

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1679 OF 2014

Prabhakar Bhau Bhoir and Others. .. Petitioners
Vs
The Collector, Pune and Others. .. Respondents
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Shri T.D. Deshmukh for the Petitioners.
Shri V.S. Gokhale, AGP for the State.
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CORAM : A.S. OKA &
VLACHLIYA, JJ
DATED : 17TH OCTOBER 2015

ORAL JUDGMENT (PER A.S. OKA, J)

. Heard the learned counsel appearing for the Petitioners.
The challenge in this Petition under Article 226 of the Constitution of India is to the acquisition proceedings initiated under Chapter VI of the Maharashtra Industrial Development Corporation Act, 1961 (for short “the said Act of 1961”). In the present case, a Notification under Sub-section (1) of Section 32 of the said Act of 1961 was issued on 7th January 2010. The Petitioners are relying upon the Circular dated 18th May 1995 issued by the Industries, Energy and Labour Department. The contention of the Petitioners is that as per the Clause 2 of the Circular, the action of determination of compensation in terms of

Section 33 of the said Act of 1961 has to be completed within a period of two years from the date of publication of the Notification under Sub-section (1) of Section 32 of the said Act of 1961.

2. The submission of the learned counsel appearing for the Petitioners is that in view of the Clause 2 of the Circular dated 18th May 1995, on account of the failure of the State to determine the compensation in terms of Section 33 of the said Act of 1961 within a period of two years from 7th January 2010, the acquisition stands lapsed.

3. The second contention of the learned counsel appearing for the Petitioners, which is not raised in the Petition, is that after a case is referred to the Collector under Sub-section (3) of Section 33 of the said Act of 1961, the Collector shall dispose of the case by determination of the amount of compensation within the time prescribed by the Maharashtra Industrial Development Corporation Rules, 1962 (for short “the said Rules of 1962”). He invited our attention to Rule 27 of the said Rules of 1962 and submitted that now the time prescribed by the said Rule is already over.

4. We must note here that the challenge based on the Rule 27 of the said Rules of 1962 is not incorporated in this Petition and the said

challenge has nothing to do with the challenge based on the Circular dated 18th May 1995. Therefore, the said challenge will have to be agitated by the Petitioners by filing a separate proceeding.

5. We have perused the provisions of Chapter VI of the said Act of 1961. The acquisition of any land which is required for the purposes of development by the Maharashtra Industrial Development Corporation is to be made by publishing a Notification under Sub-section (1) of Section 32 of the said Act of 1961 in the Official Gazette. Before publishing the Notification/Notice under Sub-section (1) of Section 32 of the said Act of 1961, by issuing a notice in terms of Sub-section (2) of Section 32 of the said Act of 1961, an opportunity has to be granted to the owners or the persons interested to show cause as to why the land should not be acquired. Sub-section (4) of Section 32 of the said Act of 1961 provides that when a notice under Sub-section (1) of Section 32 of the said Act of 1961 is published in the Official Gazette, the land subject matter of the notice shall on and from the date of such publication vest absolutely in the State Government free of all encumbrances. The proviso to Sub-section (4) of Section 32 of the said Act of 1961 confers the powers on the State Government to withdraw the land from the acquisition by following the procedure prescribed by the said Proviso.

6. Therefore, considering the Scheme of Section 32 of the said Act of 1961, once the notice under Sub-section (1) of Section 32 of the said Act of 1961 is published in the Official Gazette, on and from that date, the acquired land absolutely vests in the State Government free of all encumbrances. Section 33 of the said Act of 1961 deals with the procedure for fixing the compensation. As the vesting is complete after a notice under Sub-section (1) of Section 32 of the said Act of 1961 is published in the Official Gazette, there cannot be lapsing of acquisition. The said Act of 1961 does not contain any such provision.

7. Clause 2 of the Circular dated 18th May 1995 issued by the State Government provides that if determination of the compensation under Section 33 of the said Act of 1961 is not made within a period of two years from the date of publication of the Notification/notice under Sub-section (1) of Section 32 of the said Act of 1961, the acquisition stands lapsed. The Circular only contains departmental instructions. As stated earlier, on the publication of the notice under Sub-section (1) of Section 32 of the said Act of 1961 in the Official Gazette, the vesting of the acquired land is complete. Therefore, by virtue of the said Circular, only because of the lapse of time, there cannot be any divesting. If the State Government wants to release the land from the acquisition, the State Government will have to follow the procedure prescribed under

the proviso to Sub-section (4) of Section 32 of the said Act of 1961. Therefore, we are unable to accept the contention that the acquisition has lapsed. The Clause 2 of the Circular dated 18th May 1995 does not have the effect of lapsing of acquisition.

8. Hence, there is no merit in the contentions raised in the Petition. The Petition is accordingly rejected. We, however, make it clear that we have made no adjudication on the grievances made across the bar regarding failure to determine the compensation within the specified time.

(V.L. ACHLIYA, J)

(A.S. OKA, J)