

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3002 OF 2015

Yashwant Parsram Shendarkar And Ors. ...Petitioners

Versus

The Collector, Kolhapur And Ors. ...Respondents

Mr.P.D.Dalvi, for the Petitioners.

Ms.S.S.Bhende, AGP for the State-Respondent Nos.1 to 4.

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

DATE : APRIL 12, 2017

P. C.

1. Initially the Writ Petition came to be filed contending that in view of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 coming into play, the entire acquisition proceedings have lapsed. Subsequent to filing of affidavit-in-reply, in the first instance, an amendment came to be made to the Writ Petition contending that from the date of publication of notification under Section 4 of the Land Acquisition Act, 1894 till the publication of notification under Section 6 of the Act of 1894, the gap is more than one year. An additional

affidavit came to be filed explaining all the dates by the Deputy Collector, Kolhapur.

2. On perusal of the record and hearing the submissions, the petitioners are before this Court in respect of the land at Gat No.58 admeasuring 0.46 ares and the land at Gat No.79 admeasuring 0.53 ares, both situated at Village Kine, Taluka Ajara, District Kolhapur. The land in question is said to have been acquired for the benefit of project affected persons. Initially, on 24 September 2009, Section 4 notice was issued, followed by a notice under Section 6 dated 25 November 2010. The award came to be declared on 20 July 2012. According to the petitioners, when they approached this Court, the possession was not taken over and this Court at the initial stage directed that even if the possession is taken over or not, the other steps that are taken during the pendency of the Writ Petition would be subject to outcome of the Writ Petition. However, so far as the compensation is concerned, till date, the amount is neither paid to the land losers nor deposited in terms of Section 31 of the 1894 Act. The petitioners have also contended that in the light of the provisions of Section 114 of the 2013 Act, the rights accrued to them for non compliance of the procedure under the 1894 Act, continue to enure to their benefit and same is acceptable.

3. Be that as it may, by amendment to the Writ Petition, the petitioners have brought additional grounds in support of their prayer for declaration of lapsing of the acquisition

proceedings. According to the petitioners, the time between the notification under Section 4(1) and Section 6(1) under the 1894 Act is more than one year. By filing additional affidavit-in-reply, in paragraph (3) at page 57 of the Writ Petition, it is stated that notification under Section 4 was issued on 24 September 2009, however, the notice was published on notice board at village Chavadi on 21 November 2009. According to the them, the final notification under Section 6 of the 1894 Act was issued by the respondents-authorities on 25 November 2010 and was published on notice board at Tahsil office and village Chavadi only on 10 December 2010. Even with this clarificatory affidavit, whether the respondents-authorities were competent to issue notice under Section 6 of the 1894 Act on 25 November 2010, since from the last publication of notice under Section 4 of the 1894 Act which was on 21 November 2009 at village Chavadi even then notification on 25 November 2010 is beyond one year. Therefore, it is hit by the provisions of sub-clause (ii) of the first proviso to sub-section (1) of Section 6 of the 1894 Act which clearly indicate that there cannot be any declaration in respect of any particular land covered by a notification under Section 4(1) of the 1894 Act, if it is made after the expiry of one year from the date of publication of the notification, so far Section 6 notice is concerned.

4. Under these circumstances, the very notification issued under Section 6 of the 1894 Act in the year 2010 is invalid and it cannot be a valid declaration under Section 6 of the 1894 Act. In

that view of the matter, all consequences of passing the award become irrelevant and the so called award passed in the year 2012 becomes non-est in the eye of law.

5. It is needless to say that once the acquisition proceedings have lapsed for the legal deficit as pointed out, all consequences would follow. If the respondents-authorities intend and feel that the land in question is necessarily to be acquired for the purpose of distribution to the project affected persons, then, they have to once again initiate acquisition proceedings in accordance with the procedure applicable, otherwise they have to surrender back the possession of the land to the petitioners within a period of three months from today.

6. Writ Petition is accordingly disposed of.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)