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

WRIT PETITION NO. 1363 OF 2016

Mr.Eknath Krishna Kharat

... Petitioner.

V/s.

State of Maharashtra & Ors.

... Respondents.

Mr.Draupad Patil, for the Petitioner.

Ms.M.P.Thakur, Asstt. Govt. Pleader for the Respondent – State.

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

DATE : AUGUST 2, 2017.

P.C. :-

The Petitioner has filed the present Petition for the following reliefs :-

(a) This Hon'ble Court be pleased to declare that the acquisition of land admeasuring 1-H 61R bearing Gat No.21/3 situated at village Tirakwadi, Taluka Phalton, District Satara made under Award dated 30.4.2000 has lapsed under the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(b) This Hon'ble Court be pleased to issue Writ of Certiorari or any other writ, order or direction in the nature of Writ of certiorari thereby quashing and setting aside the impugned Award dated 30.4.2000 passed by the Special Land Acquisition Officer, Satara, Respondent No.4 herein, to the extent of land bearing Gat No.21/3 admeasuring 1H, 61R situated at Village Tirakwadi, Taluka Phaltan, District Satara being Exh.T to this Writ Petition;

2. Heard Mr.Drupad Patil, learned Counsel for the Petitioner and Ms. Thakur, Asstt. Govt. Pleader for the Respondents.

3. After the notification under Section 4 and 6 of the Land Acquisition Act, 1894 were issued, the Award was declared on 27 February 1999.

4. It is the contention of the Petitioner that the land acquisition proceedings have lapsed in view of Section Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is contended that since the possession of the land in question is still with the Petitioner and the compensation is not paid, by virtue of Section 24(2) of the Act of 2013, the acquisition has lapsed.

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 subsection (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.

6. On the aspect of possession, we find material is produced on both the sides. The Petitioner has asserted that he is in possession

of the property, while the Respondents – authorities have asserted that the possession was taken and relevant entries were also made. Considering the submissions, we find that in the present case the factum of possession is a seriously disputed question of fact and it is not possible for us under Article 226 of the Constitution of India, to finally conclude on this issue.

7. However, there is another ground on which relief is sought by the Petitioner, that is non-payment of compensation. 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

8. 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*

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

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

Ors. The Apex Court analyzed the provisions 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 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 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. This view has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

9. It has been stated in the affidavit in reply filed by Ms.Arati Bhosale, Deputy Collector, Satara on behalf of the State that the compensation has been deposited in the Personal Ledger Account. The compensation therefore is not deposited in the Court where reference under Section 18 of the Act of 1894 would lie.

10. In the result, since it is an admitted position that the

amount of compensation has not been paid as per the mandate of Section 31(2) of the Act of 1894, the Petitioner is entitled to a declaration that the land acquisition proceedings initiated in respect of the land in question have lapsed in view of Section 24(2) of the Act of 2013.

11. Accordingly, the Writ Petition is allowed directing that the acquisition proceedings in respect of the land in question have lapsed in view of Section 24(2) of the Act of 2013. No order as to costs.

(N.M. JAMDAR, J.)

CHIEF JUSTICE