

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.435/2013 & Civil Application No.3701/2014

(Maroti s/o. Tukaram Pandekar and anr. vs. State and Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.N.R.Saboo, Adv. for the petitioners.
A.G.P. for respondent no.1/State.
Mr.S.G.Jagtap, Adv. with Mr.V.G.Palshikar, Adv. for
Respondent No.2.

CORAM : B. P DHARMADHIKARI &
A. P. BHANGALE, JJ.

DATE : 16th JANUARY, 2015.

Civil Application No.3701 of 2014

Heard.

This order was dictated in open Court to stenographer Shri H.S.Joshi and on account of some cardiac problem followed by surgery, he could not transcribe it. His colleagues also could not do that work. Hence, respective counsel were, therefore, called to Chambers on 21/1/2015 and with their assistance, the following order has been again dictated.

Civil Application No.3701/2014 is filed on 5/12/2014 by legal heirs of deceased/petitioner no.1 Maroti, who expired on 5/11/2014. They seek leave to come on record to argue the matter. Application is within time and other side has no

objection. Hence, it is granted. Necessary amendment be carried out forthwith.

The petitioners before this Court claim to be owners of land field Survey Nos.325/1 A, 325/1D and 325/2 of mouza Pathrod and seek a relief of withdrawal of their lands from Shahanoor project. We have heard learned counsel Shri N.R. Saboo for petitioners, Shri V.G.Palshikar, Shri S.J.Jagtap & learned A.G.P. for the respective respondents.

At this stage, it is not necessary for us to go into any disputed question of facts. Lands of petitioners and several others have been acquired for above-mentioned Shahanoor project hereinafter referred to as '*irrigation project*' as per the provisions of Land Acquisition Act, 1894 vide LA 68/47/86-87. Notification under Section 4 of 1894 Act was published on 8/9/1988 while declaration under Section 6 was made on 8/12/1988. Final Award under Section 11 thereof has been published on 29/3/1989. Contention of petitioners, in brief, is that possession of their lands was never obtained and even today they are cultivating it. As compensation amount has not been paid to them and possession is never taken in accordance with the provisions of 1894 Act, the proceedings for acquisition lapse and their lands should be declared as released or dropped from acquisition. Our attention is also drawn to The Right to Fair Compensation and Transparency and

Land Acquisition, Rehabilitation and Resettlement Act, 2013 hereinafter referred to '*the rights 2013 Act*'. By placing reliance upon the judgment of Hon'ble Apex Court reported at **[2014] 3 SCC 183 – Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki & Others**, learned counsel for the petitioners submits that, in view of the provisions of Section 24 of this new enactment, the acquisition proceeding in relation to these lands of petitioners automatically lapses.

Respective Counsel for the respondents submit that the acquisition proceedings were complete and possession was taken as per law. Lands of petitioners were acquired for excavating harder soil i.e. murum therein for construction of dam and accordingly, has been actually used. As the land has been already acquired, according to them, grievance of present nature is erroneous and misconceived. They, therefore, pray for dismissal of Writ Petition.

On 18/10/1997, the Executive Engineer in-charge of irrigation project has written to petitioners that possession of said land was never obtained by private negotiations or been as per law, after award was made. Petitioners were advised to contact Office of Special Land Acquisition Officer [respondent no.3 herein], show legal heir Certificate and to collect compensation amount. Copy of a note dated 24/9/2010 written by the Executive Engineer and the

the Sub-Divisional Engineer of said irrigation project which considers this request, records that land ad-measuring 132.78 hectors of mouza Raipur, Waghdoh and 90.13 hectors land at mouza Malkapur, Jahanpur & Pathrod can be returned back to the original owners. It also mentioned that similar proposal was earlier submitted. Copies of request letters given by agriculturists to return back their lands were also annexed with this note. Petitioners have also produced some documents like receipts issued by very same irrigation project towards water supply to petitioners for irrigating these fields in their possession. Communications sent by the Sub-Divisional Engineer to petitioners in March 2006 pointing out the steps taken by preparing and submitting a proposal to return back these lands are also produced before us. All these documents are not in dispute. Petitioners have reiterated their request on 6/7/2011 and 19/4/2012. Last such communication dated 27/8/2012 forwarded by them by R.P.A/D. is also produced as an annexure with the petition.

Respondent No.2 has submitted that cause of action to file petition of present nature arose in 1988 when land was acquired or then in 1994 when project was complete. Limitation for filing a civil suit had also expired and hence, the Writ Petition for such a stale cause should not be entertained. Lands vest in

respondents free from all encumbrances and have been acquired for public purpose and used. Hence, such lands cannot be returned. Along with the rejoinder/affidavit presented on 21/1/2014, respondent no.2 has also produced copies of possession Certificates. However, it is not necessary to consider these documents because of old communications (mentioned supra) which accept that possession was not taken in accordance with law from petitioners.

Respondent no.1/State Government has filed affidavit-in-reply submitting that petition is not maintainable and have also raised same defence. Respondent no.2 has later on filed a pursis on 5/3/2014 pointing out notices under Section 12 [2] of 1894 Act issued to petitioners. Copy of Award is also produced to show that land has been acquired along with revenue records to demonstrate possession of irrigation project on these lands.

Divisional Commissioner, Amravati has, on 16/8/2002, forwarded a proposal to the State Government to return these lands to respective cultivator/owner. That proposal is still pending. On 30/9/2014, this Court adjourned this matter to enable learned A.G.P. to find out whether compensation amount has been paid to land owners. Before us, the fact that petitioners have not received compensation is not in dispute. Receipts produced by

them to show cultivation are issued by irrigation project only and respondents have not demonstrated that those receipts are either false or forged. However, we are not inclined to record any conclusive finding in this respect at this stage. Impact of Section 24 of 2013 Act as explained by Hon'ble Apex Court in its judgment in the case of Pune Municipal Corporation (supra) may also be required to be judged in the present matter.

In the situation, interest of justice can be met with by directing respondent no.1/State Government to take decision on said representation forwarded to it by the Divisional Commissioner on 16/8/2002 within six months from today. If necessary, an opportunity of hearing shall also be extended to present petitioners and other concerned persons. Effect of 2013 Act on these proceedings shall also be gone into by the State Government. Till this exercise is complete, parties are directed to maintain status quo as on today in relation to the agricultural lands mentioned supra.

Writ Petition is, thus, partly allowed and disposed of. No costs.

JUDGE

JUDGE