

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

WRIT PETITION NO. 11726 OF 2016

Shri.Paygonda Bhau Patil
Deceased through legal heirs
Shamgonda Paygonda Patil & Ors. ..Petitioners
V/s.
State of Maharashtra & Ors. ..Respondents

Mr.Sandeep Karegave i/b Mr.D.V. Sutar for the Petitioners

Mrs.M.P. Thakur, AGP for Respondent Nos.1 to 3-State.

Mr.Ajinkya Udhane i/b Mr.Tanaji Mhatugade for Respondent No.4.

**CORAM : DR.MANJULA CHELLUR, CJ &
M.S. SONAK, J.**

DATE : 31st OCTOBER 2017

P.C.:

1. Rule.

2. With the consent of and at the request of learned counsel for the parties, the Rule is made returnable forthwith.

3. In terms of award dated 29th April 1989, the petitioners property admeasuring 74 Ares, forming a part of Gut No.129, Village Mouje Kini, Taluka-Hatkanangle, Dist-Kolhapur ('acquired

property') came to be acquired by the Respondent-State for the public purpose of rehabilitation of project affected persons. In the affidavit, the petitioners have made a categorical statement that they were served with no notice under Section 12(2) of the Land Acquisition Act, 1894 and till date, no compensation has also been paid to the petitioners. The petitioners have further stated that possession of land admeasuring 56 Ares, from out of the acquired property was taken from the petitioners in the year 1998 and Mutation Entry No.3132 was effected so as to indicate the name of Respondent No.4, the project affected person, to whom such portion of the acquired land came to be allotted. The petitioners reiterated that even at this stage, no compensation was paid to the petitioners in respect of the acquired land or even the portion of the acquired land.

4. The petitioners have placed reliance upon communication dated 12th February 2001 addressed by Respondent No.3 i.e. Special Land Acquisition Officer to the Commissioner, Pune Division, in which, the respondent No.3 has stated that the petitioners are required to be paid compensation in pursuance of the award dated 24th April 1989. The copy of the communication dated 12th February 2001 is in fact annexed as Exh-G to the Petition.

5. The petitioners have also placed on record correspondence between their father and the authorities pointing out that no compensation has been paid in respect of the acquired property. The petitioners also placed on record the correspondence initiated by them, after the demise of their father, *inter-alia* in the matter of non-payment of compensation and the corresponding lapsing of acquisition proceedings in pursuance of Section 24 of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('said Act'). Since, there was no favorable response, the petitioner state that they have instituted the present petition, seeking *inter-alia* a declaration that the acquisition stands lapsed and seeking restoration of possession of the portion of the acquired property admeasuring 56 Ares from out of Gut No.129 to the petitioners.

6. On behalf of respondent Nos.1 to 3, Avinash Ramrao Hadgal, Deputy Collector (Land Acquisition) No.12, Kolhapur, has filed affidavit in reply on 30th October 2017.

7. The aforesaid affidavit in reply, comprises in all six paragraphs, which read as follows :-

“1. I have gone through a copy of the Writ Petition

with annexures thereto, I have also perused the official record pertaining to the subject matter of the case and on the basis of the information derived therefore, I am filing this affidavit as under. I crave leave and liberty to file Additional Affidavit-In-Reply, as and when found necessary.

2. By the present Writ Petition, the petitioner has prayed that the Award No.LQN/SR/Kini/4 dated 29th April 1989 is lapsed in light of Section 24(2) of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, Act, 2013 in respect of Gat No.129 part 0 Hectar 74 ares of village Moujue Kini Tal.Hatkanangle Dist.Kolhapur (Hereto referred to as a said land) I am filing this affidavit to place on record the following relevant facts:-

3. I say that the Notification under Section 4 of the Land Acquisition Act, 1894 was published in Maharashtra Govt. gazette on 29/09/1985. The same Gazette was published in local sector i.e. Village Chavadi board on 18/11/1985. I also say that the Notification under Section 6 of Land Acquisition Act, 1894 was published in Maharashtra Govt. Gazette on 28/08/1986. The same gazette was published in local sector i.e. Village Chavadi board on 30/04/1987 and the award was declared on 29/04/1989.

4. I say that the final Award vide No.LQN/SR/Kini/4 including the said land is declared on dated 29th April 1989. The compensation amount was fixed of Rs.42,491/- in the Award. The compensation amount payable to the petitioner is deposited in Revenue Deposit Account, as the Petitioner had not accepted the amount of compensation.

5. I say that the possession of the said land was taken on 03/05/1997 vide Mutation Entry No.2920 and the name of the Collector and Dy. Director, Project Resettlement (Land) Kolhapur is entered on 7/12 extract. Hereto annexed and marked **EXHIBIT -"1"** is the copy of the Mutation Entry No.no.2920 dated 03.05.1997.

6. *I further say that the said land was allotted to Respondent No.4 i.e. Joti Sadu Patil Warana Project Affected Person on dated 31/03/1998 and the name of the Respondent No.4 was entered on revenue record on 7/12 extract vide mutation entry no.3132.”*

8. Significantly, the deponent of the Affidavit-In-Reply does not deny the petitioners positive averment that neither their father nor they were served with any notice under Section 12(2) of the Land Acquisition Act 1894 in pursuance of the award dated 29th April 1989. Further, the affidavit-in-reply merely states that compensation was determined at Rs.42,191/- in the award and the same was deposited in the Revenue Deposit Account as the petitioners had accepted the amount of compensation. Apart from the fact that there are no details stated as to the date of deposit of the compensation in the Revenue Deposit Account, there are absolutely no particulars as to the circumstances in which the petitioners or their father is stated to have refused to accept the compensation amount. This is significant because the petitioners have placed on record correspondence in which both the petitioners and the petitioners father had pointed out that no compensation has been paid to them and even demanded for the payment of such compensation. From the return filed, it is quite apart that no compensation as determined was ever paid to the petitioners of the

award dated 29th April 1989 made under the Provisions of the Land Acquisition Act 1894.

9. In the affidavit in reply, there is no categorical denial of the statement made by the petitioners that possession of only 56 Ares from out of the acquired property was taken some time in the year 1998 and the petitioners continued to be in possession of the balance portion of the acquired property. In paragraph 5 all that is stated is that the possession of the land was taken on 03rd May 1997 vide Mutation Entry No.2920 and the name of the Collector and Deputy Director, Project Resettlement (Land) Kolhapur was entered in the 7/12 extract. In paragraph 5 of the affidavit in reply it is stated that land was allotted to Respondent No.4 on 31st March 1998 and his name was entered into Revenue Record vide Mutation Entry No.3132. The petitioners have produced on record some documents which indicate that the Respondent No.4 has applied for permission to transfer the allotted land in favour of some other party. On the perusal of such applications at pages 36 to 39 of the paper-book, it does appear that Respondent No.4 was placed in possession of a portion of the acquired property measuring 56 Ares and not the entire acquired property 74 Ares. The Respondent No.4 has also not filed any affidavit claiming to be in possession of

74 Ares. From this, it does appear that Respondent Nos.1 to 3, in pursuance of the award dated 29th April 1989, in the year 1997-98 took possession of only a portion of the acquired property admeasuring 56 Ares not the entire acquired property admeasuring 74 Ares.

10. The petitioners contend that since the possession of the entire acquired property was never taken and in any case, since no compensation was ever paid in respect of the acquired property, the acquisition lapses in terms of Section 24 of the said Act and the petitioners are entitled to the reliefs as they have prayed for in the petition.

11. Ms.M.P. Thakur, the learned AGP relies upon the decision of the Hon'ble Supreme Court in the case of ***Mahavir & Ors V/s. Union of India & Anr***¹, to submit that the present petition is barred by delay and laches and therefore, no relief ought to be granted to the petitioners.

12. Mr.Ajinkya Udhane, the learned counsel for Respondent No.4 submits that the Respondent No.4 has been in possession of

1 Special Leave Petition (c) Diary No.24781 of 2017 decided on 08th September 2017

the portion of the acquired land since the year 1998 and the possession is required to be protected even assuming without admitting that no case of lapse of acquisition is at all made out.

13. Section 24 of the said Act, reads as follows :-

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases :-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894)-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition, proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 land holdings 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.”

14. In order that the provisions in Section 24(2) of the said Act apply, broadly, three parameters are required to be fulfilled :-

- (i) Firstly, the award in question should have been published 5 years before the date of commencement of the said act, which is dated 01st January 2014;
- (ii) Secondly, the physical possession of the acquired land has not been taken; and
- (iii) Compensation in pursuance of the award has been paid.

15. In the present case, the award with which we are concerned was made on 29th April 1989. This means that the first parameter, stands fulfilled. On the aspect of possession, the affidavit on behalf of the respondent Nos.1 to 3 makes a statement that such possession was taken in the year 1997. The material on record indicates that possession of only a portion of the acquired property i.e. 56 Ares from out of 74 Ares was taken. However, there is no harm in proceeding on the basis that the second parameter stands unfulfilled, at least partly. The third parameter, stands fulfilled, in as much as there is material on record that

compensation was never paid in pursuance of the award.

16. In *Santosh Dnyaneshwar Aher V/s. State of Maharashtra Through its Secretary & Ors.*,² 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, i.e., 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.*³

17. In the affidavit in reply dated 30th October 2017, all that is stated is that the compensation amount payable to the petitioners is deposited in the Revenue Deposit Account, as the petitioners had not accepted the amount of compensation. As noted earlier, there is no denial to the positive statement made by the petitioners that neither they nor their father ever served with notice under Section 12(2) of the Land Acquisition Act. There is material placed on record by the petitioners in the form of correspondence, in which, they have complained about non-payment of compensation. That apart, the effect of such deposit in the Revenue Deposit Account has been duly considered by the Apex Court in the

² Writ Petition No.3238 of 2015 dated 17/01/2017

³ AIR 2016 SCC 4275

case of *Pune Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors.*⁴ and *Delhi Development Authority v/s. Sukhbir Singh and Ors.*⁵

18. In the aforesaid decisions, the Hon'ble 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

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

5 (2016) 16 SCC 258

Apex Court and the Division Benches of this Court.

19. Thus, applying the aforesaid principles to the facts of the present case, it is quite clear that compensation has not been paid to the petitioners at all or in any case, compensation has not been paid to the petitioners in terms of the mandate of the Section 31(2) of the Land Acquisition Act, 1894. On this basis, the petitioners, are entitled to a declaration that the Land Acquisition proceedings initiated in respect of their land stands lapsed in terms of Section 24(2) of the said Act.

20. In substantially similar circumstances, we have issued similar declaration of lapsing in the following cases :-

(a) Mr.Rajaram Appa Phalle V/s. The State of Maharashtra in Writ Petition No.11230 of 2017 decided on 09th October 2017 .

(b) Shri.Sonba Baburao Kalhate & Ors. V/s. State of Maharashtra & Ors. in Writ Petition No.4394 of 2015 decided on 06th June 2017.

(c) Mr.Anand Narayan Gade & Ors. V/s. The Collector, Pune & Ors. in Writ Petition No.3926 of 2016 decided on 06th June 2017.

(d) Mr.Prabhakar Anant Shelar & Ors. V/s. State of Maharashtra & Ors. in Writ Petition No.6788 of 2014 decided on 07th June 2017.

21. The decision in *Mahavir & Ors V/s. Union of India & Anr. (Supra)* is distinguishable on facts. In the said case, the awards in question had been made in the year 1911 and 1912. Further, there was evidence on record that notice had been issued under Section 12(2) of the Land Acquisition Act, 1894 to the land owners tendering the amount but, the amount was not collected by the claimants/land owners deliberately or that they had refused to collect it and not ready and willing to accept it and thereafter, the same was deposited in the name on account of the owners in the Treasury as per the instructions issued from the Government from time to time. It is in these circumstances that the Hon'ble Supreme Court observed that the cases in which the deliberate accounts of the owners for not collecting the compensation, the provisions of Section 24(2) do not come to their rescue.

22. The facts and circumstances of the present case are entirely different. In this case, the petitioners and their father had in fact complained about non-payment of compensation. There is material on record in support of such complaints and correspondences. The petitioners, could not have filed this petition prior to 01st January 2014, when for the first time, the provisions of Section 24(2) of the said Act entered into force. The petition has

been filed within a reasonable period thereafter. The petitioners claimed to be in possession of the portion of the acquired property. Accordingly, there is no reason to reject the petition on the ground of delay and laches. The circumstances in *Mahavir and Ors V/s. Union of India & Anr. (Supra)* were significantly different from the circumstances of the present case.

23. The next question is whether, in the facts and circumstances of the present case, we should consider the grant of relief of restoration of possession of the acquired land or in any case portion of the acquired land admeasuring 56 Ares from out of the acquired property to the petitioners.

24. In this regard, we must point out that even the petitioners have accepted that from the year 1998, they are not in possession of portion of acquired property admeasuring 56 Ares, which portion, stands allotted to Respondent No.4, a project affected person. There is no fault whatsoever on the part of Respondent No.4 and therefore, if, as a consequences to lapsing of acquisition, we direct restoration of possession to the petitioners, it is a Respondent No.4, who will suffer maximum prejudice, without any fault on his part. Therefore, it is necessary that we mould the reliefs, so that, there is no injustice to the Respondent No.4 in the

facts and circumstances of the present case.

25. In *Mr.Rajaram Aappa Phalle V/s. The State of Maharashtra (Supra)*, the Division Bench of this Court, when faced the similar situation moulded the relief in the following terms :-

“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.”

26. Applying therefore, the principles of moulding of relief in terms of the ruling of the Division Bench in *Mr.Rajaram Aappa Phalle V/s. The State of Maharashtra (Supra)* as well as the Supreme Court ruling upon which it has placed reliance in paragraph 11, we decline to order restoration, but, direct the State to pay the compensation to the petitioners by adopting the necessary steps under the said Act as expeditiously as possible and in any case, not

later than one year from today.

27. We make it clear that in case the State does not dispute that it has taken possession of only a portion of the acquired land admeasuring 56 Ares from out of the acquired property of 74 Ares, then, the petitioners can continue to remain in possession of the balance portion of the acquired property, since, we have declared that the acquisition proceedings in respect of the acquired property stands lapsed. In such a situation, the State shall be obliged to pay to the petitioners compensation in terms of the said Act, only in respect of the portion of the acquired property admeasuring 56 Ares. However, if the State maintains that it has taken possession of the entire acquired property, then, the State shall be obliged to pay compensation in terms of the said Act in respect of the entire acquired property admeasuring 74 Ares.

28. Accordingly, we dispose of this petition, with the following order :-

- (a) The acquisition proceedings in respect of the acquired property are declared as lapsed in terms of Section 24(2) of the said Act;
- (b) The State/Respondent No.4 shall however, not be obliged to restore to the petitioners portion of the

acquired property admeasuring 56 Ares, which is admittedly in the possession of the Respondent No.4.

(c) In respect of the aforesaid portion of 56 Ares however the State is directed to pay the petitioners compensation in terms of the said Act by taking necessary steps under the said Act as expeditiously as possible and in any case within a period of one year from today ;

(d) In case, the State maintains that it has taken possession of the entire acquired property, then, the State, is directed to pay to the petitioners compensation under the said Act, in respect of the entire acquired property by taking necessary steps under the said Act as expeditiously as possible and in any case within a period of one year from today.

(e) The Rule is made partly absolute in the aforesaid terms.

29. Writ Petition is disposed of in the aforesaid terms.
There shall be no order as to costs.

[M. S. SONAK, J.]

[CHIEF JUSTICE]