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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9800/2014

- 1] Babasaheb Eknath Wakchaure,
age 55 yrs., occu.agri.,
- 2] Sunil Namdeo Wakchaure,
age 42 yrs., occu.agri.,
- 3] Balasaheb Gangadhar Wakchaure,
age 60 yrs., occu.agri.,

r/o Virgaon Tq.Akole,
Dist.Ahmednagar.

...Petitioner..

Versus

- 1] The State of Maharashtra,
through the Principal Secretary,
Revenue (Land Acquisition),
Mantralaya, Mumbai – 400 032.
- 2] The Collector (Land Acquisition),
Ahmednagar.
- 3] The Special Land Acquisition
Officer No.1, Jayakwadi Project,
Ahmednagar.
- 4] The Deputy Director of
Rehabilitation (Lands), Ahmednagar.
- 5] The Tahsildar, Akole.
Dist.Ahmednagar.

...Respondents...

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Shri S.T. Shelke, Advocate for petitioners.

Shri S.S. Dande, AGP for respondent nos.1 to 5.

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**CORAM: R.M. BORDE &
K.L. WADANE, JJ.**

**JUDGMENT RESERVED ON 19.7.2016
JUDGMENT PRONOUNCED ON: 27.09.2016**

JUDGMENT (Per Wadane, J.) :

1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken for final hearing at the stage of admission.

2] The petitioners have challenged the award dated 10.3.1977 passed by the Land Acquisition Officer – respondent no.3 by which the land of the petitioners bearing Survey No.112/3 (Gut No.463) admeasuring 5 Acres 4 Gunthas has been acquired for the purpose of rehabilitation of project affected persons. The petitioners have challenged the award mainly on the two grounds that the physical possession of the land has not been taken from the petitioners and no compensation of the acquired land has been paid to them.

3] Initially the above mentioned properties were recorded in the name of grandfather of the petitioners and after his death, the properties are succeeded by the petitioners and name of one Haribhau, eldest cousin

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brother of the petitioners, has been recorded as per the mutation entry No.1048.

4] On 10.3.1977, the respondent no.3 notified the above land for acquisition for resettlement of project affected persons. The petitioners and their family members have opposed the said land acquisition proceedings stating that the lands of the petitioners are not liable for acquisition. The actual physical possession of the land was not taken by the respondents and the same is with the petitioners, which is evident from the 7/12 extracts right from the year 1978 onwards. After the acquisition of the aforesaid land, the mutation entry No.4418 came to be recorded in the name of respondent no.5, but it is merely a paper entry. There was civil litigation regarding the aforesaid properties and the same is decreed and as per the order of the Tahsildar, partition came to be effected and further, as per the mutation entry No.4665, the land was further partitioned and allotted to the petitioners and their brother.

5] On 25.9.2006, the respondent no.5 – Tahsildar, Akole, issued a notice alleging encroachment upon the

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acquired land and directing to remove the same. The petitioners have submitted their say and it seems that the authority was satisfied with the explanation and, therefore, did not proceed further. The petitioners have lastly prayed that the acquisition proceedings and the award are deemed to be lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6] The respondent nos.2,3,4 and 5 have filed their affidavit in reply. The respondent nos.2,3 and 4 have contended that the possession of the acquired land was already taken by the authorities. However, the respondent no.5 in his affidavit in paragraph no.9 has contended that as per the report dated 3.7.2014 submitted by the Sub Divisional Officer, Sangamner Division, to the Collector, Ahmednagar, that an enquiry was conducted by the Tahsildar about the land Gut No.463 and one Popat Nivrutti Darade has requested to give him this land. Vide order dated 14.4.1980, the District Collector and Deputy Director, Land Records, Ahmednagar, has allotted the said land to one Popat Nivrutti Darade. He was also

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informed to deposit the amount of Rs.7741=80 towards occupancy price of this land. Accordingly, he has deposited the first installment to the tune of Rs.1548=36 and the fees required for the measurement of land by challan. However, it is brought to the notice that till this date, the possession of the land was not given to the project affected persons because one Mr.Balasaheb Gangadhar Wakchaure (petitioner no.1) is in possession of the said land as an encroacher.

7] So, looking to the rival contentions of both the parties, there is dispute between the parties as regards the possession. On perusal of the contents of the award, it reveals that the possession of the land has not been taken u/s 17 of the Land Acquisition Act, 1894, so also no advance compensation is paid to the interested persons and further, it is mentioned in the award that the possession of the land under acquisition should be handed over to the acquiring body. So, one thing is very much clear that till passing of the award, no possession of the acquired land was taken by the authorities from the respective land holders.

8] True copy of the possession receipt is placed on

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record. It is dated 27.8.1983 in which the date of taking over the possession is left blank and it is recorded as "___-7-83". The 7/12 extract of the land is placed on record and from the contents of the 7/12 extract, it reveals that the names of the petitioners are consistently appearing in the column of cultivation since 1979 onwards. Furthermore, from the report submitted by the Deputy Collector dated 3.7.2014, it reveals that when the Circle Inspector inspected the land and drawn panchanama, at that time the petitioner no.1 is found in possession and has grown pomegranate trees in the land to the extent of 0.80 Aares. However, it was further stated that the petitioners have encroached on such a land. At the time of preparing the panchanama, panch witnesses have stated that the possession of the disputed properties is with the petitioners since beginning.

9] Though the respondents have disputed the factum of possession, but the documents on record demonstrate that the possession of the disputed property is with the petitioners. It is material to refer to the notice issued by the Tahsildar – respondent no.5 to the father, brothers and uncle of the petitioners dated 25.9.2006,

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from which it appears that as per this notice, a direction was given to the persons to remove the encroachment at their own costs. The language employed in this notice presupposes the factum of possession with the petitioners.

10] Though the respondents have disputed the factum of possession with the petitioners, the other documents demonstrate that the petitioners are still in physical possession over the suit property. The petitioners have claimed the relief u/s 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the provisions of which read as follows:-

"24 Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases:

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894)

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of

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compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in subsection (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1984), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act :

Provided that where an 'award' has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the

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notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

10 In view of subsection (2) of Section 24, though award in the instant matter has been made five years or more prior to the commencement of the Act and that the compensation has not been paid to the petitioner, proceedings in respect of acquisition shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate proceedings in respect of land acquisition afresh in accordance with provisions of the Act of 2013."

11] On bare perusal of the aforesaid provisions, the award lapses when it is made five years or more prior to the commencement of the new Act of 2013 and the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. Admittedly, the award in the present case has been passed prior to five years i.e. on 10.3.1977, before commencement of the new Act i.e. on 1.1.2014.

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12] Second aspect, which is to be taken into consideration is that no compensation has been paid to the petitioners. Nowhere it is contended by any of the respondents in their affidavit that the compensation of the acquired land has been either paid to the petitioners or their father. On the contrary, from the copy of the E-statement, it reveals that the compensation of Rs.12,7876/- is granted in the name of Haribhau, elder cousin brother of the petitioners, however, the same was neither paid to him nor it was deposited in the Court.

13] Since it is clear from the record that the amount of compensation though granted, but it has not been paid to the petitioners, therefore, the present case is governed by the decision of the Apex Court in the case of *Pune Municipal Corporation & another v. Harakchand Misirimal Solanki* [**2014(4) Mh.L.J. (SC) 566**]. The Apex Court interpreted the Sub-section (2) of Section 24 while dealing with the issue whether the offer of the compensation to the owner / persons interested will be covered by the word "paid" used in sub-section (2) of Section 24. Paragraphs 15 to 17 of the said decision read thus:

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"15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider

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proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

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 compensation by the landowners/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 Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view,

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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. (underline added)

4. Ultimately, in
paragraph 20 the Apex Court held thus:

"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

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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." (underline added)

14] So, looking to the overall circumstances of the above case, it appears that the award in the present matter was passed on 10.3.1977 and neither physical possession of the property has been taken by the respondents nor compensation for the same was paid to the petitioners. In these circumstances, we are of the opinion that the present case is squarely covered under the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, we hold and declare that the land acquisition proceedings in respect of land old Survey No.112/3 (part and now new Gut

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No.463 admeasuring 5 Acres 23 Gunthas (2 H 4 R) situated within grampanchayat limits of village Virgaon Tq.Akole Dist.Ahmednagar, stand lapsed as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11] Writ petition is allowed and disposed of in above terms. Rule made absolute accordingly. There shall be no order as to costs.

(K.L. WADANE, J.)

(R.M. BORDE, J.)