

Sequeira

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

WRIT PETITION NO. 6788 OF 2014

Mr.Prabhakar Anant Shelar and others .. Petitioners
Vs
State of Maharashtra and others. .. Respondents

Mr.Uday Warunjikar, for Petitioners.
Mr.A.B.Vagyani – Govt. Pleader a/w Mr.P.G.Sawant - AGP, for
Respondent-State.

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

DATE : JUNE 7, 2017.

P.C.:

Rule. Rule made returnable forthwith. Taken up for final disposal.

2. Short question that arises for consideration in this writ petition is whether petitioners are entitled for a declaration that the acquisition in respect of land in question has lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The subject matter of the petition are the lands bearing Survey No.145/1, 145/2, 145/3, 149/2 and 149/3 situated at village Khed, Taluka and District Satara. Proceedings for acquisition were

initiated for purpose of construction of a by-pass for Pune-Bangluru, National Highway No.4. Notifications under section 4 of the Land Acquisition Act of 1894 were issued. Thereafter notifications under Section 6 of the Act of 1894 were issued. Award under Section 11 of the Act of 1894, was declared on 26 December 1968. Petitioners made a representation on 5 November 2007 to the Executive Engineer stating that, even though by-pass road was constructed, the lands have remained unutilised and should be made free from acquisition. Further representations were made on 3 December 2007. On 13 December 2007, a representation was made to the Land Acquisition Officer for deleting the name of Executive Engineer from the revenue record and to return the land. Land Acquisition Officer replied vide letter dated 24 December 2007 that he did not have jurisdiction to return the property to the petitioners. A Writ petition bearing no.4602 of 2008 was filed by petitioners, which was disposed of on 15 March 2010 with liberty to the petitioners to approach the Divisional Commissioner. Accordingly, petitioners approached the Divisional Commissioner and the application filed by the petitioners was rejected by the Divisional Commissioner on 17 April 2011.

4. The petitioners thereafter filed the present petition challenging the order passed by the Divisional Commissioner dated 17 April 2011 and seeking direction that the lands be returned to petitioners. An amendment was carried out by the petitioners

pursuant to the leave granted by this Court on 25 April 2017. By way of amendment petitioners sought declaration that the acquisition in respect of lands in question have lapsed in view of Section 24(2) of the Act of 2013.

5. We have heard Mr. Warunjikar, learned counsel for the petitioners and Mr. Vagyani, learned Government Pleader for State.

6. Section 24 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) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 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.”

7. 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

8. The aspect of compensation as regards Section 24(2) of

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275

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.*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. 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 “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 been followed in subsequent decisions by the Apex Court and the Division Benches of this Court. It is not necessary to multiply references.

9. Reply affidavit has been filed on 22 December 2016 by the Sub-divisional Officer, Satara. In this affidavit it is stated that as per the office record compensation of the acquired lands was deposited in the Revenue Account. That the deposit of amount of compensation in Revenue Account is not compensation 'paid' as envisaged under Section 24(2) of the Act of 2013, is a settled position of law in view of the decision of the Apex Court in the case of *Pune*

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

Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors. The sequetor therefore is that the acquisition has lapsed.

10 The petitioners are therefore entitled to succeed. Petition is allowed. It is declared that the acquisition in respect of Survey no. 145/1, 145/2, 145/3, 149/2 and 149/3, situated at village Khed, Taluka and District Satara, have lapsed. Rule is made absolute in above terms. No order as to costs.

(N.M.JAMDAR, J.)

CHIEF JUSTICE