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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3928 OF 2015

Mr. Rohidas Nathu Tarde and Ors. … Petitioners.

V/s.

The Collector, Pune & Ors. ... Respondents.

Mr. Uday Nighot for the Petitioners.
Mr. N.P. Deshpande, AGP for the State.

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

DATE : JUNE 6, 2017.

P.C. :-

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for final disposal.

2. The present land acquisition proceedings is in respect of 46 Ares lands from Gat No. 38(part) situated at Village Askhed, Taluka Khed, District Pune. Relief has been sought by the Petitioners under Section 24(2) of the Right for Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 that acquisition proceedings have lapsed.

3. The lands in question are situated within the benefited zone of Bhama Askhed project in Taluka Khed of District Pune. A notification for the project was issued on 2 November 1989. A notification under Section 4 of the Land Acquisition Act was issued on 25 August 2000. Declaration under Section 6 was issued on 20 December 2001. The Award was passed on 26 December 2003. A mutation entry was carried out in favour of the District Resettlement Officer on 26 October 2007. The present Writ Petition was filed contending that the acquisition proceedings have lapsed in view of Section 24(2) of the Act of 2013 as the Petitioners are still in possession and compensation has not been paid.

4. Time to file reply was granted to the Government by order dated 16 December 2016. Reply affidavit was filed. On 1 March 2017, following order came to be passed :-

> *"The petitioners contend that after notice under Section 12 (2) of Land Acquisition Act, 1894 (for short, '1894 Act'), they sent a reply challenging the acquisition and till date, possession of the land lies with the petitioners. Though a lengthy reply affidavit is filed, there is no categorical statement that after notice under Section 12 (2) of 1894 Act, when owners of the land failed to appear for receiving compensation, the amount was deposited in terms of Section 31 of the 1894 Act. There is a statement in the reply affidavit that possession was taken but no receipts of possession are placed before the Court. If the petitioners are categorically*

denying handing over possession, minimum requirement on the part of respondents authorities is to produce the possession receipt. We fail to understand the commitment with which these affidavits in reply are filed by the officers who are responsible to answer.

2. We direct the respondent Special Land Acquisition Officer to specifically state in the additional affidavit to be filed on what date so far as these petitioners are concerned, possession of the land was taken and when compensation was disbursed or deposited in accordance with 1894 Act. He is also directed to place on record possession receipts, if any. Such additional affidavit to be filed within two weeks from today.

3. Stand over to 15 March 2017."

On 15 March 2017 following order was passed :-

" Reply affidavits are filed on behalf of Respondent Nos.2 and 4. Learned AGP admits that the compensation has not been paid to the Petitioners but it is not stated in the affidavits whether any steps were taken under Section 31 of the Land Acquisition Act. We direct the Respondent authorities to make statement on facts by way of additional affidavit to that effect within two weeks from today. Stand over for two weeks."

Accordingly, additional affidavit has been filed.

5. 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. 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 applicability of Section 24(2) of the Act of 2013 it is enough that either of the above two contingencies exist. That is, physical 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]

6. As far as the aspect of possession is concerned, it has been asserted by the Petitioners that the Petitioners are still in possession of the land in question. In the affidavit in reply filed by the Deputy Collector, Pune dated 9 March 2017 it has been stated that the possession of the land has been taken. It is stated that however the possession receipt or panchnama of possession is missing in official record of the Respondent.

7. The Apex Court in the case of *Velexan Kumar v/s. Union of India and Ors.*[3] has laid down the parameters for obtaining possession of the open land. The Apex Court observed thus :

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1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275

3 2015(4) SCC 325

"14. We have carefully examined the application filed by the appellant seeking for the beneficial provision of Section 24(2) of the Act of 2013 and the objections filed by the respondents to the same. After examining the facts and circumstances of the case, we are of the considered view that the award passed under Section 11 was passed on 03.04.2002 in respect of the disputed land of village-pansali, therefore, it is an undisputed fact that it was passed 5 years prior to the commencement of the Act of 2013 and the compensation for the acquisition of the appellant's land has not been paid to the appellant. Further, with respect to taking over of possession of the land by the respondents, it is clear from the facts and circumstances of the case that actual physical possession of the land in question has not been taken by the respondents. Even if, for the sake of argument it is accepted that possession of the land was taken by the respondents, it is clear that due procedure has not been followed by the Acquisition Authority by way of preparing proper 'Panchnama' in the presence of independent witnesses and the land-holders, and therefore it is contrary to the principles law laid down by this Court in the case of Sita Ram Bhandar Society, New Delhi v. Lt. Governor Govt. of N.C.T. Delhi & Ors.[8] , wherein, this Court held that when possession of a large tract of land is to be taken then it is permissible in law to take possession by a properly executed 'panchnama' attested by independent witnesses. This was further reiterated by this Court in its decisions in the case of Bhanda Development Authority, Raghubir Singh Sehrawat, Patasi Devi referred to supra."

8. When a categorical assertion has been made on oath by the Petitioners that the physical possession has not been taken from the Petitioners and they are still as on today cultivating the suit land, It was necessary for the Respondent – State to place cogent material on record to substantiate their claim that physical possession is taken. Physical possession of an open land can be taken by executing a panchnama as per law. The stand of the Respondent - State that possession receipt and panchnama is missing is a casual one line statement without any further elaboration. Mere revenue entry in favour of the State is not enough and cannot be a substitute for evidence of taking physical possession.

9. It is contended by the Respondent – State that in view of the *Anderson's Manual*, the acquisition authorities are not supposed to maintain all records except the Award and therefore, it is not possible for the authorities to make a statement regarding possession. Identical ground was taken by the State in Writ Petition No. 4752 of 2015, wherein the Division Bench of this Court, negating the contention in the order dated 2 March 2017 observed thus :-

> *"6. Although one of the requirements of subsection (2) of Section 24 of the 2013 Act namely of the amount of compensation not being paid to the petitioner is satisfied, to come to a conclusion that the land acquisition proceedings have lapsed in the present case, however for the sake of completeness, we also examine 'whether or not the possession of*

the land was taken over by the respondents.' As regards the issue of possession, the respondents have made bald averments in paragraph 5 of the reply affidavit as noted above, contending that possession has been taken. The respondents contend that no documents are available to show that the possession was taken as the same have been destroyed relying on Anderson's Manual. We are quite surprised on this stand taken by the respondents. Admittedly, the acquisition in question is not a very old acquisition. We cannot accept this contention as urged on behalf of the respondents that no documents whatsoever, in any of the departments/offices are available as a matter of record, to show that the possession of the land was taken over. We may observe, and in fact, a judicial notice of the state of affairs can very well be taken of such a situation, as we have come across several land acquisition petitions, being heard by us, where acquisitions though are very old, we have been shown on behalf of the State, documents to name some of them like Panchanama, compensation receipt, possession receipt etc. We, therefore, find it difficult to persuade ourselves to accept the contention of the respondents, that the documents to show that the possession of the land was taken are not available. Accepting such stand would definitely result into a serious situation not only affecting the State's interest but would jeopardize the valuable legal rights of property of the citizens. We, therefore, reject this contention as urged on behalf of the respondents. The State cannot be heard to say that the documents pertaining to the acquisition are destroyed after one year. In the circumstances, as a larger legal issue is involved and being an issue of vital public interest, we direct the Principal Secretary (Revenue) to conduct an inquiry on the stand taken

> *in para 4 of the reply affidavit and file a report on the record of this petition on the correct position of preservation or maintaining the documents and more particularly in view of the modern digital/electronic advancement. A report to that effect be placed on record of this petition within eight weeks."*

This contention raised by the State, in view of the above observation, cannot be accepted.

10. Even assuming that the possession of land is taken by the Respondent – State, the Petitioner is entitled to succeed on yet another ground. That is the non-payment of compensation. In the present case it is the stand of the Respondent – Authority that the Petitioners have not accepted the amount of compensation and the same is deposited in the Personal Ledger Account which is a Government Account. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt with by the Apex Court in the case of *Pune Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors.*[4] and *Delhi Development Authority v/s. Sukhbir Singh and Ors.* The Apex Court analyzed the provisions of Section 24 of the Act of 2013 and Section 31 of the Act of 1894. The Apex Court held that Section 31(2) of the Act of 1894, which envisages deposit of compensation in the Court, is a mandatory provision. The Apex Court construed the phrase

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

"compensation has not been *paid*" occurring in Section 24(2) of the Act of 2013 as meaning that it is not paid as per Section 31(2) of the Act of 1894. The Apex Court has laid down that if the compensation is not paid as per 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 dicta has followed in subsequent decisions by the Apex Court and the Division Benches of this Court. It is not necessary to multiply references. In the result, since it is an admitted position that the amount of compensation has not been paid as per the mandate of Section 24(2) of the Act of 2013, the Petitioners are entitled to a declaration that the acquisition proceedings initiated in respect of land in question have lapsed in view of Section 24(2) of the Act of 2013.

11. Writ Petition is accordingly allowed. Rule is made absolute. It is declared that the acquisition proceedings in respect of 46 Ares land from said land i.e. Gat No.38(part) situated at Village Askhed, Post Kurkundi, Taluka Khed, District Pune as per notification dated 25 August 2000, declaration dated 20 December 2001 and the award dated 26 December 2003 stand lapsed in view of Section 24(2) of the Act of 2013. No order as to costs.

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