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

WRIT PETITION NO. 7124 OF 2015

Ramesh Kedari Patil
Through Constituted Attorney
Mr. Ramjan Abaso Mulla ... Petitioner.

V/s.

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

Mr. Karansing B. Rajput for the Petitioner.
Ms. S.S. Bhende, Asstt. Govt. Pleader for Respondents 1 and 2.
Mr. R.A. Shelke for Respondent 3.

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

DATE : JULY 10, 2017.

P.C. :-

The Petitioner has approached this Court by way of the present Writ Petition under Article 226 of the Constitution of India seeking a writ to declare that the acquisition proceedings in respect of the land have lapsed.

2. We have heard Mr. Rajput, learned Counsel for the Petitioner, Ms. Bhende, Asstt. Govt. Pleader for Respondent Nos.1 and 2 and Mr. Shelke, learned Counsel for Respondent No. 3.

3. The land in question is the Gat No. 29 situated at Village - Kakadwadi, Taluka - Miraj, District - Sangli. A notification under Section 4 of the Land Acquisition Act of 1894 was published on 4 January 1990. A declaration under Section 6 of the Act of 1894 was published on 29 March 1990. The objections filed by the Petitioner, which were considered by the Special Land Acquisition Officer and the Award was passed on 21 August 1991. Pursuant to the Award, a mutation entry was carried out in favour of the Respondent - State.

4. It is the case of the Petitioner that the acquisition proceedings has lapsed in view of the two factors as envisaged under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Firstly, that the possession of the land is not been taken from the Petitioner. Secondly, the compensation is not paid.

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 91), 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.

7. Award is dated 21 August 1991, therefore first criterion is satisfied. As regards the possession of the land, there is a serious dispute. According to the Petitioner the land is still in possession and use of the Petitioner. Reply affidavit has been filed by Respondent No.3 – Gram Panchayat of Village Kakadwadi. According to the Gram Panchayat, the possession of the land has been taken over as the land was needed for extension of the village and further public amenities. Various documents and court

proceedings have been annexed to the reply affidavit. The Tahsildar, Miraj has filed affidavit on behalf of the State Government and has also asserted that the possession of the land has been taken over. Considering the pleadings and the rival contentions, we find that the aspect of possession in the present Petition is a seriously disputed one. It is not possible for us to enter into and adjudicate such disputed questions of fact in the writ jurisdiction.

8. There is however one more ground urged by the Petitioner, that is non payment of compensation. 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 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.

9. In the reply affidavit filed by the Tahsildar, Miraj on 3 May 2017, it has been stated that the amount of compensation is deposited in the Government Treasury. A question is whether the deposit of compensation in the Government Treasury would take the case out of the purview of Section 24(2) of the Act of 2013.

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

10. 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 provisions 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 the 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 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.

11. In the result, since it is an admitted position that the amount of compensation has not been paid as per the mandate of Section 31(2) of the Act of 1894, the Petitioner is entitled to a

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

declaration that the land acquisition proceedings initiated in respect of the land in question have lapsed in view of Section 24(2) of the Act of 2013.

12. Accordingly, the Writ Petition is allowed directing that the acquisition proceedings in respect of the lands in question have lapsed in view of Section 24(2) of the Act of 2013. No order as to costs.

(N.M. JAMDAR, J.)

(CHIEF JUSTICE)