

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

**WRIT PETITION NO.2788 OF 2015
WITH
CIVIL APPLICATION NO.14214 OF 2016.**

Manik Mallikarjun Opale ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.A.S.Bajaj, advocate for the petitioner.
Mr.M.B.Bharaswadkar, A.G.P. for the State.
Mr.Dhananjay Mane, advocate holding for Mr.Pankaj
Bharat, advocate for intervener.
Mr.G.K.Kore, advocate holding for Mr.Nagesh
Talekar, advocate for intervener.
Mr.K.S.Wani, advocate for intervener absent.
Mr.Sachin Deshmukh, advocate for applicant in
C.A.No.14214/2016.

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**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

Date : 21.3.2017.

PER COURT :

1. The petitioner seeks declaration that
the land S.No.22 at Parli Vaijnath, Dist. Beed,
admeasuring about 14 acres reserved as site No.22

for the purpose of construction of building of Industrial Training Institute be released and further the State shall follow the mandate of Section 24(2) read with Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as Act of 2013 for short).

2. The Respondent State acquired land S.No.22 at Parli Vaijnath, admeasuring 14 acres pursuant to the award dated 4.3.1986. The purpose of acquisition was the construction of building of Industrial Training Institute. It is the contention of the parties that the amount of compensation is not paid nor possession of the said land has been taken, as such in view of Section 24(2) of the Act of 2013, the acquisition stands lapsed.

3. Though the petitioner, intervener and Respondent No.5 have inter se dispute with regard to their rights in the writ property, we are not concerned with the same.

4. The petitioner, intervener and Respondent No.5 are unanimous of the fact that litigation which was commenced by virtue of CTS No.364/73 has culminated into a compromise decree before the Apex Court. It appears that the parties have arrived at a compromise on 24.1.2001 and subsequently by amendment to the said compromise in May 2004. It is the contention of the petitioner that subsequent agreement is also executed. The parties would be governed by the lawful compromise/agreement that may have been entered into between the parties and they may get settled their rights in accordance with law.

5. For the purpose of deciding the present lis, it is not necessary to go into the contentions about the inter se rights of the parties and its extent. All the parties except State are unanimous on the aspect that the acquisition pursuant to the award dated 4.3.1986 stands lapsed on account of non-payment of compensation and of possession of not being taken by the Respondent State.

6. Mr.Bharaswadkar, learned A.G.P. submits that Respondent State had deposited the amount with the Receiver immediately upon the award being passed. The Civil Application is also filed by the Respondent State in the Second Appeal that was filed between the parties, however, this Court in C.A.No.3724/90 in S.A.No.162/1982 observed that the Receiver shall act as per the directions of the Civil Judge in its decree dated 5.5.1979. According to the learned A.G.P. as the dispute was pending amongst the parties, the amount was deposited with the Receiver and deposit of the amount with the Receiver would tantamount to the payment of the said amount to the parties. The learned counsel relies on Section 30 of the Land Acquisition Act of 1894.

7. It is not disputed that till date the State has not taken possession of the property, subject matter of the Writ of which an award is passed on 4.3.1986. The I.T.I. Building is also constructed else-where. Section 24(2) of the Act of 2013 reads as under :

"24(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."

8. Reading the said provision, it is manifest that where an award U/s 11 of the Act, 1894 has been made five years or more prior to the commencement of the Act, 2013, but the physical possession of the land has not been taken, 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 the Act of 2013.

9. The litigation inter se between the parties has been settled. The same also may not be relevant at this stage. Even if it is assumed that compensation is legally deposited in the Court, still, on account of the possession not been taken by the Respondent State for more than 30 years, the acquisition proceedings shall stand

lapsed.

10. In light of the above, the acquisition proceedings pursuant to the award dated 4.3.1986 in respect of the land S.No.22 to the extent of 14 acres stands lapsed. The Respondent State if it so chooses is entitled to initiate fresh acquisition proceedings as per Act of 2013. The Respondent State is entitled to withdraw the amount of compensation deposited by it in view of the award dated 4.3.1986. If the said amount is kept in Fixed Deposit, the State may be entitled to receive accrued interest thereon.

11. The Writ Petition is accordingly disposed of. No costs.

12. The Civil Application also stands disposed of.

(SANGITRAO S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

