

Sequeira

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

WRIT PETITION NO. 8265 OF 2015

Mr. Babasaheb Genuji Shedge (Kadam)
(deceased) Through his heirs & legal
representatives -
Krishnarao @ Kisanrao Babasaheb Shedge @
Krishnarao @ Kisanrao Babasaheb Kadam-Patil
(deceased) through
Santosh Krishnarao Kadam-Patil & Ors. ... Petitioners.

V/s.

Sub-Divisional Officer, Bhore & Ors. ... Respondents.

Mr. Anish Khandekar, for Petitioners.

Mr. V. N. Sagare – AGP, for the Respondent-State.

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

DATE : SEPTEMBER 25, 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 Gat No. 257(Part) admeasuring 1 Hectare 20 Ares situated at Village-Nasrapur, Taluka-Bhor, District-Pune. 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 31 May 1999. After the declaration under Section 6 of the Act of 1894 on 28 December 2000, the award was passed on 21 April 2001.

3. Heard Mr. Khandekar, learned Counsel for the Petitioners and Mr. Sagare, 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 subsection (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 21 April 2001, the first parameter is satisfied. On the aspect of possession, the Petitioners have asserted in the Petition that they are still in possession. They have also filed a rejoinder reiterating this contention. On behalf of

the State, two reply affidavits have been filed by the Land Acquisition Officer. The Respondent – State has denied that possession is with the Petitioners and have stressed 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. After perusing the rival pleadings and hearing the learned Counsel for the parties we find that in the present case the issue as to who is in possession is a seriously disputed question of fact and it is not possible for us to conclude the same finally on the basis of material placed before us.

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

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

2 AIR 2016 SCC 4275

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 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.

³ 2014(4) Mh. L.J.566

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. Accordingly, the Writ Petition is allowed directing that the acquisition proceedings in respect of the land in question have lapsed in view of Section 24(2) of the Act of 2013. No order as to costs.

N.M.JAMDAR, J.

CHIEF JUSTICE