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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2281 OF 2014

Mr. Vijay Sadashiv Yadav & Ors. … Petitioners.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. V.S. Talkute for the Petitioners.

Mr. Vikas Mali, Asstt. Govt. Pleader for the Respondent – State.

CORAM : DR. MANJULA CHELLUR,C.J. &
N.M. JAMDAR, J.

DATE : AUGUST 02, 2017.

<u>*P.C.*</u> :-

The Petitioners have approached this Court by way of this Writ Petition under Article 226 of the Constitution of India. Though various reliefs have been sought, the Petitioners have restricted the Petition to the following prayer :-

> *"a(i) This Hon'ble Court be pleased to declare that proceedings pertaining to the acquisition of land in respect of Lands bearing Gat Nos. 204, 517, 274, 527, 578 and 247 situated at Village : Shirgaon, Tal. Karad, District : Satara, be deemed to have lapsed 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."*

2. Heard Mr. Talkute, learned Advocate for the Petitioners and Mr. Mali, Asstt. Govt. Pleader for the Respondent - State.

3. A Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 30 April 1998. A declaration under Section 6 of the Act of 1894 was published on 7 April 1999. The Award in respect of the lands was passed on 31 January 2001. The relief sought for by the Petitioners is on Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Three parameters are indicated in Section 24(2) of the Act of 2013. First, the award should have been published five years prior to the date of commencement of the Act, which date is 1 January 2014. Second, the physical possession of the land is not taken. Third, the compensation is not paid. Since the Award is declared on 31 January 2001, the first criteria for application of Section 24(2) of the Act of 2013 is satisfied since the Award is rendered five years prior to 1 January 2014.

4. As regard the aspect of possession, the Petitioners and the Respondent – State, have put forth their rival case. The Petitioners have contended that they still continue in possession. On behalf of the State, reply affidavits have been filed asserting that the possession of the lands have been taken over by the State for the purpose of allotting the same for resettlement of Tarali Project

Affected Persons. Having considered the rival contentions, we find that the factum of possession in the present case is a seriously disputed question of fact and on the basis of material before us, it is not possible for us to conclude this aspect.

5. There is however one more ground pressed in service by the Petitioners in furtherance of their contention that the acquisition proceedings have lapsed under Section 24(2) of the Act of 2013. That is, the compensation has not been paid to the Petitioners. In the case of *Santosh Dnyaneshwar Aher v/s. State of Maharashtra Through its Secretary & Ors.*[1], Division Bench of this Court has taken a view that for application of Section 24(2) of the Act of 2013, it is enough that either of the contingencies specified therein exist. That is, the possession of the land is not taken or compensation is not paid. This position is made clear by the Apex Court in the case of *Delhi Development Authority v/s. Sukhbir Singh and Ors.*[2].

6. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt by the Apex Court in the cases of *Pune Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors.*[3] and *Delhi Development Authority v/s. Sukhbir Singh and Ors.* The Apex Court analyzed the provisions of Section 24 of the

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

3. 2014(4) Mh. L.J.566

Act of 2013 and Section 31 of the Act of 1894. It was held that Section 31(2) of the Act of 1894, which envisages deposit of the compensation in the Court, is a mandatory provision. As per Section 31(2) of the Act of 1894, if the compensation is not accepted or collected by the claimant, the compensation has to be deposited by the Collector in the Court where the reference can be made under Section 18 of the Act of 1894. The Apex Court laid down that if the compensation is not paid as per Section 31(2) of the Act of 1894, then Section 24(2) of the Act of 2013 is attracted and consequences of lapsing of acquisition contemplated under Section 24(2) of the Act of 2013, will ensue.

7. On behalf of the State an affidavit in reply is filed on 3 June 2017 by Vaishali Indani-Untwal, Deputy Collector, Satara. It is stated as under :-

> *"(9) I say that, the Divisional Commissioner has deleted land admeasuring 4-H and 46-H out of land Gat No.204, because possession of the said land was not taken. The State Government has accepted that decision. As regards rest of the lands, the possession has been taken <u>and the amount of compensation has been deposited in the Court u/s. 31 of the Land Acquisition Act, 1894.</u> Hereto annexed and marked as ANNEXURE 'R-1' are the copies of the 7/12 extracts of the land under Acquisition. Hereto annexed and marked as ANNEXURE 'R-2' is the copy of the proof indicating the deposit of the amount in Court.*

Upon a query to the learned Assistant Government Pleader as to when the compensation was deposited, the learned Assistant Government Pleader referred to Annexure 'R-2' to the affidavit in reply and informed that the compensation was deposited in the court on 9 March 2017.

8. A question then arises is whether the deposit of compensation in the court as per Section 31(1) of the Act of 1894, after 1 January 2014 would save the acquisition proceedings from lapsing. For this purpose the scheme and object of Section 24(2) of the Act of 2013 will have to analyzed. Section 24(2) of the Act of 2013 reads thus :-

> *"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases -*
>
> *(1) …………*
>
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 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 landholdings 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."

The Section 24(2) refers to an Award under Section 11 and it indicates a date for the purpose of computing the five years. The relevant date is the date on which the Act of 2013 was brought into force, i.e. 1 January 2014. Section 24(2) declares that the acquisition proceedings will lapse, when the factual position indicated therein is established.

9. As indicated in the Statement of Objects and Reasons, the Act of 2013 was enacted to replace the Act of 1894 in view of the hardships faced by the landholders, and several other lacunas under the regime of the Act of 1894. The Act of 2013 seeks to achieve a balance between the two competing aims. That is, the need to acquire the lands for larger public good on one hand and the rights of the landholders, on the other. Section 24(2) remedies the injustice meted out to those landholders, whose land, inspite of the award passed five years prior to 1 January 2014, is not taken possession of or compensation is not been paid to them as per law.

The legislature has thought it fit to incorporate a deeming provision in the form of Section 24(2) to remove the hardship caused to such land owners due to the inaction of the executive. Once the parameters indicated in Section 24(2) of the Act of 2013 are satisfied, the acquisition proceedings are deemed to lapse. Thus a right to seek a declaration of lapsing was conferred on the landholders who were victims of the executive inaction, when the Act was brought in force on 1 January 2014. Therefore, the position as on 1 January 2014 will be of relevance for the deeming provision to operate. Even if the compensation is deposited subsequently, the fact will remain that as on 1 January 2014, for more than five years after the award, compensation was not paid. Subsequent deposit will not alter the position as it existed as on 1 January 2014. The lapsing under Section 24(2) occurs by the operation of law and it cannot be revived by the subsequent action of the deposit of compensation. In the circumstances, even if the compensation is deposited after 1 January 2014, it will make no difference for the purpose of Section 24(2) of the Act of 2013.

10. In the case at hand the amount of compensation has been deposited in the court on 9 March 2017. The Writ Petition is filed on 15 January 2014. The amendment to incorporate the prayer regarding Section 24(2) of the Act of 2013 was carried out on 17 December 2016 and thereafter, prior to filing the reply on 3 June

2017, compensation was deposited in the Court on 9 March 2017. Thus it is clear from the affidavit in reply that, as on 1 January 2014, no compensation was paid to the Petitioners.

11. The Petitioners therefore will be entitled to a declaration that the land acquisition proceedings have lapsed by virtue of Section 24(2) of the Act of 2013.

12. Accordingly, the Writ Petition is allowed in terms of prayer clause a(i). No order as to costs.

(N.M. JAMDAR, J.) *CHIEF JUSTICE*