

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CIVIL APPELLATE JURISDICTION***

**WRIT PETITION NO.1654 OF 2014**

|                                        |   |                 |
|----------------------------------------|---|-----------------|
| Noor Mohmad Ibrahim Mulla              | ] |                 |
| (Since Deceased) by LR                 | ] |                 |
| Aurangzeb Noor Mohamad Mulla & Ors.    | ] | ... Petitioner  |
| Versus                                 |   |                 |
| Special Land Acquisition Officer No.5, | ] |                 |
| Sangli, & Ors.                         | ] | ... Respondents |

Mr. Tejpal Ingale a/w Mr. Nikhil Pawar for Petitioners.  
 Ms. Neha Bhide, 'B' Panel Special Counsel for State.  
 Mr. Shridhar Patil for Respondent No.6.

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

**DATE :- FEBRUARY 08, 2017**

**P. C. :-**

1. The subject-matter in this Writ Petition present before us involves Survey No.26/1 admeasuring O-H 31R situate at Shirala, Dist. Sangli. Way back in the year 1990, respondent no.5 - APMC Islampur, Dist. Sangli, had acquired the adjacent land bearing Survey No.24/2 admeasuring about O-H 89R for establishing a Cattle Market at Shirala. Apart from the said land, there is already a land bearing Survey No.56 admeasuring O-H 75R kept reserved for a Cattle Market at Shirala by Grampanchayat, Shirala, which is also very near to the subject land. However, none of these lands were put to use for Cattle Market at Shirala since no Cattle Market is held at Shirala. There was a proposal for acquisition of these lands in 1990 by APMC, Shirala, which came to be dropped by the Government on 12/08/1993.

2. Therefore, acquisition proceedings so far as the land in question came to be initiated by a notification dated 17/02/1999 under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') wherein the beneficiary was shown as respondent nos.5 and 6 in respect of the present land for establishment of a Cattle Market. It is not in dispute that a show cause notice seeking objections, if any, from the owners came to be issued and the same came to be considered and thereafter they proceeded with the notification under Section 6(1) of the Act confirming the requirement of the land in question for the public purpose. This happened in the year 2000. On 13/09/2000, Writ Petition No.4828 of 2000 challenging the acquisition on the ground of suitability of the land, came to be dismissed. However, there was no appeal against the said order of dismissal.

3. On 17/11/2000, the petitioners filed an application under Section 48(1) of the Act before the Additional Commissioner, Pune Division, for deletion of land from the acquisition. On 01/12/2000, the Additional Commissioner granted stay only in respect of obtaining possession of the land from the petitioners until further orders. The said proceeding filed under Section 48(1) of the Act came to be disposed of on 15/01/2014. It is not in dispute that from 15/01/2014, the petitioner continues to be in possession of the land till date even after vacating the said order.

4. During the pendency of the proceedings, on 21/05/2000, the Additional Commissioner appointed a Court Commissioner to carry out inspection of the site. The Court Commissioner carried out inspection on 22/06/2000 and submitted his report on 23/07/2000 stating that in adjoining land Survey No.24/2 acquired for Cattle Market which was kept open, at no point of time, any Cattle Market was held in the said area and the Grampanchayat, Shirala, had already kept reserved land admeasuring 75R in Survey No.56B for Cattle Market. Ultimately, the application filed under Section 48(1) of the Act came to be rejected on 15/01/2014, as stated above, opining that there was no finality to the acquisition proceedings. Therefore, the deletion of the land from acquisition could not be considered. Now the said order has become final. During the pendency of the proceedings so far as the application under Section 48(1) of the Act is concerned, there was correspondence between different authorities which is evident from pages 61 onwards of the present Writ Petition which clearly indicate that possession of the property remained with the petitioner during the pendency of proceedings on application filed under Section 48(1) of the Act.

5. One more relevant fact to be considered is deposit of amount towards the compensation to be deposited by the concerned APMC authority. The intense correspondence between them shows that APMC, Shirala, did not deposit the compensation amount. However, the explanation now offered is that though they were

willing to deposit but a stay order was granted by the Divisional Commissioner not to take possession of the property which came in the way of such deposit. This is what they have referred to in para 6 of the affidavit-in-reply. Whether the stay order, so far as taking over possession, would come in the way of depositing the money, would be dealt with later on.

6. As on today, the petitioners seek the following reliefs :-

“a) *Rule be issued and record and proceedings be called for*

b) *That this Hon'ble Court be pleased to issue any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India;*

(i) *to quash and set aside impugned Award dated 31/10/2001 passed by the Respondent no.1 Spl. Land Acquisition Officer u/s. 11 of L.A. Act in respect of Petitioners land bearing Gat No.26/01 admeasuring 0-H 31R situated at Shirala Dist-Sangli;*

(ii) *to hold and declare that the acquisition proceeding initiated by Respondent No.1 by Spl. Land Acquisition Officer in respect of Petitioners land bearing Gat no.26/01 admeasuring 0-H 31R situated at Shirala Dist-Sangli has lapsed in view of provisions u/s. 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition,*

*Rehabilitation and Resettlement Act, 2013;*

- (iii) to hold and declare that the land acquisition proceeding bearing no.SLAQ-5/LAQ/SR/17/ 91 and the Award dated 31/10/2001 passed U/s. 11 of the L. A. Act , 1894 has also lapsed in view of provisions under 11-1 of said act;*
- (iv) to quash and set aside the impugned judgment and order dated 15/01/2014 passed by Addl. Commissioner Pune Division, Pune the Respondent No.3 in proceeding bearing No.LAQ/RR-2/Appeal/4/2000 rejecting Application and request u/s. 48 (1) of the L. A. Act, 1894 for deleting the Petitioners Land under acquisition;*
- c) Pending the hearing and final disposal of this Writ Petition, all further Proceeding in pursuance of the impugned Award dated 31/10/2001 passed u/s. 11 of the L. A. Act in respect of Petitioners land bearing Gat no.26/01 admeasuring 0-H 31R situated at Shirala Dist-Sangli be kindly stayed;*
- d) Pending the hearing and final disposal of this Writ Petition the Respondents or through their agents and servants be restrained by an order of injunction restraining them from securing possession of the Petitioners notified land bearing Gat no.26/01 admeasuring 0-H 31R situated at Shirala Dist-Sangli.*

*f) This writ petition be allowed with cost by granting any other just and consequential relief in favour of the Petitioners as this Hon'ble Court deem it fit and proper.”*

7. As a consequence of not taking possession of the property and non-payment of compensation in terms of sub-Section 2 of Section 24 of the 2013 Act, apparently, since the Award came to be passed on 31/10/2001 under Section 11 of the Act, except stay not to take possession, there was no other stay working against respondent nos.5 and 6 not to deposit the money. Even if there were to be a stay, it was only not to take possession of the property, but nothing prevented respondent nos.5 and 6 from depositing the compensation amount under protest with the authorities concerned. However, the fact remains that till date, no such payment is made by the respondent authorities. In order to have the consequences of non-payment of compensation, one should not go into the details whether there was sufficient cause for the beneficiary to deposit or not. Even if the beneficiary were to deposit the said amount with the Land Acquisition Officer, by crediting the compensation amount to the treasury, the same cannot be treated as payment of compensation to the land losers unless and until such payment is deposited in terms of Section 31 of the Act of 1894. In the present case, we need not see whether the Land Acquisition Officer had an occasion to deposit the money in terms of Section 31 of the Act as beneficiary never deposited the said

amount though they kept on expressing their willingness to deposit the said amount.

8. Even if the beneficiary had deposited the said amount, whether the compensation is paid to the petitioner, is to be considered while the claim of the petitioners for the benefits arising under sub-section (2) of Section 24 of the Act of 2013 is to be considered. So far as consequences of non-payment of compensation amount in respect of deposit of the said money by the beneficiary into the treasury of the said Land Acquisition Officer, we refer to para nos.15 and 16 of the Judgment in the case of ***Pune Municipal Corporation & Anr. Vs. Harakchand Misrimal Solanki & Ors.***<sup>1</sup>. The consequences of non-payment under Section 31 of the Act came to be discussed at length in para 17 of the said Judgment which reads thus :

*“While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid." used in this subsection (Sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section*

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<sup>1</sup> Civil Application No.877 of 2014, Judgment dated January 24, 2014

*31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the Court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33."*

9. The consequences of non-compliance of statutory provision seeking Land Acquisition being expropriatory legislation also came to be discussed in para 18 by the Apex Court. In the present case, in order to extend the benefit of sub-Section (2) of Section 24 of the 2013 Act, we have to see whether there were any directions or orders of the Court which came in the way of payment of compensation to the petitioners. The Award is dated 31/10/2001. Section 24 (2) reads thus :-

*“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 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. The Award is made prior to 5 years before the Act of 2013 coming into force with effect from 01/01/2014. Even otherwise, in terms of observations in para 11 in the case of ***Sree Balaji Nagar Residential Association Vs. State of Tamul Nadu and Others***<sup>2</sup>, Their Lordships of the Supreme Court have opined that the period to be considered under Section 24(2) of the 2013 Act does not exclude any

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<sup>2</sup> (2015) 3 Supreme Court Cases 353

period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any Court.

11. In the present case, there was no stay for payment of compensation. However, the contention of the APMC in this case is that no occasion arose for them to deposit the amount because of the stay dated 01/12/2000 granted by the Divisional Commissioner, so far as possession of the property is concerned. There was no stay not to deposit the compensation amount. Once the compensation amount is not paid in terms of Section 24(2) of the 2013 Act, automatically the statutory consequences have to follow and in this case, we are of the opinion that both the grounds i.e. possession not being taken and compensation not being paid, do exist, as contended by the learned Counsel for the petitioners. Accordingly, the Writ Petition has to be allowed by opining that the acquisition of the land of the petitioners by the Award dated 31/10/2001 has lapsed for the above reasons.

12. Writ Petition is accordingly disposed of.

**(G. S. KULKARNI, J.)**

**(CHIEF JUSTICE)**