

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No. 4752 OF 2015

Rahul Dattatraya Tanpure. ...Petitioner
Versus
1.Special Divisional Officer & Ors. ...Respondents

Mr.Rahul Thakur,, for the Petitioner.

Mr.P.G.Sawant, AGP for the Respondents.

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

DATE : MARCH 2, 2017

ORDER: (Per G.S.Kulkarni,J.)

1. Heard the learned Counsel for the petitioner and the learned AGP for the respondents.

2. The petitioner who claims to be the owner of a larger agricultural land bearing Survey No.236/3 admeasuring 3-71-0 H situated at Dhangwadi, Taluka Bhore, District Pune has filed this petition contending that a portion of this land admeasuring 0.51 R was subject matter of acquisition for the purpose of rehabilitation of the project affected persons as the land was falling under the benefited zone. The Petitioner's contention is that the acquisition proceedings qua the said land have lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 (for short '2013 Act'), for the reason that neither the compensation was paid to the petitioner nor the physical possession was taken over though the Award was passed on 12 October 2002. The petitioner, therefore, prays for quashing of the Award dated 12 October 2002 and seeks a direction that the respondents be directed not to take physical possession of the land in question.

3. The case of the petitioner is that the process for acquisition of the land in question admeasuring 51 R, was initiated on 3 July 1998 by issuance of a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short '1894 Act') followed by issuance of a Section 6 notification and a notice under Section 9 of the 1894 Act, culminating into an award dated 12 October 2012 passed under Section 11 of the 1894 Act. It is stated that the Award is in regard the land admeasuring 51 R from the larger land of the petitioner from Survey No.236/3. The total land under the said survey number being 3-71-0 Hectare. The petitioner has averred that neither compensation under the award was paid to the petitioner nor the possession of the land was taken over. These averments are made in paragraph 3(i) and 3(ii) of the petition. The petitioner has stated that in a reply dated 18 March 2015 received by the petitioner from the Information Officer, under the Right to Information Act, the authority has confirmed that payment of the compensation has not been made to the petitioner.

4. On behalf of the respondents, a reply affidavit of Tahsildar, Bhore dated 6 July 2015 has been filed. A peculiar stand has been taken in paragraph 4 of the reply affidavit to submit that as per the '*Anderson's Manual*', the authorities would preserve the award and the rest of the documents can be destroyed after completion of one year's period, after the declaration of the award, and therefore, it was difficult to gather old records. It is stated that the Writ petition is therefore being defended on the basis of tit-bits of the record. As regards payment of compensation the reply affidavit states that the petitioner has refused to accept the compensation. Thus without any documentary support, in paragraph 5 of the reply affidavit the deponent has stated thus:-

“5. I further say that the writ petition is also infructuous at the incipient stage itself. The record reveals that the Award was declared on October 12, 2002. The possession was taken. Thereafter, on December 21, 2005, January 29, 2008, letters were issued to the Petitioner to collect the compensation of the land. Hereto annexed and marked as Exhibit 3 collectively are the said letters. The Petitioner chose not to accept the compensation. However, by this conduct, he does not stand to gain to take advantage of the provisions of the new Act. If the compensation is offered and is refused, then the acquisition proceedings do not lapse. Since the possession is taken, the acquisition proceedings stand. I am annexing to this Affidavit as Exhibit 4 the 7/12 Extracts of the lands in question.”

5. On the above rival pleadings, we have heard the learned Counsel for the parties. It appears to be not in dispute that the land of the petitioner admeasuring 0.51 Ares forming part of Survey No.236/3, was the subject matter of acquisition initiated by the respondents being the land falling in the benefited zone of a dam project. It is also not in dispute that an award came to be passed on 12 October 2002. The case of the petitioner that the amount of compensation is not paid to the petitioner finds support not only from the averments as urged by the petitioner in the writ petition and not denied by the Respondents but also from the reply received by the petitioner under the Right to Information Act dated 18 March 2015 (page 40 of the paper book). Further, as noted above, the respondents in the reply affidavit have taken a clear stand, that it is the petitioner, who has not come forward to claim the compensation. The respondents do not say that they have adhered to Section 31 of 1894 Act so that the amount of compensation can be considered to be paid. If the Petitioners were not coming forward to receive payment, then the amount ought to have been deposited by the Respondents with the Civil Court as Section 31 of the 1894 Act would provide. The law in this regard is clear, as also noted by us in the decision in the case “**Santosh Dnyaneshwar Aher vs. State Of Maharashtra Through Its Secretary And Ors.**”¹ wherein referring to the decision of the Supreme Court in “**Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors**”² and the decision of the Division Bench of this Court in “**Shri.Bapuso**

1 Writ Petition No.3238 of 2015, Order dated 17.1.2017

2 2014(3) SCC 183

Narayan Kulkarni (deceased) through Lrs and Ors. Vs. The State of Maharashtra and Ors.”³ it is held only when there is compliance of Section 31 of 1894 Act it can be said that the amount of compensation is paid. In regard to the facts in hand it is quite clear that the amount is lying in the account of the Land Acquisition Officer and it is not deposited with the Civil court as the provision of Section 31 of 1894 Act would mandate, the petitioner thus would be correct in his contention that the compensation amount is not paid to him.

6. Although one of the requirements of sub-section (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

3 2016(3) Mh.L.J. 384

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.

7. As regards the facts of the present case as no document is placed on record to show that possession of the

petitioner's land was taken over, we have no alternative but to reluctantly hold that the possession of the land has remained with the petitioner. In saying so we express our serious dissatisfaction on the state of affairs the concerned department has handled the land acquisition records as noted above.

8. In view of the above deliberation, it is quite clear to us that both the requirements of sub-section (2) of Section 24 of 2013 Act namely the amount of compensation having not been paid to the petitioner as also the possession of the land was not taken over under the award, are satisfied, to hold that by operation of provisions of sub-section (2) of Section 24, the acquisition in question has lapsed.

9. We accordingly allow this petition in the following terms:-

ORDER

(i) We hold that the acquisition proceedings in relation to the land of the Petitioner namely land admeasuring 51 R in Survey No.236/3 situated at Dhangwadi, Taluka Bhore, District Pune stands lapsed in view of the provisions of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) We also make it clear that the acquisition would stand lapsed only in relation to the lands subject matter of this Petition and no adjudication is made as regards the legality and validity of the acquisition of other lands which are subject matter of the aforesaid two Awards;

(iii) This Judgment and Order will not preclude the Respondents from initiating fresh acquisition proceeding in regard to the acquired lands as per the provisions of the said Act of 2013.

(iv) The report of the Principal Secretary (Revenue) in regard to our directions in paragraph 6 be placed before the appropriate Bench after eight weeks.

(v) Petition is disposed of in the above terms. No order as to costs.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)