

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 85 OF 2014**

Sudheer Prabhakar Desai,
son of Prabhakar Shankar Desai,
aged 72 years, Indian National,
resident of House No.1130, 112,
Anand Kunj, Madhalawada,
Morjim, Pernem, Goa.

..... Petitioner.

V/s.

1) State of Goa,
through its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez, Goa.

2) Under Secretary (Revenue),
Government of Goa, having
Office at Secretariat,
Porvorim, Bardez, Goa.

3) Principal Chief Engineer,
Government of Goa,
Public Works Department,
Altinho, Panaji, Goa.

4) Chief Electrical Engineer,
Government of Goa,
Electricity Department,
having Office at Vidyut Bhawan,
Panaji, Goa.

..... Respondents.

Mr. D. J. Pangam, Advocate for the petitioner.

Mr. Dattaprasad Lawande, Advocate General with Mr. P. Dangui,
Government Advocate for the respondents.

**CORAM :- F.M. REIS &
PRITHVIRAJ K. CHAVAN , JJ.**

Date : - 09/06/2017.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. D. J. Pangam, learned Counsel appearing for the petitioner and Mr. Dattaprasad Lawande, learned Advocate General along with Mr. P. Dangui, Government Advocate appearing for the respondents.

2. In the above petition, the petitioner, *inter alia*, prays for a direction to quash and set aside the Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter, referred to as the "said Act of 1894") dated 4.11.2003, as well as the subsequent Notification under Section 6 of the said Act of 1894 and the Award dated 27/04/2007.

3. The facts of the case are that a Notification under Section 4 of the said Act of 1894 came to be published on 4/11/2003, showing an intention of the Appropriate Government to acquire the land belonging to the petitioner surveyed under Survey No. 112/0 of Village Morjim, Pernem Taluka for the construction of a

road. Thereafter, a Notification under Section 6 of the said Act of 1894 was published on 9/3/2005. After, complying with the formalities under the said Act of 1894, an Award came to be passed by the Land Acquisition Officer (LAO) on 27/04/2007. Thereafter, as the compensation for the land was not deposited, nor paid to the petitioner, nor was the possession taken, the petitioner addressed a letter to the LAO whereby the petitioner was informed that no compensation has been paid to the interested parties, and the money is also not deposited in terms of the said Act of 1894 by the Acquiring Department. It is further pointed out that in the records of the LAO, there is also a Roznama entry on 6/1/2011, *inter alia*, stating that no compensation has been forwarded by the Acquiring Department. The petitioner also received the information on 06.01.2011 that the possession of the said land was not taken by the LAO.. It is further case of the petitioner that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (herein after referred to as the "Acquisition Act of 2013") came into force on 1/1/2014 and according to the petitioner, as the compensation has not been paid nor possession taken, the acquisition

proceedings would itself lapse in terms of the Acquisition Act of 2013. The petitioner has, accordingly, filed the above petition for the aforesaid reliefs.

4. The respondents have filed their reply, *inter alia*, contending that the petitioner never approached the LAO to receive the compensation. It is further pointed out that the road had already been constructed by the Local Panchayat, but, however, the reply is silent with regard to the allegations that the amount was not deposited nor compensation was paid to the petitioner. It is also contended that the respondents have also shown their willingness to pay the money as and when the interested party demanded for such amount.

5. Mr. D. Pangam, learned Counsel appearing for the petitioner has pointed out that the factual aspects are not in dispute and, as such, according to him, in terms of Section 24 of the Acquisition Act of 2013 as both the conditions have been satisfied, the acquisition proceeding have itself lapsed. The learned Counsel further points out that the stand taken by the respondents

is totally misconceived as there is no provision in the Acquisition Act of 2013 which recognizes a situation wherein the respondents are liable to pay the amounts of compensation only after such amounts are demanded. The learned Counsel points out that the Apex Court has taken a view that the deposit has to be in terms of the provisions of the said Act and in case, the amounts have not been deposited, the proceedings would stand lapsed in terms of the Acquisition Act of 2013. The learned Counsel further submits that the contention of the respondents that the road was already in existence, does not deprive the right of the petitioner to receive the compensation and protect his proprietary right over the said property. The learned Counsel has disputed the contention that any road was existing as claimed by the respondents. Mr. Pangam relies upon a Judgment of the Apex Court, reported in 2014 (3) SCC 183 in the case of *Pune Municipal Corporation vs. Harakchand Misirimal Solanki & ors..*

6. On the other hand, Mr. Dattaprasad Lawande, learned Advocate General appearing for the respondents, submits that the respondents have already shown their willingness to pay the

amount and, as such, according to him, there is no question of granting the declaration as sought by the petitioner. It is further pointed out that, in any event, as the road was already in existence, the question of taking possession in pursuance of the Award passed by the LAO would not at all arise. The learned Advocate General, as such, points out that there is no merit in the above petition and, as such, the petition deserves to be rejected.

7. Upon hearing the learned Counsel for the respective parties, it appears that the factual aspects have not been substantially disputed by the respondents. The respondents initiated proceedings in terms of the said Act of 1894 to acquire the land belonging to the petitioner and proceeded to pass an Award on 27/04/2007. It is not disputed that the respondents have not deposited the amount, nor paid the compensation as awarded to the petitioner in terms of the provisions of the said Act of 1894.

8. Section 24 of the Acquisition Act of 2013 reads thus :

“24. Land acquisition process under Act No.1 of 1984 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 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 holding 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.”

On plain perusal of the said provision, it is seen that the said provision clearly provides that in cases in which the possession of the acquired land has not been taken, or the compensation has not

been paid by the Appropriate Government, the proceedings would stand lapsed.

9. This Court, in a Judgment reported in 2015(3) ALL MR 168, in the case of *Silvester D'Souza and ors., vs. The State of Goa and ors.*, wherein one of us (F.M. Reis, J.) is a party, relying on the Judgment of the Apex Court in *Pune Municipal Corporation (supra)*, has observed at paras 11 and 12, thus :

“ 11. The said provisions have been examined by the Apex Court in a Judgment reported in *Pune Municipal Corporation & anr. vs. Harakchand Misirimal Solanki & Ors.* [2014(2) ALL MR 923 (S.C.)]. The challenge in the said proceedings were by some persons interested in acquisition proceedings who filed nine Writ Petitions, out of which two Writ Petitions were filed before making of the Award and seven had been filed after the Award was made. The proceedings for acquisition were challenged on different grounds and this Court allowed the Writ Petitions and quashed the land acquisition proceedings and issued certain directions including restoration of possession as in the said case, the possession had already been taken from such interested persons. The Apex Court, in the Appeal filed by the authorities for whose benefit the land was acquired and who were handed over possession of the land vested in the State, examined the effect of the provisions of Section 24 (2) of the said Acquisition Act of 2013 and held that as the compensation had not been paid or deposited in terms of the said Land Act of 1894, the acquisition proceedings had lapsed. In another Judgment reported in 2014 (6) S.C.C. 586 in the case of *Bharat Kumar vs. State of Haryana & anr.* the Apex Court has also examined the said

provisions of Section 24(2) of the said Acquisition Act of 2013. In the Judgment of the Apex Court reported in **2014 (6) S.C.C. 564** in the case of ***Union of India & Ors. vs. Shiv Raj & Ors.*** all the said Judgments have been taken note of and it has been observed at paras 23, 24, 25 and 26 thus :

23. The Court held as under : (*Harakchand case, SCC pp. 187 & 189-90, paras 11, 19 & 21*)

“11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under the 2013 Act.

.....

24. The judgment of *Bharat Kumar v. State of Haryana* was a reverse case wherein the landowner had lost before the High Court. The Court held:

“Sub-section (2) of Section 24 commences with a non obstante clause. It is a beneficial provision. In view of this provision, if the physical possession of the land has not been taken by the acquiring authority though the award is passed and if the compensation has not

been paid to the landowners or has not been deposited before the appropriate forum, the proceedings initiated under the 1894 Act is deemed to have been lapsed.”

(See also *Bimla Devi v. State of Haryana*)

25. In order to clarify the statutory provisions of the 2013 Act with respect to such lapsing, the Government of India, Ministry of Urban Development, Delhi Division, came up with a Circular dated 14-3-2014 wherein on the basis of the legal opinion of the Solicitor General of India, it has been clarified as under:

“3. Interpretation of five years’ period with regard to this issue viz. interpretation of five years’ period, two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz. (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in both the above situations, as on 1-1-2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of five years would have elapsed pursuant to an award made under Section 11 from the date of commencement of the Act and that the benefit of Section 24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or compensation not having been accepted and the period equals to or exceeds five years.

4. Limitation

As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed under Section 11 of the Land Acquisition

Act, 1894, 5 years or more prior to 1-1-2014 as specified in Section 24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of benefiting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act.”

26. The Objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:

“18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.” (emphasis added)

12. Taking note of the said observations and the ratio laid down therein, in the present case it is not in dispute that the Award was passed five years or more prior to the coming into force of the said Acquisition Act of 2013. It is also not disputed that the physical possession of the acquired land has not been taken by the appropriate Government. Even the pendency period during which the challenge to the Award and the period of pendency of the proceedings before this Court will have to be included to determine the said period of five years. In such circumstance, the contention of the learned Counsel appearing for the Respondents to the

effect that in view of the pendency of the above Petition, there was no fault on the appropriate Government in not taking possession of the acquired land and, as such, the Petitioners cannot invoke the provisions of Section 24(2) of the said Acquisition Act of 2013, cannot be accepted. As admittedly, the Award was passed five years prior to the coming into force of the said Acquisition Act of 2013 and the physical possession of the acquired land has not been taken by the Government in terms of Section 24(2) of the said Acquisition Act of 2013, the acquisition proceedings are deemed to have lapsed. With regard to the contention of Mrs. Agni, learned Counsel appearing for the Petitioners that the deposit of the amount is not in terms of Section 31 of the said Land Acquisition Act of 1894, as admittedly the amount of compensation awarded by the Land Acquisition Officer was not offered to the Petitioners nor paid, need not be gone into as in view of the fact that the physical possession of the acquired land was not taken though the award was passed five years prior to the commencement of the said Acquisition Act of 2013, the acquisition proceedings in respect of the land of the petitioners is deemed to have lapsed.”

10. Taking note of the said observations and the ratio as laid down therein to the facts of the present case, it is not disputed that the Award was passed 5 years or more prior to the coming into force of the Acquisition Act of 2013. It is not disputed that the letter produced on record by the petitioner, written by the LAO, clearly specifies that no possession was taken by the respondents in terms of the said Act of 1894. The compensation also has not been paid nor deposited. In such circumstances, as

both the conditions as specified in Section 24 of the Acquisition Act of 2013 have been satisfied, the consequences mentioned therein would, naturally, flow in favour of the petitioner herein. The contention of the learned Advocate General appearing for the respondents that the respondents were always willing to pay the compensation would not defeat the rigour as provided in Section 24 of the Acquisition Act of 2013 to the effect that the proceedings have lapsed.

11. As far as the remaining reliefs sought by the petitioner, the question of granting such reliefs in the present writ petition under Article 226 of the Constitution of India would not at all be justified. The petitioner, if so advised, may claim such relief, if he is so entitled, in accordance with law.

12. In view of the above, we pass the following :

O R D E R

- (I) The proceedings for acquisition, initiated by the respondents qua the land of the petitioner surveyed under No.112/0, admeasuring 1720 sq. metres of Village Morjim, Pernem Taluka only, stands lapsed, with all legal consequences, in terms of Section 24 of the Acquisition Act of 2013.
- (II) Rule is made absolute in the above terms.
- (II) No costs.

PRITHVIRAJ K. CHAVAN, J.

F.M. REIS, J.

ssm