

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10442 OF 2016

Ravindra s/o Manohar Nagpure
age 52 years, occ. Business
r/o Shirdi, Tq. Rahata, Dist. Ahmednagar

Petitioner

Versus

1. The State of Maharashtra
Through Secretary
Urban Development Department,
Mantralaya, Mumbai 400 032.
2. The Collector, Ahmednagar
Dist. Ahmednagar.
3. The Special Land Acquisition Officer /
Sub-Divisional Officer, Shrirampur
Division, Shrirampur, Dist. Ahmednagar
4. The Municipal Council
Through its Chief Officer,
Shrirdi, Tq. Rahata
Dist. Ahmednagar
5. Shri Saibaba Sansthan Trust
Shrirdi, Tq. Rahata, Dist. Ahmednagar
Through its Chief Executive Officer

Respondents

Mr. V.P. Latange, advocate for the petitioner.
Mr. S.B. Joshi, A.G.P. for Respondents 1 to 3.
Mr. N.R. Bhawar, advocate for respondent no. 5.

**CORAM : R.M.BORDE &
K.L. WADANE, JJ.**
DATE : 25th APRIL, 2017

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.
3. Petitioner is seeking declaration that the award dated 13.08.2007 passed by the Special Land Acquisition Officer, Shrirampur Division, Shrirampur shall stand lapsed by virtue of provisions of section 24(2) of the Right to Fair Compensation And Transparency in Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'The Act of 2013') in relation to the property belonging to petitioner being CTS No. 65 situate at Shirdi, Tq. Rahata, Dist. Ahmednagar.
4. It is not a matter of dispute that the aforesaid property belonging to petitioner has been acquired for public purpose and the award has also been declared on 13.08.2007. Petitioner contends that though the award is declared in the year 2007, possession of the property has not been taken over nor he has refused the amount of compensation. Petitioner as such contends that in view of provisions of section 24 of the Act of 2013, the proceeding for acquisition shall stand lapsed.
5. The petition is opposed by respondents contending that possession of the property has already been taken over and the contention raised by petitioner in that regard is devoid of

substance. It is further contended that the amount of compensation was offer to petitioner however, he refused to accept the same. Since petitioner denies the contention as regards taking over of possession, we do not propose to go into the disputed questions of fact. Since the petitioner contends that he has not received the amount of compensation and that the amount of compensation has not been deposited in the Court where ordinarily reference application against the award lies, it cannot be construed that there is payment of amount of compensation determined under the award within contemplation of provisions of section 24(2) of the Act. In the event, the owner of the property refuses to accept the amount, it is obligatory on the part of the Collector to deposit the same in the Court where ordinarily reference against the award lies. The issue is no more *res integra* and is covered by judgment in the matter of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and others reported in **(2014) 3 Supreme Court Cases 183**. In paragraph nos. 17 and 18 of the judgment, the Apex Court has observed 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 the procedure, mode and manner of deposit provided in Section 31(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 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.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad*) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

Thus, the contention raised by respondents that since the petitioner refused to accept the amount of compensation it shall be deemed as payment of amount within contemplation of provisions of the Act is devoid of substance and deserves to be rejected.

6. It is not a matter of dispute that the award has been declared on 13.08.2007 and the provisions of the Act of 2013 are enforced since 01.01.2014. It also must be concluded that since the amount of compensation has not been deposited in the Court, there is no valid payment of amount of compensation to the petitioner. Since the award has been passed five years before enforcement of the Act of 2013 and, since the amount of compensation has not been paid to the owner, by virtue of section 24(2) it shall be deemed that the proceedings of acquisition have lapsed and the appropriate Government shall initiate the proceeding of such land acquisition afresh in accordance with the provisions of the Act. In the circumstances, it is declared that the proceedings for acquisition have lapsed and, it would be open for the appropriate Government to initiate proceedings for acquisition in relation to the property of the petitioner in accordance with the provision of the Act. Rule is accordingly made absolute. No costs.

(K. L. WADANE)
JUDGE

(R.M.BORDE)
JUDGE