

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8599 OF 2015

Prakash Tukaram Mutke and another. ... Petitioners.
V/s.
The State of Maharashtra and others. ... Respondents.

R.S.Apte, Senior Advocate with Manoj Patil i/b. Mrs.Suman
Lengare for the petitioners.

PG.Sawant, AGP for the State.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND G.S.KULKARNI , J.**

DATE : 16th March 2017.

P.C. :

Apparently, we are concerned with land bearing Gat No.182 admeasuring 1 Hectare 21 Ares situated at village- Nanekarwadi, Chakan, Taluka- Khed, District- Pune. Initially, challenge to the acquisition proceeding was on the ground of lapse of acquisition in the light of provisions of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("Act of 2013" for short).

However, subsequently another ground under section 11A of the Land Acquisition Act, 1894 came to be included on the ground that even as per the admitted dates of acquisition proceeding, the award came to be passed beyond two years from the last date of notification said to have been issued under section 6 of the Land Acquisition Act.

2. We have gone through the affidavit-in-reply filed on behalf of the State as well as rejoinder now filed by the petitioners. The notification under section 4 of the Land Acquisition Act is dated 20th January 2000 and published in the Government Gazette on 24th January 2000 making a declaration of proposal to acquire the land. Thereafter, notification under section 6 was issued on 27th February 2001 and was published in the Government Gazette on 28th February 2001. On 23rd May 2003, the award was declared and as per Exh. E it is dated 27th May 2003.

3. As indicated in the affidavit-in-reply of the respondents, on 30th August 2005 they made an attempt to take over the possession of the land, however, it was resisted. Therefore, again on 7th March 2006, the possession of the land, according to the respondents, came to be taken and they relied upon the Panchanama and possession receipt annexed at Exh.C. However, this is categorically denied by the petitioners.

4. On 8th August 2005, according to the respondent authorities, a notice under section 12(2) of the Land Acquisition Act came to be issued and the same was served on the petitioners, however, neither the owners of the land nor their legal representatives turned up to receive the compensation amount. Therefore, the amount of compensation is kept in the designated account of office of the Deputy Collector, Land Acquisition No.22.

5. With the above admitted facts placed on record by the respondent authorities, one has to see whether there was acquisition proceeding ultimately resulting in the award in question in accordance with the procedure contemplated. If the gazette notification under section 4(1) of the Land Acquisition Act is dated 24th January 2000 and section 6 notification was gazetted on 28th February 2001, then it was beyond the period of one year. Apart from that, the notification under section 6, as admitted by the respondent authorities, was gazetted on 28th February 2001 and the award was declared on 27th May 2003. Though the petitioners' counsel tries to convince the Court that section 11A of the Land Acquisition Act is applicable to the facts of the present case, the petitioners themselves have clearly admitted in paragraph- 13, page- 6 of the petition that the last declaration was on 28th May 2001 in the office of the Tahasildar concerned. The last date of notification under section 6 is 28th May 2001. If 28th May 2001, as admitted by

the petitioners, is taken into consideration as the last date and if the award is dated 27th May 2003, then it was very much within the period of two years. Therefore, benefit of section 11A cannot be extended to the petitioners.

6. However, notification under section 6 of the Land Acquisition Act lapses since it was issued beyond the period of one year from the date of preliminary notification under section 4(1) of the said Act.

7. In the absence of final notification under section 6(1) of the Land Acquisition Act for acquiring the land in question as contemplated under the said Act within one year from the date of notification under section 4(1), there is no acquisition of land at all in the eye of law. In that view of the matter, even if the award was to be passed within two years from the last date of notification under section 6 as stated above, it is non-est in the eye of law. This is so far as the consequences of not taking steps within the period contemplated in terms of the Land Acquisition Act.

8. Now coming to the Act of 2013, the said Act has come into force with effect from 1st January 2014. Sub-section (2) of section 24 of the Act of 2013 is invoked in the present case. If the award has been made five years or more prior to 1st January

2014 and if possession of the land is not taken from the owner or the person interested in the land or if the payment of compensation is not made as on 1st January 2014, the land acquisition proceeding would lapse.

9. Though the respondent authorities in the reply-affidavit have contended that the possession was taken as indicated in para-3 of the reply-affidavit, there is some doubt with regard to taking of possession. Be that as it may, the fact remains that in spite of issuance of notice under section 12(2) of the Land Acquisition Act to receive compensation amount and deposit of money in the account of the Land Acquisition Officer concerned, no amount came to be deposited in terms of section 31 of the Land Acquisition Act. Unless the money is deposited in terms of section 31 of the Land Acquisition Act, it cannot be termed as payment of compensation in terms of sub-section (2) of section 24 of the Act of 2013. This is well settled in the Apex Court judgment in the case of ***Pune Municipal Corporation & another v. Harakchand Misirimal Solanki & others*** reported in (2014) 3 SCC 183.

10. Since the acquisition proceeding, in the light of notification said to have been issued under section 6 of the Land Acquisition Act, was not validly made, all subsequent exercise undertaken by the authorities have no sanctity in the eye of law. In

that view of the matter, for the reasons mentioned above, the acquisition of the land in question lapses so far as the petitioners are concerned. It is made clear that if there is need to acquire this piece of land, the authorities are at liberty to do so in accordance with the procedure contemplated.

11. Writ petition is disposed of accordingly.

(G.S.KULKARNI, J.)

CHIEF JUSTICE