

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

WRIT PETITION NO.3088/2014

Shri Gopal Brijmohan Bajaj

...Versus...

The State of Maharashtra through the Collector, Buldana District, Buldana and others

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

Court's or Judge's orders

Shri A.V. Bhide, Advocate for petitioner
Mrs. K.S. Joshi, AGP for respondent nos. 1 and 2 – State
Mrs. S.W. Deshpande, Advocate for respondent no.3

**CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.**

DATE : 24.03.2015

Heard.

By this petition, the petitioner seeks a writ of mandamus against the respondents for initiating fresh land acquisition proceedings in respect of the petitioner's land as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by declaring that the land acquisition proceedings in the instant case have lapsed.

The petitioner was the owner of the land in Gat No.15 in village Pala. It is the case of the petitioner that the land of the petitioner was sought to be acquired by the State of Maharashtra and the possession of the land was taken from the petitioner in the year 2002 after an agreement was executed

between the petitioner and the State. In the year 2003-04, the land acquisition proceedings were initiated. The Section 4 notification was issued on 29.1.2008 and the Section 6 notification was issued on 19.10.2008. It is the case of the petitioner that despite the issuance of Section 6 notification on 19.10.2008 the State had not passed the award within a period of two years and hence, the land acquisition proceedings had lapsed in view of the provisions of Section 11 A of the Land Acquisition Act, 1894. Since the possession of the land was taken from the petitioner and according to the petitioner, the petitioner had not received any compensation towards the acquisition of the land, the petitioner had filed the instant petition seeking a declaration that the land acquisition proceedings under the Land Acquisition Act, 1894 have lapsed and it would be necessary for the State Government to initiate the proceeding under the Act of 2013.

The respondent nos.1 and 2 have filed an affidavit-in-reply. It is stated in the affidavit-in-reply that the case of the petitioner that the award has not been passed is incorrect as the award was passed by the Special Land Acquisition Officer on 31.3.2010 i.e. within a period of two years from the date of issuance of Section 6 notification on 19.10.2008. It is also stated that the respondent no.3 would pay the rental compensation to the petitioner.

After the Special Land Acquisition Officer filed the affidavit-in-reply, the petitioner has filed a rejoinder. It is stated in the rejoinder that the award was not passed by the Special Land Acquisition Officer on 31.3.2010 and a show had been made by the Special Land Acquisition Officer about the passing of

the award on 31.3.2010. The petitioner has heavily relied on the order-sheet maintained in the land acquisition proceedings under the Act of 1894 and has also relied on the notice issued by the petitioner to the respondents dated 20.8.2013, informing the respondents about the lapsing of the land acquisition proceedings for not passing the award within a period of two years. It is stated that it is required to be presumed that the State Government had not passed the award on 31.3.2010 or else they would have replied the notice. It is stated that if the award is not passed on 31.3.2010, then the provisions of Section 24 (1) (2) of the Act of 2013 would come into play and it would be necessary for the respondents to pay the compensation to the petitioner in accordance with the provisions of the Act of 2013. The learned Counsel for the petitioner has relied on the judgment reported in 2014 AIR (SCW) 6625 [Sita Ram...Versus...State of Haryana and another] to substantiate his submission that when compensation is not paid to the claimant, the provisions of Section 24 (2) would apply. Also, the judgment reported in 2013 (3) Mh.L.J. 566 [Vijay s/o Kashinath Shinde and others...Versus...State of Maharashtra and others] is relied on to canvass that the entire proceedings for the acquisition of the land have lapsed as the award was not communicated to the concerned land-owners within a period of two years from the date of declaration under Section 6 of the Land Acquisition Act.

On hearing the learned Counsel for the parties, it appears that the relief sought by the petitioner cannot be granted. According to the initial case of the petitioner, the respondent no.2 had not passed the award within a period of two years from the

date of issuance of Section 6 notification and hence, the land acquisition proceedings under the Act of 1894 had lapsed. After the respondent no.2 filed an affidavit-in-reply, annexing thereto a copy of the award passed by the Land Acquisition Officer on 31.3.2010, a new case is tried to be made out by the petitioner by filing a rejoinder, by taking recourse to the provisions of Section 24 (2) of the Act of 2013. Also, an attempt has been made for establishing in the writ petition that the award was indeed not passed on 31.3.2010. It is, however, not possible for this Court to hold on a reading of the order-sheet that the award was not passed on 31.3.2010. Merely because the State Government had not replied to the notice issued by the petitioner on 20.8.2013, it cannot be said that the award was not passed on 31.3.2010. If the petitioner is really interested in seeking a declaration, on the basis of the documents sought to be relied on, that the award was not passed on 31.3.2010, it would be necessary for the petitioner to approach the competent civil court so that the parties would have an opportunity to tender the evidence in support of the assertions and denials. We do not find any force in the lame submission made on behalf of the petitioner that the award was not passed by the Land Acquisition Officer on 31.3.2010 and a show is being made by the Land Acquisition Officer about the passing of the award on 31.3.2010. We are also unable to hold that the entire land acquisition proceedings under the Act of 1894 would lapse merely because one or some of the claimants have not received the notice issued by the Land Acquisition Officer under Section 12 (2) of the Land Acquisition Act within a period of two years from the date of issuance of the

Section 6 notification. We find that the judgment reported in **2013 (3) Mh.L.J. 566** and relied on by the learned Counsel for the petitioner is solely based on the judgment of the Hon'ble Supreme Court reported in **AIR 1961 SC 1500 [Raja Harish Chandra Raj Singh...Versus...The Deputy Land Acquisition Officer and another]**. We have minutely gone through the judgment of the Hon'ble Supreme Court reported in **AIR 1961 SC 1500**. In the said reported judgment, the Hon'ble Supreme Court has interpreted the clause "from the date of the award" under Section 18 (2) of the Land Acquisition Act, 1894 to mean "from the date of the knowledge of the award". The clause was interpreted by the Hon'ble Supreme Court for the purpose of computing the limitation, as prescribed by the provisions of Section 18 (2) of the Act of 1894. The Hon'ble Supreme Court has not held in the said reported judgment that the entire proceedings for acquisition would lapse merely because one or more of the landholders affected by the award or the proceedings are not served with the notice under Section 12 (2) of the Act of 1894.

We also do not find any force in the submission made on behalf of the petitioner that since the compensation is not received by the petitioner till date, the proceedings under the Act of 1894 would lapse in view of the provisions of Section 24 (2) of the Act of 2013. The provisions of Section 24 of the Act of 2013 are very clear and unambiguous. The provisions of Section 24 (2) of the Act of 2013 would apply only in cases where an award under Section 11 of the Act of 1894 has been made five years or more, prior to the commencement of the Act of 2013. In the

instant case, the award dated 31.3.2010 was not made five years or more, before the commencement of the Act of 2013 and hence, there is no question whatsoever of the applicability of the provisions of Section 24 (2) of the Act of 2013 to the case in hand. The judgment reported in **2014 AIR (SCW) 6625** and relied on by the learned Counsel for the petitioner is inapplicable to the facts of this case. Admittedly, in that case the award was passed on 8.10.2003 i.e. more than five years before the coming into force of the Act of 2013 and hence, the provisions of Section 24 (2) of the Act of 2013 were applicable.

In view of the aforesaid, we dispose of the writ petition with only a direction to the respondent no.3 to pay the rental compensation to the petitioner as early as possible and positively within a period of three months.

Order accordingly. No order as to costs.

JUDGE

JUDGE

Wadkar