

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5853 OF 2014
ALONG WITH
WRIT PETITION NO.5854 OF 2014

WRIT PETITION NO.5853 OF 2014

Gudulal Noormohammad Shaikh.	..	Petitioner
Vs		
The Collector, Solapur, and Another.	..	Respondents
—		

WRIT PETITION NO.5854 OF 2014

Sudhakar Narayan Kulkarni.	..	Petitioner
Vs		
The Collector, Solapur, and Another.	..	Respondents
—		

Shri P.B. Shah i/b Shri Kayval P. Shah for the Petitioner in both the Petitions.
Mrs. M.P. Thakur, AGP for the Respondents in both the Petitions.
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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 8TH FEBRUARY 2016

ORAL JUDGMENT (PER A.S. OKA, J)

1. The Writ Petition No.5853 of 2014 relates to the land bearing Gat No.56/3/A situated at Village- Vatvate, Taluka- Mohol, District - Solapur. The challenge in this Petition under Article 226 of the Constitution of India is to the acquisition of the said land. The

Notification issued under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) dated 3rd April 1969 was modified on 16th March 1972. The public purpose of acquisition is for the Resettlement of Project Affected Persons of Ujni Dam. The award under Section 11 of the said Act of 1894 was made on 16th January 1976. The Petitioner filed a suit for injunction in the Civil Court in the year 2012 praying for a declaration that he continues to be in possession of the acquired land and that his title is not disturbed. There is a reply filed by Shri Milind Balkrishna Pathak, Deputy Collector (Rehabilitation), Solapur. There is a rejoinder tendered by the Petitioner.

2. As far as Writ Petition No.5854 of 2014 is concerned, the lands subject matter of the said Writ Petition are Gat Nos.160, 116/2, 120/2 and Gat No.121/3 situated at Miri, Taluka- Mohol, District – Solapur. The acquisition proceedings were initiated on the basis of the Notification under Sub-Section (1) of Section 4 of the said Act of 1894 on 13th December 1968. The public purpose for the acquisition was for a Resettlement of Project Affected Persons of Ujni Dam. Two separate awards under Section 11 of the said Act of 1894 were made on 15th March 1976 and 15th April 1974.

3. The contention raised in both the Petitions is based on Sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said Act of 2013”). The contention is that though the compensation was paid to the Petitioners, the possession of the acquired lands was never taken over in accordance with Section 16 of the said Act of 1894 till the said Act of 2013 came into force. Therefore, the prayer is for a declaration that the acquisition is deemed to have been lapsed in view of Sub-section (2) of Section 24 of the said Act of 2013.

4. In support of the Writ Petition No.5853 of 2014, the learned counsel appearing for the Petitioners urged that an incomplete copy of the possession panchanama has been annexed to the affidavit-in-reply. He pointed out that when the original was produced, it was in torn condition. However, on the copy of the possession panchanama in the file, the signatures of the panch witnesses are not appearing. He pointed out that in the affidavit-in-reply, the stand taken is that under the possession receipt dated 2nd February 1976, the possession of the acquired land was handed over by the Petitioners. He submitted that there is absolutely no evidence of delivery of possession as a proper

possession receipt bearing the signatures of the Petitioner and the panch witnesses is not produced. He invited our attention to the Written Statement filed by the State Government in the suit filed by him. It is sought to be contended in the Written Statement that the possession of the acquired land was taken over in the year 1978. He submitted that unless there is a cogent material produced to show that the possession of the acquired land was taken over in accordance with Section 16 of the said Act of 1894, Sub-section (2) of Section 24 of the said Act of 2013 squarely applies. His submission is that the State has indulged in suppression of material documents and its case as regards the possession is inconsistent.

5. As far as the Writ Petition No.5854 of 2014 is concerned, he invited our attention to the affidavit of Shri Milind Pathak. He invited our attention to the stand taken on 21st July 1978 that the possession of the acquired land was taken over by the State Government. He submitted that at one place, the stand of the State Government is that the possession was taken over in the year 1976 itself. He submitted that even in this case, the possession receipt produced by the State Government will not help the State Government inasmuch as the same does not bear the signature of the Petitioner. In both the Petitions, his submission is that there is no evidence on record to show that the possession of the acquired land was taken over prior to

the coming into force the said Act of 2013. Hence, the acquisition shall be deemed to have been lapsed in view of Sub-section (2) of Section 24 of the said Act of 2013.

6. We have considered the submissions. It is true that in the Writ Petition No.5853 of 2014, the State Government has not produced the original possession panchanama which is signed by the panch witness. We must note here that the possession receipt and the panchanama is of 2nd February 1976. The State Government is not expected to produce the original after a lapse of more than 37 to 38 years. There is one more aspect which needs to be noted that under the Mutation Entry dated 13th September 1979, which was confirmed on 10th October 1979, the name of the Petitioner in the said Writ Petition No.5853 of 2014 was deleted from the revenue records and the name of the “Ujani Punarvasan/the District Collector-cum-Deputy Director of Resettlement (Land) Solapur” was incorporated in the Kabjedar Column. It is not the case of the Petitioner that he was not aware of the mutation entry made and the confirmation thereof in the year 1979 by which his name was deleted and the name of the State Government was mutated. At no stage, the Petitioner seems to have challenged the said mutation entry. There is another crucial factual aspect. The specific stand taken by Shri Milind Pathak in his affidavit filed on behalf of the State Government is that in the year 1988-1989, the name of the

Petitioner was incorporated in the cultivation column in 7/12 extract though there is no specific order directing incorporation of the name of the Petitioner. The name of the Petitioner which was incorporated in the cultivation column in the year 1988-1989 was continued till the year 2011-2012. The letter dated 5th November 2015 addressed by the Tahsildar, Mohol, to the Deputy Collector, Resettlement (Land) specifically records that without any order of the Competent Authority, the name of the Petitioner was entered in the cultivation column as aforesaid. He has relied upon the report submitted by the Circle Officer recording that without there being any order from the Competent Authority, the name of the Petitioner was incorporated in the cultivation column.

7. What is material is that the name of the Petitioner appearing in the Kabjedar (Possession) Column was deleted and the said entry was certified on 10th October 1979 and the name of the District Collector/Ujani Punarvasan was added. The Petitioner never challenged the said mutation entry. Even during the period from 1988-1989 to 2010-2011, the name of the Petitioner did not appear in the Kabjedar Column /possession column. But the subsequent entry of the name of the Petitioner in cultivation column was done without there being any order of the Competent Authority. His name appeared in the cultivation column as the person cultivating the land. Therefore, it is

impossible to disbelieve the case made out by the State Government that the possession of the acquired land was taken over from 2nd February 1976. As stated earlier, the Petitioner never challenged the mutation entry of 1979. The Petitioner never challenged the deletion of his name in the cultivation column with effect from the year 2012-2013 onwards.

8. Now turning to the Writ Petition No.5854 of 2014, the State Government is relying upon the possession panchanama/possession receipt dated 21st July 1978. Even in this case, the mutation entry was made on 5th November 1978 by which the name of the Petitioner was deleted from the Kabjedar column of the acquired land. Even in this case, the Petitioner did not challenge the said mutation entry. It is not the case made out by the Petitioner that the name of the Petitioner was deleted without serving any notice. In this case, there is one more important aspect. Out of the acquired lands, the land bearing Survey No.160 admeasuring 1 Hectare 21 Ares was allotted to one Shri Sambha Bali Kuchekar vide the order dated 10th April 2013. Moreover, even in the present case, in the cultivation column, the name of the Petitioner appeared from 1988-1989 till 2010-2011. The State Government is relying upon the mutation entry made in June 2013 which was certified on 22nd July 2013 which recorded that a sale of the land bearing Gat No. 160 admeasuring 1 Hectare and 21 Ares was

made by the said allottee Shri Sambha Bali Kuchekar in favour of a third party.

9. Therefore, in both the Writ Petitions, considering the conduct of the Petitioners, it is not possible to disbelieve the case of the State Government that the possession of the acquired lands was taken over long back in accordance with the provisions of the said Act of 1894. In the first Petition i.e. Writ Petition No.5853 of 2014, the possession was taken over on 2nd February 1976 and in the second Petition i.e. Writ Petition No.5854 of 2014, the possession was taken over on 21st July 1978. Admittedly, the Petitioners have received compensation in respect of the acquisition of their lands in both the cases.

10. Hence, Sub-section (2) of Section 24 of the said Act of 2013 is not applicable to both the cases. Accordingly, both the Writ Petitions are rejected.

(C.V. BHADANG, J)

(A.S. OKA, J)