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

WRIT PETITION NO. 11230 OF 2017

Mr. Rajaram Aappa Phalle,
Since deceased through his heirs & legal
representatives -
1 A. Sachin Rajaram Phalle,
& Ors.

... Petitioners.

V/s.

The State of Maharashtra,
through Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai & Ors.

... Respondents.

Mr. Umesh Pawar for Petitioners.

Mr. Vikas Mali, AGP for the Respondent-State.

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

DATE : OCTOBER 09, 2017.

P.C.:

The Petitioners have filed the present Petition seeking benefit of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The land in question is Survey No. 48/2, Hectare 22 Ares, situated at Village-Urun, Islampur, Taluka-Walwa, District-Sangli. The District Resettlement Officer had forwarded a proposal for acquisition of land for resettlement of the project affected persons. A notification under Section 4 of the Land Acquisition Act, 1894 was issued on 1 Mar 1990. After the declaration under Section 6 of the Act of 1894 on 8 October 1990, the award was made on 28 February 1991.

3. Heard Mr. Pawar, learned Counsel for the Petitioners and Mr. Mali, Addl. Govt. Pleader for the State.

4. It is the contention of the Petitioners that the land acquisition proceedings have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is contended that since the possession of the land in question is still with the Petitioners and the compensation is not paid, by virtue of Section 24(2) of the Act of 2013, the acquisition has lapsed.

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

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(1)

(2) Notwithstanding anything contained in sub-section (1), 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.

6. Since the award is dated 28 February 1991, the first parameter is satisfied. On the aspect of possession, the Petitioners have admitted that they are not in possession. On behalf of the State, reply affidavit have been filed by the Land Acquisition Officer. The Respondent – State has placed on record that the possession of the

lands has been taken and relevant entries in the record to that effect have been made. State has also contended that the land has been allotted to the project affected persons. The Petitioners have accepted the position that the project affected persons have constructed houses.

7. However, there is another ground on which relief is sought 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 application of Section 24(2) of the Act of 2013, it is enough that either of the contingencies exist. That is, the possession of the land is not taken or compensation is not paid. This position is made clear by the Apex Court in the case of *Delhi Development Authority v/s. Sukhbir Singh and Ors.*².

8. In the reply affidavit filed by the Special Land Acquisition Officer, Satara, it has been stated that the compensation has been deposited in the Sub Divisional Office Account. This fact has also been confirmed by the learned Addl. Govt. Pleader for the State. 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*

1 Writ Petition No. 3238 of 2015 dtd 17/01/2017

2 AIR 2016 SCC 4275

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

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. It is held that the deposit in Personal Ledger account is not a compliance with S.31(2). This view has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

9. 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 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.

10. We have been hearing a group of matters along with several other petitions wherein by virtue of the position of law as it stands today we would have to declare acquisition proceedings having lapsed. Considering the implications of such large number of orders, we had, from time to time, called upon the State to formulate a scheme to address the consequences that may ensue from such declarations. In the order passed on the last occasion on other matter, we had recorded the statement of the learned Government Pleader that no immediate commitment can be given to the Court. We cannot keep deferring the declaration, hence the Petition was taken for disposal.

11. We make it clear that, though we have declared that the acquisition proceedings in this petition has lapsed, we have not relieved the State from its statutory obligation under the Maharashtra Project Affected Persons Rehabilitation Act, 1999. The State will therefore, have to evolve a methodology to counterbalance the interest of all concerned in this petition by taking remedial measures. Since the State has put the project affected person in possession, it will be highly inequitable to direct restoration of possession of the lands to the Petitioners. This view is taken by the Apex Court in the case of *Antevorta Developers Private Limited Vs The Principal Secretary to the Government of Maharashtra – Civil Appeal No.8593 of 2017*. In such cases the State will pay the compensation

to the Petitioners by taking necessary steps under the Act of 2013. This, State shall do within period of one year from today.

12. Accordingly, Writ Petition is allowed holding that the Land Acquisition proceedings in respect of the lands in question have lapsed by virtue of section 24(2) of the Act of 2013. It is directed that the project affected persons who are already put in possession, their possession shall not be disturbed and the State shall take necessary steps as indicated above for acquisition of the land and payment of compensation under Act of 2013 to the Petitioners within period of one year from today.

13. Writ Petition is disposed of in above terms. No order as to costs.

N.M.JAMDAR, J.

CHIEF JUSTICE