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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. OF 1303 OF 2015

Hareshwar Dhanaji Madhavi ..Petitioner

Vs.

The Deputy Collector, Land Acquisition
& Ors.

...Respondents

Mr. Rahul Thakur, Advocate for the Petitioner

Mr. V.S. Gokhale, AGP for the Respondent Nos. 1 to 3

CORAM : A.S.OKA, &

C.V. BHADANG, JJ.

Date of Reserving the Judgment : 12th January, 2016

Date of Pronouncing the Judgment: 19th January, 2015

JUDGMENT: (PER SHRI C.V. BHADANG, J.)

Rule. Rule made returnable forthwith. Learned AGP waives service for Respondent Nos. 1 to 3. Heard finally by consent.

By this petition under Article 226 of the Constitution of India the petitioner seeks quashing of the award dated 18th February, 1986 passed by the Special Land Acquisition Officer, Metro Centre No.1 Uran in Unit Case No.118, District Raigad.

The petitioner claims to be the owner of the agricultural land bearing Survey No.122/4 of village Chanje Taluka: Uran, District: Raigad, which was subject matter of acquisition, under the Land Acquisition Act 1894 (Act of 1894 for short). In the aforesaid land acquisition case. It is contended that in terms of Section 24(2) of the Right to Fair Compensation And Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short Act of 2013), in a case where

either the physical possession of the land is not taken or compensation is not paid, when the award is passed five or more years prior to the commencement of the Act, the acquisition proceeding would lapse. It is contended that the petitioner has neither been paid compensation nor the respondents have obtained physical possession of the subject land. Thus the petitioner continues to be in physical possession of the said land. On behalf of the petitioner reliance is placed on the decision of the Honourable Supreme Court in the case of **Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors. (2014) 3 Supreme Court Cases 183** and a decision of this Court in the case of **Kaulram Maruti Dange Vs. The Special Land Acquisition Officer & Ors. in Writ Petition No. 6695 of 2014 dated 16/17th July 2015**. The petitioner is claiming a declaration that the land acquisition proceedings have lapsed.

In reply filed by Jaymala Ganpat Murudkar, Deputy Collector (Land Acquisition), it is not disputed that the compensation is neither paid to the petitioner, nor deposited before the Court. It is, however, contended that the possession of the land was taken on 31st October, 1986 under a panchanama as the concerned person had 'failed to accept the compensation and handover possession'. It is contended that the provisions of Section 24(2) of the Act of 2013 are not applicable.

We have considered the circumstances and the submissions made. We find that the respondents have not paid the compensation or deposited the same as contemplated under Section 24(2) of the Act of 2013. The Hon'ble Apex Court in the case of **Pune Municipal Corporation (Supra)** has inter alia held that the expression "paid" as used in Section 24(2) includes

deposit of compensation in the Court before which a reference under Section 18 of the Land Acquisition Act, 1844 would be maintainable. However, it cannot be given a limited meaning “offered” or “tendered”. It has been held that if literal construction is given to expression “paid”, then it would amount to ignoring the procedure, mode and manner of deposit of compensation in Court as provided in Section 31(2) of 1894 Act.

In the case of **Kaulram Maruti Dange (supra)** a Division Bench of this Court to which one of us (A.S. Oka, J) was a party, placing reliance on the decision of the Hon'ble Supreme Court in the case of **Pune Municipal Corporation (supra)** has inter alia held that by virtue of legal fiction in Section 24(2) of the Act of 2013, the lapsing of acquisition is automatic. In that view of the matter, we find that the petition has to succeed. In such circumstances rule is made absolute in terms of prayer clause (a) with no order as to costs.

We however make it clear that it will be open for the respondents to initiate fresh acquisition proceedings in accordance with law.

(C.V. BHADANG,J.)

(A.S.OKA,J.)