Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11659 OF 2014

Mr.Bapu Balu Dhangar
- (since deceased)
Through LRs. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11225 OF 2016

Mr.Sudam Ramrao Palande. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11224 OF 2016

Mr.Madhukar Balwant Palande and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 8130 OF 2016

Mr.Ganpati Kedari Borage (Decd)
Through LRs. … Petitioners.
V/s.
Collector and Deputy Director for
Rehabilitation and others. … Respondents.

Along with
WRIT PETITION NO. 6303 OF 2015

Mr.Ganpatrao Govindrao Rananavare. … Petitioners.
V/s.
The Collector, Kolhapur District and others. … Respondents.

Along with
WRIT PETITION NO. 6369 OF 2015

Mr.Bandu Laxman Salgar (since decd)
Through LRs. … Petitioners.
V/s.
The Collector, Kolhapur District and others. … Respondents.

Along with
WRIT PETITION NO. 6301 OF 2015

Mr.Shankarrao Govindrao Rananavare. … Petitioner.
V/s.
The Collector, Kolhapur District and others. … Respondents.

Along with
WRIT PETITION NO. 6302 OF 2015

Mr.Govindrao Shankarrao Rananavare
(since decd) through LRs. … Petitioners.
V/s.
The Collector, Kolhapur District and others. … Respondents.

Along with
WRIT PETITION NO. 4804 OF 2015

Mr.Hari Ganpat Madne and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11229 OF 2016

Mr.Narshing Narayan Palande. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 11228 OF 2016

Mr.Mohan Baban Palande. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 14209 OF 2016

Mr.Chandrakant alias Kaluram Sadashiv Mutke. … Petitioner.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
CIVIL APPLICATION NO. 295 OF 2017
in
WRIT PETITION NO. 14209 OF 2016

Mr.Aba Yashwant Deshmukh … Applicant.
V/s.
Mr.Chandrakant @ Kaluram Sadashiv Mutke. … Respondent.

Along with
WRIT PETITION NO. 9774 OF 2015

Mr.Anandrao Laxman Thorat and others. … Petitioners.
V/s.
State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION (Stamp) NO. 13466 OF 2017

Mr.Bhairu Namdeo Darekar and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Along with
WRIT PETITION NO. 3554 OF 2016

Mr.Bhagwan Genu Argade and others. … Petitioners.
V/s.
The State of Maharashtra and others. … Respondents.

Mr.Sanjeev Kadam for the Petitioner in WP No.11659/2014.
Mr.Vishwanath Talkute for Petitioners in WP No.4804 /2015.
Mr.Vivek Salunkhe, for Petitioners in W.P. Nos.6301/2015, 6302/2016, 6303/2016 and 6369/2015.
Mr.S.R.Nargolkar i/b Mr.Swapnil Mohite, for Petitioners in W.P. Nos.11224/2016, 11225/2016, 11228/2016, 11229/2016 and 11231/2016.
Mr.S.R.Nargolkar i/b Mr.Omkar Amberkar, for the Petitioner in W.P. No.14209/2016.
Mr.A.B.Vagyani – GP a/w Mr.P.G.Sawant – AGP a/w Ms.Geetanjali Golatkar – AAGP and Mr.Rohan Sawant – AAGP, for the State.
Mr.P.D.Dalvi for Respondent Nos.5, 6A to 6D in in WP No.11659 / 2014.
Mr.Manoj Patil i/b Ms.Suman Lengare, for Respondent Nos.7 and 8 in W P No.4804/2015.

CORAM : DR. MANJULA CHELLUR, C.J. &
N.M. JAMDAR, J.
DATE : OCTOBER 3, 2017.

P.C. :-

In this group of matters, since a common question of law arises, identical facts are involved and the reliefs claimed is the same, by consent of learned counsel for the parties, the Petitions are disposed of by this common order. The learned counsel for the parties have also advanced common submissions.

2. The Petitioners have filed the Petitions under Article 226 of Constitution of India seeking relief under section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('Act of 2013'). They seek a declaration that acquisition proceedings have lapsed.

3. The lands involved in these Petitions have been acquired under the Land Acquisition Act, 1894 for the resettlement of project

affected persons. The resettlement of project affected persons is carried out under the provisions of Maharashtra Project Affected Persons Rehabilitation Act 1999. Notifications under section 4 of the Land Acquisition Act, 1894 were issued, thereafter followed by declaration under section 6 of the Land Acquisition Act, Awards in all these proceedings were declared five years prior to 1 January 2014.

4. Since relief is sought under section 24(2) of the Act of 2013, it will be necessary to reproduce the said section for ready reference-

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 (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. In all the Petitions, the State has asserted that State has taken possession of the lands in question. In some cases the State has placed on record that possession has been handed over to project affected persons. The Petitioners dispute this position. It is not possible for us to decide this contested factual issue of possession in these Petitions.

7. However, 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 amply made clear by the Apex Court in the

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

case of *Delhi Development Authority v/s. Sukhbir Singh and Ors.*[2].

8. In all these proceedings, the State has either filed affidavits or has placed a chart on record which has been counter signed by the learned Additional Government Pleader. These documents show that the compensation has not been paid to the Petitioners and the same is deposited in Personal Ledger Account or Revenue Account. It is an admitted position that in none of these petitions, compensation has been deposited in the court where reference under section 18 of Land Acquisition Act will lie.

9. 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 provision 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 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

2. AIR 2016 SCC 4275.

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

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.

10. In the result, the contention of the Petitioners that the land acquisition proceedings have lapsed since the compensation is not paid as per Section 24(2) of the Act of 2013, will have to be upheld.

11. Accordingly, Writ petitions are 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.

12. Writ Petitions are disposed of in above terms. No order as to costs.

N.M. JAMDAR, J. *CHIEF JUSTICE*