

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 3553 OF 2016

Mr.Babu Narayan Tambe and others. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

***Along with
WRIT PETITION NO. 9559 OF 2016***

Mr.Narsu Dhondiba Potwade and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

***Along with
WRIT PETITION NO. 9566 OF 2016***

Mr.Shankar Vithoba Mohite and anr. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

***Along with
WRIT PETITION NO. 9560 OF 2016***

Mr.Baban Dagadu Potvade and others. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

***Along with
WRIT PETITION NO. 13509 OF 2016***

Mr.Bhagwant Gangaram Mohite. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Along with
WRIT PETITION NO. 13512 OF 2016

Mr.Sopan Maruti Umap and others. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.Suresh Sabrad, for the Petitioner in W.P. No.3553 of 2016, W.P. No.7007 of 2017, W.P. No.9559 of 2016, W.P. No.9560 of 2016, W.P. No. 10073 of 2016, W.P. (St.) No.11222 of 2017, W.P. (St.) 11223 of 2017, W.P. (St.) No.11479 of 2017, W.P. No.13509 of 2016, W.P. No.13512 of 2016, W.P (St.) No.19501 of 2017, W.P (St.) No.19502 of 2017.

Mr.A.B.Vaganyi – GP a/w Mr.P.G.Sawant – AGP a/w Ms.Geetanjali Golatkar – AAGP & Mr.Rohan Sawant – AAGP, for Respondent - State.

Mr.Anwar Landge i/b Harshad Bhadbhade, for Respondent No.10 in W.P. No.3553 of 2016.

Mr.Ganesh Bhujbal, for Respondent No.5 in W.P No.3553 of 2016.

Mr.Avinash Avhad, for Respondent Nos.8 & 9 in W.P. No. 3553 of 2016.

Mr.Jayprakash Kapre, for Respondent Nos.4 to 6 in W.P. (St.) No.11222 of 2017.

Mr.C.M.Lokesh a/w Ms.Juhi Pandey i/b Mr.A.R.Bhole & Co., for Respondent No.4., in W.P. No.13509 of 2014.

Mr.S.V.Sadavarte, for Respondent Nos.6 & 7 in W.P. No.13512 of 2016.

Mr.Vilas Tapkir, for Respondent Nos.6 & 7 in W.P. No.13990 of 2016.

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

DATE : OCTOBER 3, 2017.

P.C. :-

In this group of matters, since a common question of law arises, identical facts are involved and the reliefs claimed is the same, by consent of learned counsel for the parties, the Petitions are disposed of by this common order. The learned counsel for the parties have also advanced common submissions.

2. The Petitioners have filed the Petitions under Article 226 of Constitution of India seeking relief under section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013'). They seek a declaration that acquisition proceedings have lapsed.

3. The lands involved in these Petitions have been acquired under the Land Acquisition Act, 1894 for the resettlement of project affected persons. The resettlement of project affected persons is carried out under the provisions of Maharashtra Project Affected Persons Rehabilitation Act 1999. Notifications under section 4 of the

Land Acquisition Act, 1894 were issued, thereafter followed by declaration under section 6 of the Land Acquisition Act, Awards in all these proceedings were declared five years prior to 1 January 2014.

4. Since relief is sought under section 24(2) of the Act of 2013, it will be necessary to reproduce the said section for ready reference-

5. Section 24(2) of the Act of 2013 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 land is not taken. Third, the compensation is not paid.

6. In all the Petitions, the State has asserted that State has taken possession of the lands in question. In some cases the State has placed on record that possession has been handed over to project affected persons. The Petitioners dispute this position. It is not possible for us to decide this contested factual issue of possession in these Petitions.

7. However, in the case of *Santosh Dnyaneshwar Aher v/s. State of Maharashtra Through its Secretary & Ors.*¹ 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.*²

1. Writ Petition No. 3238 of 2015 dtd 17/01/2017

2. AIR 2016 SCC 4275.

8. In all these proceedings, the State has either filed affidavits or has placed a chart on record which has been counter signed by the learned Additional Government Pleader. These documents show that the compensation has not been paid to the Petitioners and the same is deposited in Personal Ledger Account or Revenue Account. It is an admitted position that in none of these petitions, compensation has been deposited in the court where reference under section 18 of Land Acquisition Act will lie.

9. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt by the Apex Court in the cases of *Pune Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors.*³ and *Delhi Development Authority v/s. Sukhbir Singh and Ors.* The Apex Court analyzed the provision of Section 24 of the Act of 2013 and Section 31 of the Act of 1894. It was held that Section 31(2) of the Act of 1894, which envisages deposit of compensation in the Court, is a mandatory provision. As per Section 31(2) of the Act of 1894, if the compensation is not accepted or collected by the Claimant, the compensation has to be deposited by the Collector in the Court where the reference can be made under Section 18 of the Act of 1894. The Apex Court construed the phrase “compensation has not been *paid*” occurring in Section 24(2) of the Act of 2013 as being “paid” as per Section 31(2) of the Act of 1894. The Apex Court laid down that if the compensation is not paid as per

3. 2014(4) Mh. L.J.566

Section 31(2) of the Act of 1894, then Section 24(2) of the Act of 2013 is attracted and consequences of lapsing of acquisition contemplated under Section 24(2) of the Act of 2013, will ensue. This view has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

10. In the result, the contention of the Petitioners that the land acquisition proceedings have lapsed since the compensation is not paid as per Section 24(2) of the Act of 2013, will have to be upheld.

11. Accordingly, Writ petitions are allowed holding that the Land Acquisition proceedings in respect of the lands in question have lapsed by virtue of section 24(2) of the Act of 2013.

12. Writ Petitions are disposed of in above terms. No order as to costs.

N.M. JAMDAR, J.

CHIEF JUSTICE