

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2527 OF 2014

Shri Mobin Aarif Kalyani .. Petitioner
V/s
The Solapur Municipal Corporation
and others .. Respondents

...

Mr.Madhav Jamdar with Mr.Sushil Inamdar, Advocate for the petitioner.

Mr.Amarnath Boddhul i/b Mr.D.G. Dhanvre, Advocate for respondent no.1.

Ms.S.S.Bhende, AGP for the Respondent State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATED: 8th FEBRUARY, 2017

P.C.:-

1 Petitioner is before us mainly contending that physical possession of the land belonging to him which was acquired, still remains with him. In order to substantiate this fact, he produced certain photographs to contend that the land is not utilized, and is kept vacant as it was, when paper possession was recorded way back in the year 1997. According to him, along with sub-section (2) of Section 24, Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “2013 Act”) has to be read in

Tilak

order to appreciate his contention. He also refers to Section 16 of the Land Acquisition Act, 1894.

2 On perusal of the records, we notice that land in Gat No.13/1A admeasuring 2 hectares 47 ares, situated at Mulegaon Tanda, Taluka South Solapur, District Solapur, of the petitioner came to be acquired. The purpose for which it was acquired was to establish a slaughter house with all modern facilities. Exhibit-C at page 35 is a document with the heading '*Tamba Pavti*' i.e. possession receipt which is placed on record. As per this document on 30th January 1997, in the presence of the petitioner, the Special Land Acquisition Officer and the owner of the property – the petitioner, this document came to be reduced to writing. The signature of the petitioner finds place in this document. The document refers to taking possession of the above said land from the petitioner which was the subject matter of award in the proceedings under the Land Acquisition Act, 1894.

3 Admittedly, the acquisition was in pursuance of the 1894 enactment. The claim of the petitioner is under 2013 Act which has come into force with effect from 1st January 2014. Sub-section (2) of Section 24 of the 2013 Act deals with the consequences of non-passing of an award u/s.11 of the Repealed Land Acquisition Act and also the consequences of non payment of compensation, or non taking of physical possession of the land within certain period prior to the commencement of this enactment i.e. 1st January 2014. We are concerned with one of the provisions of sub-section (2) of Section 24 of the 2013 Act which

refers to consequences of not taking physical possession of the land where an award u/s.11 has been made 5 years or more prior to the commencement of the 2013 Act.

4 Apparently, the possession receipt refers to 1997. The new Act of 2013 has come into force with effect from 1st January 2014. So far as this condition, may be 5 years or more period does exist between the commencement of the Act and the date of the award when we come to crucial contention upon which the petitioner seeks quashing of the entire acquisition proceedings i.e. physical possession of the land, whether Exhibit-C at page 35 can be taken into consideration as a document certifying or establishing taking physical possession of the property? So far as landed properties or immovable properties, there cannot be factual physical possession of the property like a movable property. In order to understand physical possession of immovable property *vis-a-vis* of the authority or an individual, one has to understand who is in control of this immovable property, or who has the management of the property in question. On 30th January 1997, possession receipt indicating that the petitioner has handed over possession of the land acquired under the award to the concerned authority is recorded. Presumption lies with the contents of the document i.e. possession was handed over on 30th January 1997. In order to rebut this factum of possession being handed over, no other material substantiating the contention of the petitioner is forthcoming. On the other hand, 7/12 extract at page 32 clearly indicate that the land vests with the Solapur Municipal Corporation on handing over physical possession of the property.

In order to rebut this material on record, the petitioner must be able to show that in spite of it, he is in physical possession of the property and possession receipt at page 35 is only a formal possession receipt without taking physical possession.

5 It is also relevant to mention that possession receipt is recorded on 30th January 1997. On the ground of holding physical possession of the property till now, the writ petition came to be filed almost 13 years after the possession receipt. Delay and laches also go against the interest of the petitioner.

6 We do not find any active control or management of the petitioner over this property which was the subject-matter of award, subsequent to 1997. In that view of the matter, in the absence of any material supporting the contention of the petitioner that in spite of possession receipt, he continued to be in physical possession of the property, thereby no physical possession of the land was handed over to the concerned authority in terms of possession receipt which is at Exhibit-C (page 35), cannot be believed/accepted.

7 We cannot appreciate the stand of the petitioner before us. On the one hand, the contents of possession receipt, which is at Exhibit-C do not indicate that it was a formal possession certificate recorded, but on the other hand, it connotes handing over physical possession of the property. In that view of the matter, we are of the opinion that we cannot extend the benefit of sub-section (2) of Section 24 of the 2013 Act.

8 So far as the contention of the petitioner that Section 101 also has to be read along with sub-section (2) of section 24 of the 2013 Act, according to us, this cannot go along with Section 24, and Section 101 refers only to what are the consequences of non-utilizing the acquired land for a period of 5 years from the date of taking over possession in respect of the land i.e. the land acquired under the 2013 Act. Apparently, the land was not acquired under the 2013 Act, but was acquired under the Land Acquisition Act, 1894. Therefore, section 101 will not be applicable to the facts of the present case.

9 Accordingly, petition is dismissed.

(G.S.KULKARNI, J)

(CHIEF JUSTICE)