

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2884 OF 2014

Harshad D. Shah
S/o Dhirajlal Chimanlal Shah, of
Mumbai, Indian Inhabitant, residing
at Madhu Kunj, Plot No.267,
8th and 11th Road Corner, Khar,
Mumbai-400 052.

.... Petitioner

- Versus -

1. State of Maharashtra,
through the Secretary,
Revenue Department, Mantralaya,
Mumbai-400 001.
2. Collector, Mumbai City, having
his office at Old Customs House,
Shaheed Bhagat Singh Road,
Fort, Mumbai-400 001.
3. Special Land Acquisition Officer,
Mumbai & Mumbai Suburban
District, Old Customs House Yard,
DD Bldg., Fort, Mumbai-400 025.
4. Bharat Education Society,
a Society registered under the
Maharashtra Registration Act, 1860,
and registered as Public Trust Act
under Bombay Public Trust Act
having its office at Ram Nivas
Building, 12th Lane, Kethwadi,
Mumbai-400 004.

.... Respondents

WITH
NOTICE OF MOTION NO.150 OF 2015
IN
WRIT PETITION NO.2884 OF 2014

Harshad D. Shah	 Applicant
<i>In the matter between</i>	
Harshad D. Shah	 Petitioner
Vs.	
State of Maharashtra & 3 Others	 Respondents

Mr. Ajay Panicker i/by M/s. Ajay Law Associates for
the Petitioner/Applicant.

Ms Geeta Shastri, Addl. Government Pleader, for
Respondent Nos.1 to 3.

Mr. G.V. Murti with Mr. Mohan Rao & Mr. R. Malandkar
i/by M/s. MSR & Associates for Respondent No.4.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

DATE : OCTOBER 13, 2016

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. Rule. The respondents through their respective counsel waive service. By consent, rule is made returnable forthwith and the writ petition is taken up for hearing and final disposal.

2. By this petition under Article 226 of the Constitution of India, the petitioner is claiming a declaration that the proceedings under the Land Acquisition Act, 1894, ending in an Award dated 20-9-1984, have lapsed, for this is a clear case covered by 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 Right to Fair Compensation Act, 2013").

3. The petitioner states that the subject-matter of the petition is an immoveable property/land bearing City Survey No.1108 of Girgaum Division, admeasuring 933.03 sq.mtrs.. The property was owned by the petitioner's grandfather Chimanlal Manchubai Shah. He expired on 13-2-1949, leaving behind his legal heirs and representatives.

4. The details of the same are set out in para 2.1. Under certain Gift Deeds, the petitioner claims that he has become the absolute owner of the subject-property.

5. The fourth respondent is a Society at whose behest proceedings for acquisition of the said land were initiated under the predecessor Act, namely, the Land Acquisition Act, 1894. For short, it shall be referred to as "the Act of 1894".

6. The petitioner complains that a notification was published in the Bombay Government Gazette, dated 30-7-1959, a copy of which is at Annexure-A. Then, a notice under Section 4(1) of the Act of 1894 also came to be issued on 21-8-1959. The acquisition was for a public purpose, namely, for a Municipal School. The petitioner does not dispute that he and other co-owners lodged their objection to this notice in writing. A typed copy of the written objection is annexed as Annexure-C. This acquisition came to be cancelled, according to the petitioner, on 25-9-1964.

7. Thereafter, a Development Plan was sanctioned for the City of Mumbai under the Maharashtra Regional and Town Planning Act, 1966 (for short, "the MRTP Act") and the plot was

reserved for a Secondary School. Once again, the fourth respondent moved the Government for acquisition and this time the Government issued a notice under Section 4(1), duly published it in the Maharashtra Government Gazette Part-I, dated 24-9-1970, notifying the subject-property for the purpose of expansion of Sardar High School for Bharat Education Society (respondent No.4). Once again, the petitioner objected and in writing. Annexures "G" and "H" to the writ petition are copies of the written objections. On 25-4-1974, a Notification under Section 126 of the MRTP Act r/w Section 6 of the Land Acquisition Act was published. The public purpose was for setting up a Secondary School. Then notices under Section 9 of the Act of 1894 were issued on 10-1-1975.

8. Once again, objections were lodged and after the requisite procedure was completed, the Award was made under Section 11 of the Act of 1894. That Award was made on 20-9-1984. The petitioner, on receipt of a notice of this Award being made, filed a writ petition being Writ Petition No.1008 of 1985 in this Court.

9. The tenants on the property also raised a challenge to the acquisition under the Act of 1894 by instituting writ petitions and it is stated by the petitioner himself, in para 2.20, that as far as the tenants are concerned, respondent No.4 agreed to provide them alternate accommodation. Thus, their rehabilitation was taken care of. Thereafter, the tenants' writ petitions were disposed of on 21-10-1994. Equally, the petitioner's petition came to be dismissed on 25-10-1994. The Awards made under the land acquisition proceedings were thus upheld.

10. Now the argument is that though it is claimed that physical possession of the property was taken over by the State officials and it was made over to respondent No.4 as far back as on 2-2-1996, there is no evidence placed on record of the petitioner being physically dispossessed.

11. The learned counsel appearing for the petitioner raised only one contention for our consideration and that is by

relying on sub-section (2) of Section 24 of the Right to Fair Compensation Act, 2013. That reads as under:-

"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 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 sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), 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 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."

12. A bare perusal thereof would indicate that notwithstanding anything contained in Section 24(1), in any case where Award has been passed under the Act of 1894 five years or more prior to the commencement of the Right to Fair Compensation Act, 2013 but where 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 proceedings for acquisition of the said land afresh in accordance with the provisions of the Right to Fair Compensation Act, 2013.

13. The petitioner in para 2.23 of the writ petition states as under:-

"It is claimed that on 02/02/1996, possession was given by Respondent No.3 to Respondent No.4 Society. However, the physical possession of the property continues with the Petitioner and no physical

possession has ever been taken by the Respondents at any point of time. The Petitioner is in actual physical possession of the property even today. A copy of the so-called possession receipt dated 02/02/1996 is hereto annexed and marked as Exhibit-Q. It is clear from the same that the Petitioner has not handed over possession and the document is not of handing over of physical possession."

14. On a perusal thereof it is clear that the petitioner is aware that certain steps were taken for obtaining physical possession of the immoveable property/land under the 1894 Act and further steps by the Special Land Acquisition Officer have also been taken. The respondent No.4-Society, to whom the physical possession is claimed to have been handed over, was called upon to explain whether it has abided by its commitment and undertaking given to this Court.

15. The petitioner in para 2.24 of the writ petition states that the possession of the immoveable property though handed over to respondent No.4, it is of a temporary nature.

16. Then a feeble attempt is made in para 2.25 to urge that even the compensation has never been paid to the

petitioner.

17. It is only in order to ascertain this factual position that we have perused the lengthy pleadings, particularly the affidavit of the contesting respondent. The affidavit of the contesting respondent, in para 10 at page 160, relies upon the fact that not only was the Award made but the petitioner and other co-owners of the property were called upon to collect the compensation amount. These letters addressed to the petitioner and the other co-owners were duly served. The compensation amount has thereafter been deposited in this Court.

18. It is claimed in this affidavit very clearly that the possession of the property was taken over and that is evidenced by the possession receipt and the panchnama.

19. Mr. Panicker would submit that this is only a symbolic possession and the physical possession is still with the petitioner.

20. We do not see how the petitioner can be permitted

to raise such a contention, for it is the petitioner's affidavit in rejoinder which states that the possession, though handed over to respondent No.4, is of a temporary nature. We have before us an affidavit in reply filed by Ajit Panditrao Sakhare, Deputy Collector (Land Acquisition), Mumbai City on behalf of respondent Nos.1 to 3. In this affidavit in reply, it has been stated in para 4 that the acquisition proceedings had been completed and possession of the land has been handed over to respondent No.4-Society on 2-2-1996. Exhibits '2' and '2A' to this affidavit are copies of the possession receipt dated 2-2-1996 along with the panchnama.

21. We have perused these exhibits at pages 320 and 321 of the paper-book. Mr. Panicker is not right, for the contents of this affidavit would demonstrate that symbolic possession of the premises in possession of the tenants only had been taken. As far as rest of the property is concerned, the physical possession was duly taken and even handed over to the acquiring body on 2-2-1996. The possession receipt clearly shows that it was a Special Land Acquisition Officer of MHADA

who was present. He took over the possession of the land under acquisition, situate in Mumbai City, Division Girgaum, City Survey No.1108 and the approximate area is stated to be 947.32 sq.mtrs..

22. Preceding this document is a letter/notice dated 22-1-1996 to all owners/co-owners informing them that physical possession of the property would be taken and handed over. This letter clearly states that the Land Acquisition Officer would take only symbolic possession of the premises which are occupied by the tenants and as far as rest of the premises, the Land Acquisition Officer would take physical possession.

23. In the very affidavit in reply filed by the Deputy Collector in this writ petition, at page 5, it is stated that obligation towards the tenants is distinct from that of the petitioner. The petitioner is claiming to be the owner of the property. Notice, copy of which is at page 318 of the paper-book, was duly served upon the petitioner and as an owner of the property he has acknowledged receipt of the same on page

319.

24. Yet, the petitioner makes a bold assertion in the writ petition. That assertion is completely belied by the three documents from pages 318 to 321 of the paper-book. These are records maintained in the office of the Special Land Acquisition Officer. He is none other than an officer from the office of the Collector of Mumbai City. His statements on oath and supported by contemporaneous record cannot be disbelieved at the instance of the petitioner. The petitioner has clearly woken up belatedly. He is seeking to question an Award made more than 32 years back and the act of his dispossession more than 20 years back. At the instance of such a petitioner who is aware that he has lost physical possession and thereafter the title to the immoveable property, we do not think that in writ jurisdiction we should decide any larger question or wider controversy. From the facts we found that the petitioner has come up with a completely incorrect version. The physical possession of the land was already taken over by the State. It vests in it. We find no merit in the writ petition and it is accordingly dismissed. The

rule is discharged.

25. In view of dismissal of the writ petition, Notice of Motion No.150 of 2015 does not survive and it accordingly stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)