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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6175 OF 2012**

Mahesh Kantilal Bhayani	... Petitioner
Versus	
State of Maharashtra & Ors.	... Respondents

WITH

WRIT PETITION NO.6172 OF 2012

Arvind Narayan Golande	... Petitioner
Versus	
State of Maharashtra & Ors.	... Respondents

WITH

WRIT PETITION NO.6187 OF 2012

Raju Bapu Mane and Anr.	... Petitioners
Versus	
State of Maharashtra & Ors.	... Respondents

WITH

WRIT PETITION NO.6188 OF 2012

Iqbal Usman Shaikh	... Petitioner
Versus	
State of Maharashtra & Ors.	... Respondents

WITH

WRIT PETITION NO.7576 OF 2012

Sudhakar Shantaram Jogalekar	... Petitioner
Versus	
State of Maharashtra & Ors.	... Respondents

WITH

WRIT PETITION NO.8992 OF 2012

Dr. Raja Kushadhwaj Kulkarni	... Petitioner
Versus	
State of Maharashtra & Ors.	... Respondents

Mr. Praveen K. Hushing, for the Petitioners.
Mr. V.S. Gokhale, AGP, for the Respondent – State.

**CORAM : A.S. OKA &
G.S. PATEL, JJ.**
DATE : 30TH NOVEMBER, 2015

ORAL JUDGMENT (Per A.S.Oka, J.)

1. In these Petitions under Article 226 of the Constitution of India, the challenge is to the acquisition proceedings under the Land Acquisition Act, 1894 (for short “the said Act of 1894”). There are two Awards under Section 11 of the said Act of 1894 which are the subject matter of challenge in this group of Writ Petitions. The first Award is dated 15th July, 1982 and the second Award is of 23rd September, 1986. The purpose of acquisition is for building residential quarters and training ground for the State Reserve Police Force (SRPF) Group V and Group VII, Daund, District Pune. In all these Writ Petitions, the challenge is based on 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”). The contention of the Petitioners in these Petitions is that neither physical possession of the acquired land subject matter of these Petitions was taken over on or before 31st December, 2013 nor compensation was paid on or before the said date. Therefore, the contention is that under Sub-Section (2) of Section 24 of the said Act of 2013, the acquisition has lapsed.

2. In all the Petitions, there is a reply filed firstly by Shri Nehru Dashrath Bandgar, Police Inspector, SRPF Group V, Daund. The second reply dealing with the challenge is by Shri Sahebrao Manik Gaikwad, the Deputy Collector (Land Acquisition) No.19, Pune. The contentions raised therein are two fold. The first contention is that the possession of the acquired lands has been taken over way back in the year 1986-87. Reliance is placed on documents evidencing taking over possession and consequent mutation entry effected. The second contention is that the Petitioners were absent when the compensation was attempted to be paid to the interested persons. It is contended that the compensation amount payable to the Petitioners has been deposited in the Revenue Deposit Account (for short "RD Account") at Daund Sub-Treasury on 7th November, 1986 which is an account dedicated for the payment of compensation in the Land Acquisition proceedings. Reliance is placed on the list which is annexed to the reply. During the course of hearing, additional compilation was tendered by the learned AGP which is taken on record and marked 'X-1' for identification.

3. The learned counsel appearing for the Petitioners relies upon the decision of the Apex Court in the case of ***Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others***¹. He also relied upon the decision of this Court in the case of

1. (2014) 3 SCC 183

Kaluram Maruti Dange Vs. Special Land Acquisition Officer, Pune².

4. The submission of the learned counsel appearing for the Petitioners is that the possession of the acquired lands was not taken over on or before 31st December, 2013. His second submission is that the amount of compensation was not paid to the Petitioners as contemplated by Sub-Section (2) of Section 24 of the said Act of 2013. His submission is that even assuming that possession of the acquired land was taken over, even according to the case of the State Government, the compensation was transferred to the Revenue Deposit in the Sub-Treasury and therefore, it cannot be said that the compensation amount was paid to the Petitioners. He would, therefore, urge that Sub-Section (2) of Section 24 of the said Act of 2013 is applicable and, therefore, acquisition proceeding shall stand lapsed.

5. The learned AGP relied upon the additional compilation tendered on record and marked 'X-1' for identification. He submitted that the compilation contains a report of the village Talathi which shows that notices under Sub-Section (2) of Section 12 of the said Act of 1894 were served to the Petitioners. His contention is that though compensation was offered to the Petitioners as per the said notice, the Petitioners did not come forward to take compensation. His submission

2. Writ Petition No.6695 of 2014 decided on 16/17th July, 2014

is that consequent deposit of the compensation amount in the RD Account will have to be treated as the payment of compensation as the deposit was made in the account specially designated for the deposit of the compensation amounts. The learned AGP urged that for challenging acquisition of the year 1982 and 1986, Writ Petitions have been filed in the year 2012 and till the date of filing of the Writ Petitions, none of the Petitioners have made any grievance regarding the failure of the Respondents to pay compensation on account of acquisition.

6. We have given careful consideration to the submissions. Firstly, we deal with the contentions raised as regards the failure to make payment of compensation. The stand taken by Shri S.M. Gaikwad, the Deputy Collector (Land Acquisition) No.19, Pune in all the Petitions is identical. For the sake of convenience, we are making a reference to the stand taken in Writ Petition No.6172 of 2012. In paragraph 4 of his affidavit, Shri Gaikwad has stated thus :-

“4. I state that I am enclosing relevant documents in respect of deposit of compensation amount in treasury i.e. copy of Challan, Entry in Cash Book and letter from Bank and marked the same as “*Annexure-II colly*”. I state that as the Petitioner was absent when the payment of compensation is made to the interested persons; the remaining amount of compensation including the compensation amount of the petitioner is deposited in R.D. account at Daund Sub

Treasury on 7-11-86 which is an account dedicated for payment of compensation in the said land acquisition proceeding. The name of the Petitioner is at Serial No.42 in the R.D. list. Hereto annexed and marked as “***Annexure III***” is the true and correct copy of the R.D. list. The amount of compensation if not lifted by the interested person may be due to the reasons known to them. The attempt of the petitioner to save the land, by taking advantage of new enactment is oblique in nature and without any foundation.”

(Underline supplied)

7. Exhibit-2 to the said reply filed in Writ Petition No.6172 of 2012 shows that unpaid compensation amount under the Award dated 23rd September, 1986 was credited to the RD Account in the Sub-Treasury at Daund. Challan at Exhibit-2 does not record that the compensation was deposited in a dedicated account specifically opened for deposit of the compensation amount.

8. Section 24 of the said Act of 2013 reads thus :-

“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.”

9. The said Act of 2013 came into force on 1st January, 2014. As held by the Division Bench of this Court in the case of *Kaluram Maruti Dange*, if physical possession of the acquired land is not taken over on or before 31st December, 2013 or if compensation is not paid

before the said date, the proceedings for acquisition will lapse by virtue of Sub-Section (2) of Section 24. Therefore, even if one of the two contingencies is shown to exist, the acquisition would lapse. Thus, the only issue in these Petitions is whether the deposit of the compensation amount in the RD Account with the Sub-Treasury at Daund amounts to payment of compensation within the meaning of Sub-Section (2) of Section 24. The issue is no longer *res integra*. The issue is answered in the case of *Pune Municipal Corporation and others (supra)*. Paragraphs 12 to 17 and 20 thereof read thus:-

12. To find out the meaning of the expression, “compensation has not been paid”, it is necessary to have a look at Section 31 of the 1894 Act. The said Section, to the extent it is relevant, reads as follows:

31. Payment of compensation or deposit of same in Court. – (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

13. There is amendment in Maharashtra - Nagpur (City) in Section 31 whereby in sub-section (1), after the words “compensation” and in sub-section (2), after the words, “the amount of compensation”, the words “and costs if any” have been inserted.

14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.
15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.
16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.
20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.”

(Underlines added)

10. The Apex Court has considered the provisions of Section 31 of the said Act of 1894. Sub-Section (2) provides that if the person interested does not consent to receive the compensation amount, the Collector shall deposit the amount of compensation in the Court to which a Reference under Section 18 would be submitted. In paragraph 17, as quoted above, the Apex Court held that on the basis of Sub-Section (2) of Section 24, the compensation shall be regarded as paid if the same has been offered to the persons interested and such compensation has been deposited in the Court to which a Reference under Section 18 can be made. In the present case, the compensation has not been deposited in the Court to which the Reference under Section 18 could have been made. In fact, in paragraph 20, the Apex Court specifically held that the deposit of the compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to the compensation paid to the land owners/persons interested. The Apex Court held that in case of such deposit, Sub-Section (2) of Section 24 will apply. In paragraph 21, the Apex Court reiterated that the legal fiction under Sub-Section (2) of Section 24 comes into operation as soon as one of the two conditions specified therein is satisfied.

11. As stated earlier, in the present case, the deposit of the compensation amount is admittedly made with the Government Sub-Treasury at Daund. Therefore, it follows that one of the two conditions specified in Sub-Section (2) of Section 24 is satisfied and thus, the acquisition proceedings shall stand lapsed as the Awards have been made five years prior to 31st December, 2013.

12. The said Act of 2013 came into force with effect from 1st January, 2014. Thus, Sub-Section (2) of Section 24 on the basis of which relief is claimed was brought on the statute book on 1st January, 2014. As held by the Apex Court in the case of ***Pune Municipal Corporation and another***, the legal fiction under Sub-Section (2) of Section 24 comes into the operation as soon as one of the two conditions stated therein is satisfied. If as on 1st January, 2014 one of the two conditions specified in Sub-Section (2) of Section 24 is satisfied, the lapsing of acquisition is automatic which takes place on 1st January, 2014. Therefore, we find no merit in the submission canvassed by the learned AGP as regards the delay in filing Writ Petitions. The contention based on the lapsing of acquisition could have been taken up only after 31st December, 2013.

13. It is an accepted position that possession of the acquired lands is with SRPF Group V and VII. Hence, a direction will have to be

issued to the State Government to place the Petitioners in possession of the acquired lands. We must note here that the lands are actually being used by the SRPF Group V and Group VII. Hence, notwithstanding the lapsing of acquisition under Sub-Section (2) of Section 24, it will be always open for the Respondents to initiate fresh acquisition proceedings in accordance with the said Act of 2013. In these Petitions, this Court has not dealt with the issue of the existence of public purpose. The said issue will remain open. Since, the lands are allegedly used by the SRPF for training and other purposes, a longer time deserves to be granted to vacate the acquired lands.

14. Hence, the Petitions must succeed and we pass the following order :-

ORDER

- (i) We hold that the acquisition proceedings in relation to the lands of the Petitioners described in paragraph 2 of the Writ Petitions stand lapsed in view of Sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Considering the fact that SRPF is in possession and use of the acquired lands for more than 50 years, we grant time of one year to the State

Government to restore possession of the acquired lands to the Petitioners. Accordingly, we direct that the State Government shall restore possession of the acquired lands to the Petitioners on or before 30th November, 2016;

- (ii) We make it clear that this Judgment and Order will not preclude the Respondents from initiating a fresh acquisition proceeding in respect of the acquired lands under the provisions of the said Act of 2013. We also make it clear that the acquisition would stand lapsed only in relation to the lands subject matter of these Petitions and no adjudication is made as regards the legality and validity of the acquisition of other lands which are subject matter of the aforesaid two Awards;

- (iii) Rule is made partly absolute on above terms;

(G.S. PATEL, J)

(A.S. OKA, J)