

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4325 OF 2013

Shri Sharadchandra Ganesh Mulay,
Since deceased through his legal
representatives:

1. Smt. Madhuwanti Sharad @
Sharadchandra Mulay and Others. .. Petitioners

Vs.

The State of Maharashtra and Others. .. Respondents

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Shri Rahul Deshpande i/b Shri Suresh M. Kamble for the Petitioner.
Shri V.P. Malvankar, AGP "A" Panel for the Respondent Nos.1 and 2.
Shri Roopadaksha Basu I/b The Law Point for the Respondent No.3.

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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 23RD FEBRUARY 2016

P.C.

1. Heard the learned counsel appearing for the Petitioners,
the learned AGP for the first and second Respondents and the learned
counsel appearing for the third Respondent.

2. On 27th November 2015, the parties were put to notice that
an endeavour shall be made to decide the Petition finally at the stage of
admission.

3. The Petition relates to the land bearing Gat No.51-B admeasuring 1064 sq meters situated at Village Kalundre, Taluka-Panvel, District - Raigad. On 3rd February 1970, a Notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (for short “the said Act”) was issued. The Award under Section 11 of the said Act was made on 30th March 1994. Initially, the father of the Petitioner filed Writ Petition No.694 of 1984 for challenging the acquisition proceedings. The Writ Petition was rejected by the judgment and order dated 31st March 1992. Till the date of rejection, there was an interim order passed by this Court which was operative. Thereafter, the acquisition proceedings continued and the Award under Section 11 of the said Act was declared on 30th March 1994. The Notice under Sub-section (2) of Section 12 of the said Act was served upon the Petitioner on 9th June 1994. Thereafter, the Writ Petition No.2249 of 1994 was filed by the Petitioner for challenging the Award on the ground that the same is hit by Section 11-A of the said Act. The Writ Petition was dismissed on 30th June 1994. The Special Leave Petition was preferred against the said order which was dismissed on 14th August 1995.

4. By amending the present Petition, it is contended that 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 acquisition has lapsed. It is contended that neither the possession of the acquired land has been taken over in accordance with the provisions of the said Act nor the compensation has been made. A specific contention has been raised as regards the non payment of compensation in Paragraph 22C of the Petition.

5. There is an affidavit-in-reply filed by Ms. Revati A. Gaikar, the Deputy Collector (Land Acquisition), Metro Centre No.I, Panvel, District - Raigad. It will be necessary to make a reference to the stand taken in the affidavit. Paragraph 11 of the said affidavit-in-reply reads thus:

“11. I say that thereafter this office sent a letter dated 24.11.1994 to the petitioner to be present to handover the possession of his land. The petitioner was also asked to collect the payment against the land acquisition amounting to Rs.1,00,796/- But the petitioner refused to take the same. Further the said compensation amount was deposited in sub-treasury as a revenue deposit on 29th June 1994. This office has sent various letter to the petitioner to come to handover the possession of his land on 12.9.1994, 24.11.1994, 7.12.1994, 26.9.1995. But on all dates, the petitioner remained absent and did not give possession of the said land.”

(Underline added)

6. Thus, the compensation amount has been deposited in Sub-Treasury as a revenue deposit. Even in Paragraph 16, it is contended that the compensation payable to the Petitioner has been deposited in

the revenue deposit. The case regarding failure to take possession has been disputed in the reply. It is pointed out that a reference under Section 18 of the said Act made at the instance of the Petitioners is pending.

7. The case will be covered by the decision of the Apex Court in the *Pune Municipal Corporation & Another v. Harakchand Misirimal Solanki & Others* [(2014) 3 SCC 183]. While interpreting the Sub-section (2) of Section 24 of the said Act of 2013, the Apex Court held that the deposit of compensation amount in the Government Treasury is of no avail and cannot be held to be equivalent to the compensation “paid” to the land owners/persons interested. The Apex Court held that in such a case, the acquisition proceedings shall be deemed to have lapsed under Sub-section (2) of Section 24 of the said Act of 2013. Thus, in the present case, the contention of the Petitioners that the acquisition lapsed under Sub-section (2) of Section 24 of the said Act of 2013 will have to be accepted. It is, therefore, not necessary to deal with the disputed question regarding the possession of the acquired land.

8. Hence, we pass the following order.

ORDER :

- (a) The Rule is, accordingly, made absolute in terms of the prayer Clauses (aa) and (ab);
- (b) We make it clear that this judgment and order will not preclude the Respondents from initiating a fresh acquisition proceedings in respect of the very land in accordance with the provisions of the said Act of 2013;
- (c) Compliance in terms of the prayer Clause (ab) shall be made within a period of three months from today;
- (d) In view of the aforesaid order, the Land Acquisition Reference No.158 of 1994 filed by the Petitioners which is pending in the Civil Court at Panvel, District – Raigad, will not survive and accordingly the same stands disposed of. The Registry to issue writ accordingly to the Court of Civil Judge, Senior Division, Panvel;
- (e) The Petition is disposed of on above terms;