

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4308 OF 2016**

Vitthal Bapu Tupe
Since deceased through his heirs
& legal representatives,
Shri Nivas Vitthal Tupe & Ors. Petitioners.

Versus

The Divisional Commissioner,
Pune Division, Pune & Ors. Respondents.

Mr. Dilip Bodake for Petitioners.
Mrs. M. P. Thakur - AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 28 NOVEMBER 2017

P.C.:

1] Heard Mr. Dilip Bodake, learned counsel for the petitioners and Mrs. M. P. Thakur, learned AGP for the Respondents- State.

2] Rule. With the consent of and at the request of the learned counsel for the respondents, Rule is made returnable forthwith.

3] The petitioners seek a declaration that the acquisition proceedings in respect of their lands bearing Gat No. 481 admeasuring 2 H, 85 R at Village : Surli, Tal : Karad, District Satara (the acquired land) stand lapsed under section 24 (2) of the Right to Fair Compensation and Transparency

in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') on account of failure on the part of the State to take possession of the acquired land and to pay compensation in respect of the acquired land.

4] The acquisition was for the public purpose of rehabilitating the project affected persons of Wang Marathwadi Irrigation Project ('Project'). The acquisition culminated in an award dated 20th July 2002 made under the provisions of the Land Acquisition Act 1894 ('1894 Act').

5] The provisions of section 24(2) of the 2013 Act are quite clear. Broadly, three parameters have to be fulfilled before acquisition can be said to have lapsed. The first is that the award should be published five years prior to the date of the commencement of 2013 Act which is 1st January 2014. The balance two parameters can be fulfilled in the alternate. The second parameter is that possession of the acquired land must not have been taken over by the State. The third parameter is that compensation in respect of the acquisition must not have been paid by the State. It is not necessary that the second and third parameters must be simultaneously fulfilled. Even if one of the parameters stands fulfilled, the acquisition can be said to have lapsed under section 24(2) of the 2013 Act. This position is made clear by the Supreme Court in the case of **Pune Municipal Corporation and Anr. V/s Harakhchand Misirimal Solanki and Ors. (2014 (4) Mh.L.J. 566)** and **Delhi Development Authority v/s Sukhbir Singh and Ors. (AIR 2016 SCC 4275)**. This position is also made clear in series of decisions of this Court, including **Santosh Dnyaneshwar Aher v/s. State of Maharashtra, Through the Secretary & Ors. (Writ Petition No. 3238 of 2015 decided on 17th January 2017)**.

6] In the affidavit in reply dated 13th February 2017 filed by the State, it is stated that the possession of the acquired land was taken over on 24th March 2009 and further, the acquired land stands allotted to a project affected persons. The petitioners seriously dispute this position. In a petition of this nature, we cannot decide the factual dispute as to whether the possession was indeed taken by the State or not. There is really no necessity to decide this dispute because the affidavit in reply admits that no compensation was paid to the petitioners in respect of the acquired land. On this ground itself, the petitioners are entitled to a declaration that the acquisition stand lapsed.

7] In paragraph 13 of the affidavit in reply filed by the Deputy Collector (Special Land Acquisition Officer No. 4) it is specifically stated that no compensation was paid to the petitioners in respect of the acquired land. Later on, an additional affidavit was filed on 29th September 2017, in which, it is clarified that the compensation was deposited in the District Court on 26th May 2017. Such subsequent deposit of compensation, almost 15 years after the award was made on 20th July 2002, does not wipe out the effect of deemed lapse of the acquisition proceedings. In this case, the compensation appears to have been deposited even after the institution of the present petition.

8] Admittedly, as on 1st January 2014 when the 2013 Act entered into force, no compensation was paid to the petitioners in respect of the acquired land. The award in the present case, is made 5 years prior to the date of the coming into force of the 2013 Act. Therefore, applying the law laid down by the Supreme Court and followed in several cases by this Court, the petitioners are entitled to a declaration that the acquisition

proceedings in respect of the acquired land stand lapsed. Such a declaration is accordingly issued.

9] Accordingly, this writ petition is allowed by holding that the land acquisition proceedings in respect of the acquired land stand lapsed by virtue of section 24(2) of the 2013 Act.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

(CHIEF JUSTICE)

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