IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 3839 OF 2015

1.Sopan Baban Bhondve & Anr. ...Petitioners

Versus

State Of Maharashtra Through Its Secretary And Ors ...Respondents

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Mr.Siddharth R.Ronghe, for the Petitioners.

Ms.S.S.Bhende, AGP for Respondent Nos.1 to 5.

Mr.Vijay Patil, for Respondent No.6.

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

DATE :- JANUARY 17, 2017

P. C. :-

1. Rule returnable forthwith. Heard finally by consent of the parties. The Petitioners who are the owners of land bearing Survey No.119/1 admeasuring 1 Hectors 4 Ares and Survey No.119/2 admeasuring 2 Hectors 24 Ares, situated at Village- Chinchwad, Taluka-Haveli, District- Pune, have filed this petition under Article 226 of the Constitution of India interalia praying that the land acquisition proceedings commenced in pursuance of a notification dated 9 March 1970 issued under Section 4 of the Land Acquisition Act,1894,

culminating into an Award dated 31 August 1986, be declared to have lapsed by virtue of the provisions of Section 24(2) of the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act,2013 (for short “2013 Act”).

2. In nutshell the facts are :-

The Commissioner, Pune Division had issued a notification dated 9 March 1970 under Section 4 of the Land Acquisition Act for a public purpose namely for the planned development and utilization of the lands in Pimpri Chinchwad Township area for industrial, commercial and residential purposes. Thereafter a notification dated dated 16 November 1972 under Section 6 of the Land Acquisition Act was issued as also published in the Government Gazette. An Award was declared on 31 August 1986, acquiring the Petitioners' land. On 19 September 2008 possession of the said land was taken by the Special Land Acquisition Officer No.3, Pune. The possession receipt issued in that regard also indicated that after obtaining the possession, the land was handed over to Respondent No.6-Pimpri Chinchwad New Town Development Authority. Consequently a Mutation Entry No.13530 also came to be recorded in the mutation extract register, incorporating the name of Pimpri Chinchwad New Town Development Authority being mutated in the ownership column of the 7/12 extract.

3. The case of the Petitioners is that though the Respondents in pursuance of the Award have taken over the possession of the land

as also the name of Respondent No.6 was mutated in the records of rights, however, the compensation as required to be paid under the Award, is not paid to the Petitioners. The contention is that with effect from 1 January 2014, the 2013 Act, as enacted by the Parliament was brought into force and by virtue of Section 24(2) of the 2013 Act the acquisition of the Petitioners' land is deemed to have lapsed on account of the non-payment of the amount of compensation. Accordingly, this Writ Petition is filed. In support of the contentions as urged in the Petition the learned Counsel for the Petitioners has relied on decisions of the Supreme Court in the case (i) ***Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors.*** [1]; (ii) ***Delhi Development Authority Vs. Sukhbir Singh & Ors.***[2] as also the decision of the Division Bench of this Court in a batch of petitions being ***Writ Petition No.6175 of 2012*** and other connected petition (***Mahesh Kantilal Bhayani Vs. State of Maharashtra & Ors.***) decided on 30 November 2015.

4. On behalf of the State (Respondent Nos.3 and 4) an affidavit of opposition has been filed. This affidavit is hardly of any relevance to meet the Petitioners' contentions inasmuch as the contents therein revolve around the facts pertaining to the acquisition. It is stated that the acquisition in question is prior to the 2013 Act coming into force and also the possession of the land is taken and handed over to Respondent No.6. It does not deny the contention of the Petitioners that the amount of compensation as payable under the

1 2014(3) SCC 183
2 AIR 2016 SC 4275

Award has not been paid to the Petitioners. In fact in paragraph 8 of the affidavit it is stated that the Petitioners had not approached the office of the affiant for receiving the compensation, and hence, the same was deposited in a Personal Ledger Account. The Petitioner did not, however, apply for withdrawal of the compensation amount from PLA account which is a dedicated account. It is therefore contended that the provisions of Section 24(2) of the 2013 Act are not applicable.

5. Respondent No.6 which is beneficiary of the acquisition of this land has also filed an affidavit of opposition. Respondent No.6 justifies that the land is acquired in public interest. It is stated that the notices under Section 12(2) were issued by the Land Acquisition Officer to the land owners under the Award dated 31 August 1986. It is stated that a letter was addressed by the Petitioner no.1's father dated 20 November 1986 to the Land Acquisition Officer acknowledging the receipt of the notice under Section 12(2) asking him to collect the compensation amount and applying for the certified copy of the Award. It is further stated that it appears that the Petitioners was not interested in taking compensation and therefore did not approach the Land Acquisition Officer for receiving the compensation. The affiant states that the Petitioners had challenged the acquisition proceedings by filing suit which came to be dismissed. A compensation amount was deposited in the Personal Ledger Account (PLA) of the Special Land Acquisition Officer. It is, therefore, averred that the Petitioners himself did not collect the compensation amount as he has aggrieved by the acquisition and now challenges the

acquisition. It is thereafter contended that the possession of the land was taken over on 19 September 2008 and handed over to Respondent No.6. It is thus pleaded that the contention of the Petitioners that the acquisition proceeding had lapsed in pursuance of Section 24 of the 2013 Act, cannot be accepted.

6. On this factual conspectus, we have heard the learned Counsel for the parties, we have also perused the relevant documents as placed on record. To appreciate the controversy, it would be appropriate to note the provisions of Section 24 of the 2013 Act which concerns lapsing of the land acquisition in certain cases. Section 24 of the 2013 Act reads thus:-

> *"**24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases**.–*
> *(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—*
>
> *(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or*
>
> *(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*
>
> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, <u>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</u>*

> *<u>of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed</u> 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."* *(emphasis supplied)*

From a plain reading of Section 24(1), it is clear that it begins with non-obstante clause to give an overriding effect to the provisions under the Land Acquisition Act,1894 as also to the other provisions of the 2013 Act. Firstly, it provides that where no award under Section 11 of the Land Acquisition Act has been made, then, all provisions of the 2013 Act relating to the determination of compensation shall apply, and secondly where an award under Section 11 has been made, then, such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

7. We are however not concerned with sub-section (1) in the present facts. As regards sub-section (2) of Section 24, this provision also begins with non-obstante clause to override the provisions of sub-section (1) to stipulate that in case of land acquisition proceedings initiated under the Land Acquisition Act,1894, where an award under the Section 11 of the Land Acquisition Act has been made, five years or more prior to the commencement of the 2013 Act, but where the

physical possession of the land has not been taken or the compensation has not been paid, in such eventuality the acquisition proceedings are 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 the 2013 Act.

8. Thus, a perusal of Section 24(2) of the 2013 Act makes it clear that when an Award under the Land Acquisition Act was made five years or more prior to the commencement of the 2013 Act and compensation has not been paid, the land acquisition proceedings as initiated under the Land Acquisition Act are deemed to have lapsed by virtue of the application of Section 24(2) of the 2013 Act. The words used in sub-section (2) namely "*compensation has not been paid*" are relevant in the context of what Section 31 of the Land Acquisition Act would provide. Section 31 provides for payment of compensation or deposit of the same in the Court. Section 31 reads thus:-

> "31. Payment of compensation or deposit of same in Court:- <u>(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.</u>
>
> <u>(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a</u>

reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whose or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the (appropriate Government) instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any pe4rson interested in the land and competent to contract in respect thereof." (emphasis supplied)

The application of Section 31 of the Land Acquisition Act qua the consequence of section 24(2) of the 2013 Act fell for consideration of the Supreme Court in the case of "***Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors***" (supra). The Supreme Court held that Section 31 makes a provision for payment of compensation or deposit of the same in the Court. The provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation, and if due to happening of any contingency as contemplated under Section 31(2) of the Land Acquisition Act, if the compensation was not paid, the Collector was under an obligation to deposit the amount of compensation in the Court, to which a reference can be made under Section 18 of the Land Acquisition Act. It was held that the mandatory nature of Section 31(2) with regard to deposit of compensation in the Court was further fortified by the provisions under Section 32, 33 and 34 of the Land Acquisition Act. In the context of a lapse of the land acquisition proceedings under sub-section 2 of Section 24 of the 2013 Act, their Lordships in paragraphs 17 and 18 held thus:-

> *"17. 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 sub-section (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 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.*
>
> *18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad[1]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

9. In a recent decision of the Supreme Court in "***Delhi Development Authority Vs. Sukhbir Singh & Ors.****" (supra)* dealing with the case where the Respondent had contended that the amount of compensation was not paid and, therefore, acquisition has lapsed under Section 24(2) of the 2013 Act, their Lordships considering the earlier decision in ***Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors***.(supra) in paragraph 14 held as under:-

> *"14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more.*

These steps include the taking of physical possession of land and payment of compensation. What the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that 'or' should be read as 'and' must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

10. A Division Bench of this Court in "***Shri. Bapuso Narayan Kulkarni (deceased) through Lrs and Ors. Vs. The State of Maharashtra and Ors.***"[3] considered the submissions of the Respondent therein namely of the amount of compensation being deposited in the PLA account. The Division Bench following the law

3 2016(3) Mh.L.J. 384

laid down by the Supreme Court in the case ***Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors***. (supra), held that deposit of the compensation amount in the PLA account is hardly of any significance, as PLA account is an account of the Government Treasury and deposit of compensation in the Government treasury is of no avail and cannot be equivalent to compensation paid to the landowners/persons interested as Section 31(1) and (2) of the Land Acquisition Act would provide. Similar view was taken by another Division Bench in a batch of petitions being Writ Petition No.6175 of 2012 and other connected petitions (***Mahesh Kantilal Bhayani Vs. State of Maharashtra & Ors.***).

11. Now coming to the facts of the case, it is clear that the Special Land Acquisition Officer had made an award acquiring the Petitioners' land on 31 August 1986. Though possession of the land was taken on 19 September 2008, admittedly the amount of compensation which was required to be paid to the Petitioners under the Award was not paid to the Petitioners. The case of Respondent No.6 is that the said amount was deposited in the personal ledger account (PLA) of the Special Land Acquisition Officer and it was an obligation of the Petitioners to collect the amount. An affidavit of opposition as filed on behalf of the State Government and Respondent No.6 also do not deny the Petitioners' assertion that the amount of compensation was not paid to the Petitioners. As noted above the position in law is clear that mere deposit of the amount in the personal ledger account of the Special Land Acquisition Officer is of

no avail. This is not payment of compensation to the Petitioners. These being the clear facts, we have no hesitation to observe that Section 24(2) of the 2013 Act is squarely applicable and as the compensation amount is not paid to the Petitioners, the acquisition proceedings are deemed to have lapsed.

12. At this stage on behalf of Respondent No.6 it is also contended that two negative conditions contained in Section 24(2) firstly that the physical possession of the land being not taken and secondly the compensation not being paid, are required to be read conjunctively. It is submitted that both these conditions are required to be fulfilled for the purpose of holding that the acquisition has lapsed under Section 24(2) of the 2013 Act. In support of this submission, the learned Counsel for Respondent No.6 relies on paragraph 12 of the decision of the Supreme Court in the case ***M/s.Magnum Promoters P. Ltd. Vs. Union of India & Ors.***[4] We are not impressed with this submission as urged on behalf of Respondent No.6 as paragraph 12 of the said decision merely records the submission as urged on behalf of the Respondents in the said case, namely that the said two negative conditions contained in Section 24(2) are required to be read conjunctively so as to read fulfillment of both these conditions for the purpose of holding that the acquisition proceedings have lapsed. We may therefore note the contents of paragraph 12 of the said decision, which reads thus:-

> *"12. It is further contended by the learned counsel that if either of the two negative conditions mentioned in Section*

4 2014 AIR SCW 6919

> *24(2) of the Act of 2013 remains unfulfilled, the acquisition proceedings of the land involved in this appeal cannot be held to have lapsed as it would defeat the purpose of acquisition and intendment of the L.A. Act. In other words, the two negative conditions contained in Section 24(2) has to be read conjunctively and as such both the conditions are required to be fulfilled for the purpose of holding the acquisition proceedings as lapsed. This aspect of the matter has been dealt with by this Court in the case of The Punjab Produce and Trading Co.Ltd. V. CIT, West Bengal, Calcutta10. It is contended that this case was also not brought to the notice of this Court in the case of Pune Municipal Corporation (AIR 2014 SC 982: 2014 AIR SCW 787) (supra) and other cases referred to supra and therefore the said decisions require re-consideration by the larger Bench of this Court."*

A perusal of the above paragraph in ***M/s.Magnum Promoters P. Ltd.*** (supra) indicates that the contents are only the submissions of the Respondents as recorded by their Lordships. Further reading of the decision also shows that these contentions as urged on behalf of the Respondents as recorded in paragraph 12 were not considered by their Lordships much less accepted. In any case such contention cannot be accepted as the same is completely contrary to the plain reading of Section 24(2) of the 2013 Act, which provides for lapsing of the acquisition in either of the consequence namely the physical possession of the land having been not taken or the compensation being not paid under the Award, which came to be passed five years or more prior to come into force the 2013 Act. Accepting such submission as urged on behalf of Respondent No.6 would be nothing but doing violence to the plain and clear language of Section 24(2) of the 2013 Act.

13. Resultantly, we allow the Writ Petition by the following order:-

ORDER

(I) The acquisition proceedings in relation to the land of the Petitioners bearing Survey No.119/1 admeasuring 1 Hectors 4 Ares and Survey No.119/2 admeasuring 2 Hectors 24 Ares situated at Village-Chinchwad, Taluka-Haveli, District- Pune, being the subject matter of acquisition, under a Notification dated 9 March 1970 issued under Section 4 of the Land Acquisition Act,1894, stand lapsed 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.

(II) We direct that the State Government shall restore the possession of the acquired land to the Petitioners on or before 30 June 2017.

(III) We make it clear that the acquisition would stand lapsed only in relation to the lands which are subject matter of this petition and no adjudication is made as regards the legality and validity of acquisition of other lands if any, which may form subject matter of the Award.

(IV) Rule is made absolute accordingly in the above terms. No costs.

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