

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6732 OF 2011

- 1] Narayan massa Khamkar,
Age 65 years, Occ. Agri.,
R/o Nagewadi, Tq. Bhoom,
District Osmanabad.
- 2] Arjun Gona Sandse,
Age Major, Occ. Agri.,
R/o Nagewadi, Ta. Bhoom,
District Osmanabad.
- 3] Ashru Ekanath Salunke,
Age Major, Occ. Agri.,
R/o Nagewadi, Ta Bhoom,
District Osmanabad.
- 4] Shrirang Arjun Sandse,
Age Major, Occ. Agri.,
R/o Nagewadi, Ta. Bhoom,
District Osmanabad.
- 5] Sudam Kundlik Khamkar,
Age Major, Occ. Agri.,
R/o Nagewadi, Ta. Bhoom,
District Osmanabad.
- 6] Laxmi Narayan Khamkar,
Age Major, Occ. Agri.,
R/o Nagewadi, Ta. Bhoom,
District Osmanabad.

... PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through its
District Collector, Osmanabad,
Ta. and District Osmanabad.
- 2] The Special Land Acquisition Officer,
Medium Project,
(Raighavan Project) Division,
District Osmanabad.

... RESPONDENTS

Mr. Anand V. Patil, Advocate for Petitioners.
Mrs. M. A. Deshpande : AGP for Respondents.

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**CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : 28TH JANUARY, 2016.

PER COURT:

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] Mr. Patil, learned counsel for the petitioners submits that the land of the petitioners was acquired and award came to be passed on 7.1.2005. Learned counsel submits that the amount of compensation has not been received by the petitioners as yet. Respondent authorities failed to deposit the amount in the Court. According to learned counsel, in view of the provisions of Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, "the Act of 2013") the said acquisition stands lapsed and the respondents may initiate fresh acquisition proceedings.

3] Mr. Patil relies on the judgment of the Apex Court in the case of "*Pune Municipal Corporation & another Vs. Harakchand Misrimal Solanki & others*" reported in **2014 AIR SCW 787**.

4] Mrs. Deshpande, learned AGP submits that the award is already

passed in the year 2005, possession of the land is also taken. Compensation was also offered to the petitioners with notices under Section 12(2) of the Land Acquisition Act, 1894. However, the petitioners did not accept the said amount of compensation. Learned AGP, on instructions, submits that the amount is still lying with the office of the Land Acquisition Officer.

5] The only issue for consideration is, as to whether in view of Section 24(2) of the Act of 2013, the acquisition stands lapsed. The award being passed on 7.1.2005 is not disputed. It is also not in dispute that the possession of the land is taken by the respondents. It also not in dispute that petitioners have not received the amount of compensation. The contention of the respondents is that the petitioners did not accept the amount of compensation. It is also an admitted fact that the amount is not deposited by the respondents in the Court and the amount is still lying with the office of the Special Land Acquisition Officer.

6] Section 31 of the Land Acquisition Act, 1894, reads as under :-

31. (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 :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.”

There was no impediment for the respondent authorities to deposit the said amount in the Court. The Apex Court in the case of "Pune Municipal Corporation" (supra), has observed as under :-

"19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs. 27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes [Ivo Agnelo Santimano Fernandes and Ors. Vs. State of Goa and Anr., (2011) 11 SCC 506]*, relying upon the earlier decision in *Prem Nath Kapur [Prem Nath Kapur Vs. National Fertilizers Corpn. of India Ltd., (1996) 2 SCC 71]*, has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in Court.

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.

7] Facts in the present case are akin to the one in the case of "Pune Municipal Corporation" (supra).

8] Considering the fact that the acquisition proceedings vide award dated 7.1.2005 stands lapsed in view of Section 24(2) of the Act of 2013, the respondents shall initiate proceedings for acquisition in accordance with the provisions of the Act of 2013, within six months from today.

9] Rule is made absolute in above terms. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-