Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10881 OF 2014

Mr.Ganesh Keshav Jog -
since deceased)
Through LRs. … Petitioner.

V/s.

The Divisional Commissioner,
Pune Division, Pune and others. … Respondents.

Along with
WRIT PETITION NO. 10937 OF 2015

Mr.Bajirao Kisan Daundkar and others. … Petitioners.

V/s.

The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11843 OF 2015

Mr.Kisan Vishram Kad. … Petitioners.

V/s.

The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11844 OF 2015

Ms.Droupadabai Uttam Shelke and others. … Petitioners.

V/s.

The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 9233 OF 2014

Mr.Kantaram Bhausaheb Kad and others. … Petitioners.

V/s.

The State of Maharashtra and others. … Respondents.

Along with

WRIT PETITION NO. 12588 OF 2015

Mr.Maruti Ganpat Amle
Through POA- Mr.Ashok … Petitioners.

V/s.

The State of Maharashtra and others. … Respondents.

With

Civil Application No. 1651 of 2017

in

WRIT PETITION NO. 12588 OF 2015

Mr.Maruti Ganpat Amle
(Since decd.) Through LRs. … Applicants.

V/s.

The State of Maharashtra and others. … Respondents.

With

Civil Application (St.) No. 21046 of 2017

in

WRIT PETITION NO. 12588 OF 2015

Mr.Maruti Ganpat Amle
(Since decd.) Through LRs.
-Gopal M. Amle … Applicants.

V/s.

The State of Maharashtra and others. … Respondents.

Along with

WRIT PETITION NO. 1027 OF 2016

Mr.Baban Rambhau Mohite. … Petitioner.

V/s.

The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 1028 OF 2016

Mr.Rajaram Ananda Mohite and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 1030 OF 2016

Mr.Balasaheb Bhau Jadhav and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2786 OF 2016

Mr.Laxman Gajanan Mohite and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2788 OF 2016
with
CIVIL APPLICATION NO. 1135 OF 2017

Mr.Gorakh Vasant Hargude and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2785 OF 2016

Mr.Sukhdeo Murha Darekar and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2790 OF 2016

Mr.Rambhau Baban Hargude. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2784 OF 2016

Mr.Sitaram Sopana Darekar. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2787 OF 2016

Mr.Devchand Laxman Hargude. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 2789 OF 2016

Mr.Namdeo Sakharam Darekar and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Mr.Manoj Patil i/b Ms.Suman Lengare, for the Petitioner in W.P. No.10881 of 2014.

Mr.Suresh Sabrad, for Petitioner in W.P. No.1027, 1028 and 1030 of 2016; W.P. No. 2784 to W.P. No.2790 of 2016; W.P. No.3554 of 2016; W.P. No.9233 of 2014; W.P. No.10937 of 2015; W.P. No.11843 and 11844 of 2015; W.P. No.12580 of 2015; W.P. No.12588 of 2015.

Mr.S.R.Nargolkar i/b Mr.Omkar Amberkar, for Petitioners.

Mr.A.B.Vagyani – GP a/w Mr.P.G.Sawant – AGP a/w Ms.Geetanjali Golatkar – AAGP & Mr.Rohan Sawant – AAGP, for Respondent - State.

Mr.Saurabh Kurade i/b Mr.Vijay Patil, for Respondent No.6 in W.P. No.10881 of 2014.

Mr.Abhijit Singh i/b Ms.Pallavi Potnis, for Respondent Nos.12A, 12B, 12D & 12E & 13 in W.P. No.10881 of 2014.

Mr.Ashish Pawar, for Respondent Nos.4 & 5 to 7, in W.P. No.2784 of 2016.

Mr.Prashant Darandale, for Respondent No.4 in W.P. No.2786 of 2016.

Mr.Vilas Tapkir, for Respondent No.4 in W.P. No.2787 of 2016.

Mr.P.S.Dani – Senior Advocate a/w Mr.Aditya Shiralkar i/b Prime Legem, for Respondent No.4 in W.P. No.2788 of 2016.

Mr.S.S.Kanetkar, for Respondent Nos.5 and 6 inW.P. No.2789 of 2016.

Mr.K.D.Bhosale, for Respondent No.5 in W.P. No.9233 of 2014.

Mr.Abhijit Singh i/b Ms.Pallavi Potnis, for Respondent Nos.4(1) & 4(2) in W.P. No.11843 of 2015.

Mr.Madhav J.Jamdar, for Respondent No.13 in W.P. No.12580 of 2015.

Mr.Vivek Salunkhe, for Respondent Nos.10, 11, 35, 36, 38 to 40, 41 & 42 in W.P. No.12588 of 2015.

Mr.Drupad Patil, for Respondent Nos.18 to 31 in W.P. No.12588 of 2015.

Mr.Pramod Pawar, for Respondent Nos.15 & 16 & 35.

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

DATE : OCTOBER 3, 2017.

P.C. :-

In this group of matters, since a common question of law arises, identical facts are involved and the reliefs claimed is the same, by consent of learned counsel for the parties, the Petitions are disposed of by this common order. The learned counsel for the parties have also advanced common submissions.

2. The Petitioners have filed the Petitions under Article 226 of Constitution of India seeking relief under section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013'). They seek a declaration that acquisition proceedings have lapsed.

3. The lands involved in these Petitions have been acquired

under the Land Acquisition Act, 1894 for the resettlement of project affected persons. The resettlement of project affected persons is carried out under the provisions of Maharashtra Project Affected Persons Rehabilitation Act 1999. Notifications under section 4 of the Land Acquisition Act, 1894 were issued, thereafter followed by declaration under section 6 of the Land Acquisition Act, Awards in all these proceedings were declared five years prior to 1 January 2014.

4. Since relief is sought under section 24(2) of the Act of 2013, it will be necessary to reproduce the said section for ready reference-

5. 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."*

Thus, 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 1 January 2014. Second, the physical possession of the land is not taken. Third, the compensation is not paid. Though the awards in these matters have been passed some years ago that the provision of section 24(2) providing for deemed lapse of acquisition was introduced only on 1 January 2014 thereafter the Petitioners have sought declarations based on this deeming provision.

6. In all the Petitions, the State has asserted that State has taken possession of the lands in question and that possession has been handed over to project affected persons.

7. 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 exist. That

1. Writ Petition No. 3238 of 2015 dtd 17/01/2017

is, the possession of the land is not taken or 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.*[2].

8. In all these proceedings, the State has either filed affidavits or has placed a chart on record which has been counter signed by the learned Additional Government Pleader. These documents show that the compensation has not been paid to the Petitioners and the same is deposited in Personal Ledger Account or Revenue Account. It is an admitted position that in none of these petitions, compensation has been deposited in the court where reference under section 18 of Land Acquisition Act will lie.

9. 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 provision of Section 24 of the 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 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

2. AIR 2016 SCC 4275.

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

Section 18 of the Act of 1894. The Apex Court construed the phrase "compensation has not been *paid*" occurring in Section 24(2) of the Act of 2013 as being "paid" as per Section 31(2) 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.

10. In the result, the contention of the Petitioners that the land acquisition proceedings have lapsed since the compensation is not paid as per Section 24(2) of the Act of 2013, will have to be upheld.

11. We have been hearing this group of matters along with several other petitions wherein by virtue of the position of law as it stands today we would have to declare acquisition proceedings having lapsed. Considering the implications of such large number of orders, we had, from time to time, called upon the State to formulate a scheme to address the consequences that may ensue from such declarations. In the order passed on the last occasion, we had recorded the statement of the learned Government Pleader that no immediate commitment can be given to the Court. We cannot keep deferring the declarations, hence the Petitions were taken for disposal.

12. We make it clear that, though we have declared that the

acquisition proceedings in each of these petitions have lapsed, we have not relieved the State from its statutory obligation under the Maharashtra Project Affected Persons Rehabilitation Act, 1999. The State will therefore, have to evolve a methodology to counterbalance the interest of all concerned in each of these Petitions by taking remedial measures. Since the State has put project affected person in possession, it will be highly inequitable to direct restoration of possession of the lands to the Petitioner. This view is taken by the Apex Court in the case of *Antevorta Developers Private Limited Vs The Principal Secretary to the Government of Maharashtra – Civil Appeal No.8593 of 2017* . In such cases the State will pay the compensation to the Petitioner by taking necessary steps under the Act of 2013. This State shall do within period of one year from today.

13. Accordingly, Writ petitions are allowed holding that the Land Acquisition proceedings in respect of the lands in question have lapsed by virtue of section 24(2) of the Act of 2013. It is directed that the project affected persons who are already put in possession their possession shall not be disturbed and the State shall take necessary steps as indicated above for acquisition of the land and payment of compensation under Act of 2013, within period of one year from today.

14. Writ Petitions are disposed of in above terms. No order as to costs.

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