

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10373 OF 2014

Mr.Vijay Ganpatrao Powar. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Nikhil Sakhardande i/b.Pralhad D. Paranjape for the petitioner.

V.S.Gokhale, AGP for respondent Nos.1 to 5.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 29th January 2016.

ORAL JUDGMENT. : (Per A.S.Oka, J.)

Heard the learned counsel appearing for the petitioner and the learned AGP for the respondents. The notice for final hearing was issued on 12th January 2016. The challenge in this petition under Article 226 of the Constitution of India is to the acquisition proceedings in respect of the acquired land of the petitioner which is more particularly described in paragraph- 4 of the petition. An award under section 11 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) was made on 19th November 1998 . The contention raised in the writ petition is that the acquisition proceedings stand lapsed in view of 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 first contention is that the possession of the acquired land is not taken over in accordance with section 16 of the said Act of 1894 till date. The second contention is that the compensation on account of acquisition has not been paid in terms of the award.

2. There is a reply filed by Dr.Swati Kiransinh Deshmukh-Patil, Deputy Collector (Land Acquisition) No.12, Kolhapur. In clause (2) of paragraph- 2 of the said affidavit-in-reply, the deponent has stated thus:

2. By the present Writ Petition, the Petitioner has prayed that it be declared that Award SR/24/81 dated 19-11-1988 is null and void in the light of section 24 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of Gat nos. 179/4 of village Umchgaon Tal. Karveer Dist. Kolhapur. I am filing this affidavit to place on record the following relevant fact:-

i) I state that the possession of lands in dispute obtained by Government and the necessary Mutation Entry is made in revenue record. Hereto annexed and marked as “EXHIBIT-1” is the copy of said Kabjepatti-Panchanama.

ii) In respect of payment of compensation, I state that inspite of issuance of notices to the owner/interested persons, they have not come forward to collect compensation. Therefore, the amount of compensation, due to the Petitioner is deposited in the Government Account bearing Head No.2059.

(Underline added)

The stand taken in the said affidavit is that as the owners/ interested persons have not come forward to receive the compensation, the same has been deposited in the Government account bearing a particular head.

Thus, the compensation amount has been admittedly deposited in the separate account in the Treasury.

3. In view of the aforesaid statement on oath, the law laid down by the Apex Court in the case of ***Pune Municipal Corporation and Anr. v. Harakchand Misirimal Solanki and ors.***,¹ will squarely apply to this case. The Apex Court specifically considered the contention whether the word “paid” in sub-section (2) of section 24 of the said Act of 2013 can be equated with the words “offered” or “tendered”. Paragraph-17 of the said decision deals with this aspect, which reads 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 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 32(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, 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

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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.

4. Hence, what is held by the Apex Court is that for the purpose of sub-section (2) of section 24 of the said Act of 2013, the compensation can be regarded as paid, if the compensation has been offered to the persons interested and thereafter, the compensation amount is deposited in the Court to which a reference under section 18 can be made. The Apex Court held that the deposit of the amount with the Treasury will be of no avail.

5. In the present case, even assuming that the compensation amount was offered to the owners/ persons interested, the Land Acquisition Officer has not deposited the said amount in the Court to which a reference under section 18 would have been made.

6. Hence, one of the two conditions provided under sub-section (2) of section 24 of the said Act of 2013 has been satisfied and, therefore, in view of sub-section (2) of section 24 of the said Act of 2013, the acquisition stands lapsed. Accordingly, we pass the following order:

O R D E R

- (i) Rule is made absolute in terms of prayer clause (b)(i);
- (ii) We make it clear that notwithstanding this judgment and

order, it will be open to the respondents to initiate a fresh acquisition proceeding in respect of the said land subject matter of this petition in accordance with the said Act of 2013. All contentions of the parties in that behalf are kept open;

(iii) No costs.

(C.V. BHADANG, J)

(A.S.OKA, J)