

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5106 OF 2017.

Shri. Manik Namdeo Aware & Anr.

..Petitioners

V/s.

State of Maharashtra & Ors.

..Respondents

Mr. Dilip Bodake for the Petitioners.

Mrs. M.P. Thakur, AGP for Respondents- the State.

**CORAM : DR.MANJULA CHELLUR, CJ &
M.S. SONAK, J.**

DATE : 20th NOVEMBER 2017

ORAL ORDER:

1. Rule.

2. With the consent of and at the request of learned counsel for the parties, the Rule is made returnable forthwith.

3. The present land acquisition proceedings are with respect to the land bearing Gat No. 196 admeasuring 19 R, Gat No. 197 admeasuring 63 R and Gat No. 198 admeasuring 7 R situated at Village-Narkhed, Tal-Mohol, Dist-Solapur (the said property). The said property was acquired for the purpose of construction of the

bridge on Sina River near Malikpeth village on Mohol-Vairag State Highway No. 74. The Petitioners have sought relief under Sec 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the 2013 Act).

4. A declaration u/sec 6 of the Land Acquisition Act, 1894 (the 1894 Act) was published vide order dated 04/10/2000 and was subsequently published in the Government Gazette Part I dated 12/10/2000 at page 2189/2190. Thereafter, the Respondent No. 4 issued notices under Sec 9 of the 1894 Act. A final award was passed on 26/03/2002 awarding the compensation of Rs. 12,540/- towards the land bearing Gat No. 196 admeasuring 19 R, Rs. 41, 580/- towards the land bearing Gat No. 197 admeasuring 63 R, Rs. 4,620/- towards the land bearing Gat No. 198 admeasuring 7 R, total being Rs. 58,740/-. A notice dated 11/07/2002 was served upon the Petitioners thereby intimating them about passing of the award.

5. The Petitioners have submitted application dated 23/11/2016 to the Special Land Acquisition Officer no. 7, Mohol and sought information about the payment of the compensation of their

acquired land as per the final award. The Respondent No. 7 has replied through letter dated 24/11/2016 and stated that the compensation amount of the acquired land is lying in the PDPLA account of the office of Special Land Acquisition Officer No. 7, Mohol.

6. The present writ petition was filed contending that the acquisition proceedings have lapsed in view of Section 24 (2) of the Act of 2013 on the ground that the compensation has not been paid.

7. Reply were filed by the Respondent no. 1 to 4.

8. We have heard Mr. Dilip Bodake, learned counsel for the Petitioners and Mrs. M.P.Thakur, learned AGP for the State.

9. Sec 24 (2) of the Act of 2013 is enacted as under :-

“24. Land acquisition process under Act No. 1 of 1894 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 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.

10. Three parameters are indicated in Section 24(2) of the Act of 2013. First, the award should be published five years prior to the date of commencement of the Act, which date is 1st January, 2014. Second, the physical possession of the land is not taken. Third, the compensation is not paid. In the case of **Santosh Dnyaneshwar Aher v/s. State of Maharashtra, Through the Secretary & Ors (Writ Petition No. 3238 of 2014)**, the Division Bench of this Court has taken a view that for applicability of Section 24(2) of the Act of 2013, it is enough that either of the above contingencies exist. That

is, physical possession of the land is not taken or the compensation is not paid. This position is amply made clear by the Apex Court in the case of *Delhi Development Authority v/s Sukhbir Singh and Ors. (AIR 2016 SCC 4275)*.

11. As far as the aspect of the possession is concerned, it is asserted by the Respondent No. 1 to 4 in their affidavit-in-reply dated 28th July, 2017, in para 3, that pursuant to the said award dated 26/03/2002, unilateral possession, free from any encumbrances of the said property was taken from the Petitioners and the same has been handed over to the acquiring body on 30/12/2003. The copies of the Panchnama and Kabjepavati dated 30/12/2003 has been placed in record as Exhibit 'C'. This is considered to be a valid possession in accordance with the view of the Apex Court in the case of *Velaxan Kumar v/s. Union of India and Ors. (2015 (4) SCC 325)*.

12. Even if the possession of the said property is taken by the Respondent – State, the Petitioners are entitled to succeed yet on another ground. That is, the non-payment of compensation. In the present case, it is the stand of the Respondents that the Petitioners have not accepted the amount of compensation and the same is

deposited in the Personal Deposit and Personal Ledger Account.

13. The aspect of compensation regards Section 24(2) of the Act of 2013 has been dealt with by the Apex Court in the case of ***Pune Municipal Corporation and Anr. V/s Harakhchand Misirimal Solanki and Ors. (2014 (4) Mh.L.J. 566)*** and Delhi Development Authority v/s Sukhbir Singh & Ors. The Apex Court analyzed the provisions of Section 24 of the Act of 2013 and Section 31 of the Act of 1894. The Apex Court held that Section 31(2) of the Act of 1894, which envisages deposit of compensation in the Court, is a mandatory provision. The Apex Court construed the phrase “compensation has not been paid” occurring in Section 24(2) of the Act of 2013 as meaning that it is not paid as per Section 31(2) of the Act of 1894. The Apex Court has 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. This dicta has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court. It is not necessary to multiply references.

14. In the affidavit-in-reply dated 28th July, 2017 filed by the Land Acquisition Officer No. 7, it has been stated in para 4 that the compensation amount has been deposited in Personal Deposit and Personal Ledger Account.

15. That the deposit of amount of compensation in Personal Deposit and Personal Ledger Account is not compensation 'paid' as envisaged under Section 24(2) of the Act of 2013. It is a settled position of law in view of the decision of the Apex Court in the case of *Pune Municipal Corporation and Anr. V/s. Harakhchand Misirimal Solanki and Ors.*

16. In the result, since it is an admitted position that the amount of compensation has not been paid as per the mandate of Section 24(2) of the Act of 2013, the Petitioners are entitled to a declaration that the acquisition proceedings initiated in respect of land in question have lapsed in view of Section 24(2) of the Act of 2013.

17. The Petition is allowed. It is declared that the acquisition proceedings in respect of land bearing Gat No.196 admeasuring 19 R, Gat No. 197 admeasuring 63 R, Gat No. 198 admeasuring 7 R situated at Village – Narkhed, Tal – Mohol, Dist : Solapur stands

lapsed in view of Section 24(2) of the Act of 2013. Further, the respondents are directed to reinitiate the acquisition proceedings and to acquire the said property under the 2013 Act. The acquisition proceedings is to be completed within a period of one year from today.

18. Rule is made absolute in above terms. There shall however, be no order as to costs.

(M.S.SONAK, J.)

(CHIEF JUSTICE)

Vijaya/Dinesh