

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1358/2016

Shri Prabhakar s/o Kashinath Shende and others

...Versus...

State of Maharashtra, Ministry of Urban Development, Through its Chief
Secretary, Mantralaya, Mumbai – 400032 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri I.G. Meshram, Advocate for petitioners
Mrs. K.R. Deshpande, AGP for respondent nos.1 to 3
Shri S.N. Tapadia, Advocate for respondent no.4
Shri S.K. Mishra, Sr. Adv. with Shri V.S. Mishra, Adv. for respondent no.5

CORAM : SMT. VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.

DATE : 03.05.2016

By this writ petition, the petitioners have challenged the award passed by the Special Land Acquisition Officer on 16.2.2009, in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

By the notification issued by the respondent under Section 4 of the Land Acquisition Act, 1894 in the year 2006, the land of the petitioners was sought to be acquired. After conducting an enquiry under Section 5 A of the Land Acquisition Act, the award was passed by the Special Land Acquisition Officer on 16.2.2009. The award has been challenged by the petitioners

by relying on the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

It is stated on behalf of the petitioners that despite the passing of the award by the Special Land Acquisition Officer on 16.2.2009, the compensation has not been paid to the petitioners till date. It is stated that the compensation was not deposited in the accounts of the petitioners. It is stated that the possession of the land is not acquired by the State Government after the passing of the award.

The learned Assistant Government Pleader for the respondent nos.1 to 3, however, strongly opposed the prayer made by the petitioners. It is stated on behalf of the respondents that since the petitioners had failed to handover the possession of the land to the respondents, the respondents - Authorities took the possession of the land on 12.2.2015 after execution of the possession receipt in the presence of the Panchas. It is stated that the possession of the land was lawfully secured more than one year before the filing of the writ petition on 20.2.2016. It is stated that since the petitioners refused to receive the compensation towards the acquisition of the land, the amount of compensation was deposited in the reference Court in Land Acquisition Case No.18/2011. It is stated that the amount payable to the petitioners as per the award was deposited in the Court of Civil Judge (Senior Division), Nagpur, by Cheque No.528855 dated 4.1.2011, drawn on the Reserve Bank of India, on 10.1.2011.

Shri Mishra, the learned Senior Counsel for the respondent no.5 and Shri Tapadia, the learned Counsel for the

respondent no.4 submitted that the petition is liable to be dismissed as the petitioners cannot seek the benefit of the provisions of Section 24 (2) of the Act of 2013 as the award was passed by the Special Land Acquisition Officer on 16.2.2009 and the provisions of Section 24 (2) of the Act would apply only to the cases where the award is passed more than five years before the commencement of the Act of 2013. It is stated that the award was not passed five years before the commencement of the Act of 2013. It is stated that since the possession of the land was secured and the amount of compensation was deposited in the reference Court, the claim of the petitioners is liable to be rejected.

On hearing the learned Counsel for the parties and on a perusal of the provisions of Section 24 (2) of the Act and the affidavit-in-reply filed on behalf of the respondent nos.1 to 3, it appears that the relief sought by the petitioners cannot be granted. It is the case of the petitioners that the petitioners have not received the compensation towards the acquisition of the land till date. The respondent nos.1 to 3 have deposited the compensation in the Court, as required by the provisions of Section 31 of the Land Acquisition Act, 1894. In compliance with the provisions of Section 31 of the Land Acquisition Act, the amount of compensation is deposited by the State Government before the Civil Judge (Senior Division), Nagpur on 10.1.2011 in Land Acquisition Case No.18/2011 since the petitioners refused to accept the compensation. After the respondents have deposited the amount in the reference Court in view of the failure on the part of the petitioners to receive the same, the provisions of Section 24 (2) of the Act cannot be invoked. Also, we find on a

perusal of the original record and proceedings that the possession of the land is secured by the respondents on 9.2.2015. The possession receipt shows that the petitioners were not ready to handover the possession of the land to the respondents and hence, the respondents secured the possession of the land in the presence of the Panchas, the Deputy Collector and the Mandal Adhikari.

Since both the grounds on which the petitioners have challenged the award in view of the provisions of Section 24 (2) of the Act of 2013 are baseless as we find that the possession of the land was secured by the respondents before the filing of the writ petition and the compensation was also deposited in the reference Court, in view of Section 31 of the Land Acquisition Act in the year 2011, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar