

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

WRIT PETITION NO. 2362/2014

(Shri Ashok Waman Koparkar and 37 others vs. The State of Maharashtra and others)

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

Court's or Judge's order

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Mr. N.S.Deshpande, Advocate for petitioners
Mr. K.L. Dharmadhikari, Asst.Govt.Pleader for Respondents 1 and 2
Mr. Anand Parchure, Advocate for respondent no.3

CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.

DATED : 5th May, 2015.

Heard.

By this Petition, the petitioners challenge the award, dated 29.3.1988, passed under the provisions of Section 11 of the Land Acquisition Act, 1894, on the ground that the petitioners are still in possession of the land and, therefore, the land acquisition proceedings have lapsed, in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.

It is the case of the petitioners that though the award was passed by the Special Land Acquisition Officer, under the provisions of the Land Acquisition Act, on 29.3.1988, the petitioners are still in possession of the lands and hence, in view of the provisions of Section 24(2) of the Act of 2013, the proceedings for the acquisition of the lands of the petitioners, have lapsed. It is stated on behalf of the petitioners that the acquiring body/

respondent no.3 to this petition, has not utilized the lands of the petitioners for the purpose for which it were acquired. It is the case of the petitioners that the petitioners are still in occupation of the lands and they are cultivating the same and also paying the electricity bills.

It is stated on behalf of the respondents that the petitioners have not approached this Court with clean hands. It is stated that the lands of the petitioners were acquired in the year 1986 and the possession of the land was secured by the respondent no.1, in the month of May,1986. According to the respondent nos. 1 and 2, after securing the possession of the lands from the petitioner, who willingly handed over the same to the respondents, as could be depicted from the possession-receipts, the lands were handed over to the respondent no.3 for the Project. It is stated that before securing the possession of the lands, the respondent no. 1 had paid 80% of the compensation to the petitioners and within a short time, the balance amount was also paid. It is stated that the petitioners had filed Reference under Section 18 of the Land Acquisition Act, 1894 and the land acquisition cases have been decided. In this background, according to the respondents, the relief sought by the petitioners cannot be granted, more so when the petitioners were paid the compensation and the possession of the lands was also secured. It is stated that though some electricity bills are annexed to the petition, the bills depict that no electricity was consumed by the petitioners for the period for which the electricity bills are issued. It is stated that if the lands of the petitioners are irrigated lands, it is impossible that the electricity consumption of the petitioners would be 'nil'. The learned counsel for the respondents have sought for the dismissal of the petition with costs, as the petitioners are wrongfully taking advantage of the provisions of Section 24 (2) of the Act of 2013.

On hearing the learned counsel for the parties, we find much force in the submission made on behalf of the respondents that the petitioners have not approached this Court with clean hands. The petitioners received the entire compensation towards the acquisition of the lands in the year 1986 and soon thereafter. The respondent nos. 1 and 2 have secured the possession of the lands from the petitioners in May 1986. The possession-receipts annexed to the affidavit-in-reply filed on behalf of the respondent no.2, clearly show that the petitioners had willingly handed over the possession of the lands to the respondent no.2.

We find that after coming into force of the Act of 2013, several land owners who have received the compensation and have lost the possession, are approaching this Court, to secure the benefit of the provisions of Section 24 (2) of the Act of 2013. The petitioners appear to be some of them. Some evidence is sought to be created at the behest of the petitioners to point out that the petitioners are still in possession of the lands. Though we have clearly expressed at the time of hearing that we would not be looking to the documentary evidence in the form of electricity bills which shows 'nil' consumption of electricity and the petitioners are free to approach the Civil Court to seek appropriate relief, the learned counsel for the petitioners insisted on pursuing the Writ Petition. On the basis of the documents annexed to the affidavit-in-reply filed on behalf of the respondent no.2, it is apparent that the petitioners have received the entire compensation and have also lost the possession of the lands nearly 30-years earlier. The judgment reported in (2011) 5 SCC 394: Banda Development Authority, Banda vs. Motilal Agrawal and others. and relied on by the learned counsel for the petitioners cannot be made applicable to the facts of this case. In fact, the principles culled out by the Hon'ble Supreme Court in paragraph 37 of the said judgment support the

case of the respondents. Merely because the land is not utilized by the respondent no.3 for the project for which it was acquired within a reasonable time from the vesting of the land in the State Government, the petitioners would not be entitled to seek a declaration that the land acquisition proceedings in respect of the petitioners' lands have lapsed.

In the result, the Writ Petition fails and is dismissed, with costs.

JUDGE

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