Taluka – Daund, District –Pune, admeasuring 4 Hectares and 92 Ares (for short “the said land”) is the subject matter of this Petition. The total area of old Survey No.238 is 8 Hectares and 61 Ares. The said land was notified for acquisition under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) dated 20th March 1974. An Award under Section 11 of the said Act was made on 15th June 1982.

3. The challenge in this Petition is to the aforesaid acquisition proceedings initiated under the said Act. There is also a challenge to the notice dated 9th May 2011.

4. The first submission of the learned counsel appearing for the Petitioner is that before 1st January 2014, neither the possession of the acquired land has been taken in accordance with the provisions of the said Act of 1894 nor any compensation has been offered before the said date. He, therefore, relied upon the provisions of Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (for short “the said Act of 2013”). He urged that in view of the operation of Sub-section (2) of Section 24 of the said Act of 2013, the acquisition has lapsed. The second limb of argument is that the land subject matter of the acquisition has not been used for any public purpose, and therefore, either it must be revert back to the original owner or it must be disposed of in accordance with the law. Dealing with the affidavit of Shri Sahebrao Manik Gaikwad, the Deputy Collector (Land Acquisition) No.19, Pune, the learned counsel appearing for the Petitioner submitted that on the basis of the document at Page 148, it is claimed that the compensation was paid by a cheque. There is nothing on record to show that the cheque was actually handed over and was encashed. He urged that the mutation entry has been made on the basis of the so

called possession receipt without notice to the concerned persons and, therefore, the mutation entry cannot be relied upon. He urged that as far as the said land subject matter of this Petition is concerned, on the possession receipt, the signature of any person does not appear and, therefore, it cannot be said that the possession was taken over in accordance with Section 16 of the said Act of 1894. His submission that both the contingencies specified under Sub-section (2) of Section 24 of the said Act of 2013 have been satisfied in this case. The learned AGP relied upon the affidavit of Shri Sahebrao Manik Gaikwad, the Deputy Collector (Land Acquisition) No.19, Pune and urged that no interference is called for. Apart from the contention raised of delay and laches, he urged that the averments made in the Petition show that the Petitioner is not in possession. He invited our attention to the prayer clause (c) of the Petition.

5. We have carefully considered the submissions. From the averments made in Paragraph II of the Petition, it becomes an admitted position that the said land described in Paragraph II was subject matter of the Award under Section 11 of the said Act of 1894 dated 15th July 1982. From the averments made in Paragraph II of the Petition, it appears that the Petitioner has accepted that the acquired land is in the "A" Statement appended to the Award. Sr.No.52 at "A" Statement appended to the Award shows that one Shri Maruti Bhiwa Charmale

was held to be entitled to receive the compensation. The averments made in Paragraph II of the Petition shows that the Petitioner never made any grievance regarding the fact that the said Maruti Charmale was held entitled to receive the compensation in respect of the said land subject matter of this Petition.

6. We have perused the affidavit of Shri Sahebrao Manik Gaikwad. In the said affidavit, a reliance is placed on the possession receipt dated 20th August 1982. The possession receipt records that the possession of the acquired land subject matter of this Petition was taken over on that date and was handed over to an officer of SRP Group on 25th August 1982. Item No.52 is the acquired land subject matter of this Petition. In the possession receipt, against Item No.52, the thumb impression of the said Shri Maruti Charmale appears. On the basis of the said possession receipt, on 2nd October 1982, a mutation entry was made which was certified by the Circle Officer on 5th November 1982. It is not the case of the Petitioner that the said Maruti Charmale ever challenged the said mutation entry which was certified on 5th November 1982. In this Petition filed by the Petitioner on 16th July 2012, it is very difficult to accept the contention that the possession of the acquired land was not taken over in accordance with the said Act of 1894 especially when the said Maruti has made no grievance even about the mutation entry certified on 5th November 1982.

7. The extract of the cashbook is also annexed to the reply filed by Shri Sahebrao Gaikwad. The entry in the cashbook specifically refers to the said land described in Paragraph II of the Petition and it records that the compensation amount of Rs.19,406/- was paid to the said Maruti by a Cheque No.008353. The said Maruti never made a grievance regarding the failure of the Authority to pay him the compensation. As stated earlier, under the Award made under Section 11 of the said Act of 1894, the said Maruti was found to be entitled to receive the compensation described in the Paragraph II of the Petition. Therefore, it is not possible for us to disbelieve the stand taken by the State Government that the compensation of Rs.19,406/- was paid to the said Maruti. Therefore, in our view, as the possession was taken over in accordance with Section 16 of the said Act of 1894 and as the compensation was paid in respect of the acquired land way back in the year 1982, Sub-section (2) of Section 24 of the said Act of 2013 will not be attracted.

8. As far as the contention that the acquired land is not being used for the purpose for which it was acquired is concerned, by virtue of Section 16 of the said Act of 1894, the vesting of the acquired land is completed by the August 1982 when the possession of the acquired land was taken over. It is well settled that once the acquired land vests in

the State Government, it can be used for any other public purpose. If according to the State Government, the land is not required even for any other public purpose, the same is required to be disposed of in accordance with the provisions of the Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. Under no circumstances, it can be directly returned to the original owner as the same is already vested in the State. A land vested in the State can be disposed of in accordance with the aforesaid Rules by adopting a fair and transparent procedure. In the event, the State wants to dispose of the acquired land, the Petitioner can always participate in the process.

9. Hence, there is no merit in the Petition. Subject to what is observed above, the Petition is rejected.

(V.L. ACHLIYA, J)

(A.S. OKA, J)