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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1955 OF 2014

Mr. Balaram Kukaji Kumbhar and Anr. … Petitioners.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. V.M. Thorat a/w. Mr. Madhav Thorat for the Petitioners.

Mr. B.S. Nayak a/w. Kiran Bagalia i/b. Mrs. Chitra Phadke for Respondent 4.
Mr. A.B. Vagyani, Govt. Pleader and Mrs. M.P. Thakur, Asstt. Govt. Pleader for the State.

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

DATE : JULY 12, 2017.

P.C. :-

The Petitioners have approached this Court by way of this Writ Petition under Article 226 of the Constitution of India, seeking a writ to declare that the land acquisition proceedings in respect of the lands have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

2. The lands in question (the lands) are Survey No. 17/1/A/1 (Old Survey No.17/1/1) and Survey No. 17/1/A/3 (Old Survey No. 17/1/3) situated at Village - Diksal, Taluka – Karjat, District – Raigad.

3. A notification under Section 4 of the Land Acquisition Act, 1894 was issued on 15 December 1992. A notification under Section 6 of the Act was published on 30 October 1973. Notice under Section 9 was issued on 25 February 1974. The Award was declared on 6 January 1976.

4. The Petitioners have approached this Court with a case that though the lands were sought to be acquired for the purpose of widening the Karjat-Ambernath-Kalyan Road, the possession of the lands has not been taken from the Petitioners and they are cultivating the lands right from the beginning. It is only recently that the State of Maharashtra, through the Respondent No.4 – Mumbai Mahanagar Region Development Authority (MMRDA) and the Respondent No. 5 - Contractor have started the work of road widening. According to the Petitioners, they went to the office of the Respondent No.4 -MMRDA and sought information under the Right to Information Act, 2005. It is the case of the Petitioners that since the possession of the lands is still with the Petitioners and the compensation has not been paid, the acquisition is deemed to have lapsed under Section 24(2) of the Act of 2013.

5. The Petition has been heard from time to time. By order dated 25 February 2014, the parties were directed to maintain *status-quo*. The inspection of records was directed to be given to the Petitioners. The Court also directed the Respondent – State to produce the possession receipt on record. A detailed order was passed on 8 February 2017 directing the State to place on record the particulars in respect of the possession as well as payment of compensation. Replies and rejoinders are filed.

6. We have heard Mr. Thorat, learned Counsel for the Petitioners, Mr. Nayak, learned Counsel for Respondent No.4 and Mr. Vagyani, Govt. Pleader for the State.

7. Since the case of the Petitioners is based on Section 24(2) of the Act of 2013, it will be fruitful to reproduce the provision. It 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 lands is not taken. Third, the compensation is not paid.

8. The first aspect that arises for consideration is the factum of possession. It is the assertion of the Petitioners that the Petitioners are still in possession of the lands. In the reply filed by the State it is stated that the possession was taken on 22 January 1976 by way of a possession receipt, and a report regarding compensation having been paid to the father of the Petitioners, which is on record also shows that the possession was validly taken. It is stated that the signature of the Petitioners' father was not obtained on the possession receipt,

which was signed by other farmers, as he remained absent and thereafter, the office of Respondent No.3 sent the same to the residence of the father for obtaining his signature, however, the Petitioners' father did not sign the receipt. It is further asserted that the possession of the lands was handed over to the Zilla Parishad, Kolaba on 22 February 1976. Reply is also filed on behalf of the Respondent No.4 – MMRDA.

9. While considering the rival contentions on the aspect of possession we are conscious of the limitations of the writ jurisdiction to determine disputed questions of fact. However, in the present case we find from the record produced by the State itself that procedure as mandated in law has not been followed. The lands in question are open agricultural lands. The manner of taking possession of open Lands pursuant to acquisition has fallen for consideration of the Apex Court in several cases. The Apex Court in the decisions of *Tamil Nadu Housing Board v/s. A. Viswam (Dead) by L.Rs.*[1] and *Sita Ram Bhandar Society, New Delhi v/s. Lt. Governor, Govt. of N.C.T. Delhi & Ors.*[2] has emphasized that if the owner does not co-operate, the possession of a open piece of land can be taken by drawing a panchnama in presence of two panchas.

10. Admittedly, as on date the revenue records still show the names of the Petitioners. It is true that the revenue record cannot be

1 AIR 1996 SC 3377
2 AIR 2010 SC 1143

a conclusive proof of possession, but the fact cannot be ignored that this record maintained by the State is in favour of the Petitioners. Heavy reliance is placed by Mr. Vagyani, the learned Government Pleader on the possession receipt which has been placed on record by way of an additional affidavit. This document is dated 22 January 1976. It contains various survey numbers. This document states that all those who are present on site have signed this possession receipt and have handed over the possession of their lands. At the bottom of this document there is one more endorsement stating that the possession has been handed over to the Engineer on 27 January 1976. It is an admitted position that the Petitioners' father has not signed this document. The manner in which the document dated 22 January 1976 is prepared appears as a complete farce. The document appears to have been prepared in the office of the land Acquisition Officer and not on the site and simply signatures have been obtained. Be that as it may, if the Petitioners' father did not co-operate in the process of handing over the possession, nothing stopped the Respondent – State from executing a valid and proper panchnama as mandated by the Apex Court. Since there is no panchnama in respect of the Petitioners' land, the assertion of the Petitioners that they are still cultivating the lands and are in actual physical possession, cannot be discarded. This unsigned possession receipt is the only record that the State has produced to substantiate its claim.

11. Even assuming the aspect of possession is against the Petitioners, there is one more ground put forth by the Petitioners, that is non-payment of the compensation. In the case of *Santosh Dnyaneshwar Aher v/s. State of Maharashtra Through its Secretary & Ors.*[3] 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 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.*[4].

12. The Respondent – State has placed on record the notice issued to the Petitioners' father under Section 12(2) of the Act of 1894. With the assistance of the learned Government Pleader, we have gone through this record. It is pointed out to us that the name of the Petitioners' father appears at Serial No.20 in the chart prepared for the notices under Section 12(2) of the Act of 1894. There is no dispute that the Petitioners' father has signed the acknowledgment of the said notice, but what we find is that the compensation payable for three lands is shown as Rs.67.62, Rs.8.16 and Rs.12.02 i.e. Rs. 87.80 in total. In the additional reply affidavit, extract of the register of receipts have been produced. Mr. Vagyani

3. Writ Petition No. 3238 of 2014

4. AIR 2016 SCC 4275.

has taken us through the said register. There is no dispute that the signature of the Petitioners' father appears in the column of receipt of amounts. The amounts paid however are shown are Rs.18.12, Rs.8.16 and Rs.12.02 thus totaling to Rs.38.30.

13. It is the contentions of the Respondent – State that since the Petitioners' father has accepted the compensation, no relief under Section 24(2) of the Act of 2013 can be claimed by the Petitioners. As rightly pointed out by Mr. Thorat, the learned Counsel for the Petitioners, while issuing notices under Section 12(2), the total amount payable to the Petitioners is Rs.87.80 but admittedly only Rs. 38.30 has been paid. There is absolutely no explanation forthcoming from the Respondent – State as to how almost half of the amount of compensation has been paid and what were the circumstance for not paying the entire amount. Undisputedly, the entire compensation has not been paid to the Petitioners. In a given case there could be a cogent explanation why such course of action is adopted. The difference also cannot be said to be marginal. We are not called upon to decide a question as to what should be done in the circumstance when the shortfall is extremely marginal. In the present case, almost half of the compensation has not been paid.

14. Section 24(2) of the Act of 2013 clearly contemplates that if the 'compensation' is not paid then the acquisition proceedings are deemed to lapse and the State Government, if it so

desires, has to acquire the land as per the provisions of the Act of 2013. Section 24(2) of the Act of 2013 seeks to achieve a balance between the competing interests of the State and the citizens. This provision is enacted to remove injustice meted out to those land owners whose lands have been acquired by the State without paying compensation as per law and/or without taking possession. Keeping this object of the legislature in mind, the phrase 'compensation' will have to be construed. By no stretch of imagination, paying half of the amount due, can be considered as 'compensation paid' as contemplated under Section 24(2) of the Act of 2013.

15. In these circumstances, when we find cogent evidence that the Petitioners continue to be in the possession of the lands in question and that they have been paid only part of the amount of compensation, they are entitled to relief under Section 24(2) of the Act of 2013. Consequently, the Writ petition is allowed. It is declared that the land acquisition proceedings in respect of the lands in question have lapsed. No order as to costs.

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