

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.640 OF 2015

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| 1 | Rabbani S/o Amir Nalegave
age:32 years occu: agri | |
| 2 | Taibunbai w/o Amir Nalegave
age: 68 years, occu: agri
Both R/o Sastur, Tq. Omerga,
Dist. Osmanabad | Petitioners |

Versus

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| 1 | The State of Maharashtra,
Through: The Secretary,
Earthquake Rehabilitation
Mantralaya, Mumbai 32 | |
| 2 | The Collector, Osmanabad
Dist. Osmanabad | |
| 3 | Lad Acquisition Officer,
Manjara Project, Osmanabad
Dist. Osmanabad | Respondents |

Mr.R.S. Deshmukh i/b Mr.V.V. Ingale advocates for the petitioners
Mr.P.S. Patil, Assistant Govt. Pleader for Respondents

CORAM : R.M. BORDE & A.I.S. CHEEMA, JJ

(Date : 1st FEBRUARY, 2016.)

ORAL JUDGMENT

(Per: R.M. Borde, J)

- 1 Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

2 The petitioners are praying for a declaration that, by virtue of provisions of section 24(2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, the proceedings of acquisition and the Award declared pursuant to the proceedings initiated under the Act of 1894 shall stand lapsed, since the petitioners have not been paid compensation in respect of the acquired land.

3 According to the petitioners, the landed property belonging to them out of survey Nos.147/1/2 and 147/1/3 situate at village Sastur, Tq. Omarga, Dist. Osmanabad has been acquired for rehabilitation of earthquake affected persons in observance of procedure prescribed under the Act of 1894. The Land Acquisition Officer passed award on 22.10.1996. The petitioners contend that, neither the possession of the land under the acquisition has been handed over to the State Government, nor they have been paid compensation, determined by the Land Acquisition Officer.

4 So far as the aspect of taking over the possession of the property by the State Government is concerned, there is a serious dispute raised by the respondents and it is contended that, the possession has already been taken over. However, so far as the payment of compensation is concerned, it is contended in the

affidavit in reply presented on behalf of the respondents that, the petitioners have not withdrawn the amount of compensation determined by the land acquisition officer.

5 It is not the case of the State Government that, the amount of compensation has been deposited in the accounts of the petitioners or that, the said amount has been transferred to the Court which normally deals with the proceedings in respect of reference applications, arising out of the Award passed by the Land Acquisition Officer.

6 In this context, the decision rendered by the Supreme Court in the matter of **Pune Municipal Corporation & another V/s Harakchand Misirimal Solanki and others** reported in 2014 (4) Mh. L.J. 566 is relevant. In paragraph No.17 of the Judgment, the Honourable Supreme court has observed thus:-

“ 17. While enacting section 24(2), Parliament definitely had in its view section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word ‘paid’ to ‘offered’ or ‘tendered’. But at the same time, we do not think that by use of the word ‘paid’, Parliament intended receipt of the compensation by the land-owners/persons interested. In our view, it is not appropriate to give a literal construction to the expression ‘paid’ used in this sub-section (sub-section (2) of the 1894 Act in the event of happening of any of the contingencies contemplated herein which may prevent the Collector

from making actual payment of compensation. We are of the view, therefore, that for the purposes of section 24(2), the compensation shall be regarded as 'paid' if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under section 18 can be made on happening of any of the contingencies contemplated under section 31(2) of the 1894 Act. In other words, the compensation may be said to have been 'paid' within the meaning of section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in sections 32 and 33."

7 Since in the instant matter, there is non-compliance of the mandate of payment of compensation to the petitioners and both the conditions enumerated in section 24(2) of the Act of 2013 having been satisfied, viz. Award has been declared five years or more prior to the enactment of the Act of 2013 and that the amount of compensation has not been paid to the land owners, the proceedings in respect of acquisition shall be deemed to have lapsed and the award declared under the Act of 1894 shall be required to be quashed and set aside so far as the petitioners are concerned and it is accordingly ordered. It would be open for the State Government or the appropriate Government, if it so chooses to initiate proceedings of such land acquisition afresh in

accordance with provisions of the Act of 2013.

8 Rule is accordingly made absolute.

9 There shall be no order as to costs.

(A.I.S. CHEEMA, J)

(R.M.BORDE, J)

vbd