

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

WRIT PETITION NO. 11870 OF 2016

Shri. Ananda M. Tone and ors. .. Petitioners

V/s.

The Revenue & Forest Department
and ors. .. Respondents.

Mr. Ravi Kadam for the Petitioners.

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

Mr. Vijay Patil for Respondent No.5

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 14 NOVEMBER 2017.

ORAL JUDGMENT:

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

2. The petitioners by this petition under Articles 226 and 227 of the Constitution of India seeking following reliefs:

“a) That by writ of mandamus or writ in the nature of mandamus or by any other appropriate writ, order and or direction of this Hon'ble Court record and proceeding of Award dated 10/10/1975 in which the land of Petitioners bearing Gat No. 26, 28, 31, 182,190,191,193 and 198 were acquired for the construction of Walekhindi Irrigation Dam, situated at

Walekhindi, Tal. Jat, Dist. Sangli, kindly be called for.

b) That by writ of mandamus or writ in the nature of mandamus or by any other appropriate writ, order and/or direction after perusal of record and proceeding in respect of letter dated 13/01/2014 and Order dated 29/02/2016 passed by Lokayukta on LA/COM/2007/2011 (T-2) after examining its legality and validity be quashed and set aside and/or in the alternative.

c) That by writ of mandamus or writ in the nature of mandamus or by any other appropriate writ, order and/or direction after perusal of record and proceeding in respect of Award dated 10/10/1975 passed by the Learned Land Acquisition Officer after examining its legality and validity be quashed and set aside.

d) That by writ of mandamus or writ in the nature of mandamus or by any other appropriate writ, order and/or direction the Respondent No.1 to 6 may be directed to reinitiate the Petitioners land Acquisition proceeding and issue amount of compensation to the Petitioners at the market rate in view of the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

e) *Any other equitable relief in favour of Petitioners may be granted*".

3. By an award made by the Land Acquisition Officer on 10th October 1975, the petitioners property bearing Gat No. 26, 28, 31, 182, 190, 191, 193 and 198, area ad-measuring 1H, 79R/ 0H, 11 R/ 1H, 11 R/ 6H, 10R + Pot Kharab 40R / 0H, 6 R / 0.20R / 0H, 73 R respectively situated at Golavchi, Tal. Jat, Dist. Sangli. were acquired under the provisions of Land Acquisition Act 1894 (1894 Act) for the public purpose of Walekhindi Irrigation Dam (said property).

4. It is the case of the petitioners till date, the respondents have not paid the total compensation as determined in the award to the petitioners or their predecessors-in-title. Therefore, the acquisition proceedings stand lapsed by virtue of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act).

5. The petitioners have stated that in terms of the award, compensation for the acquired land was determined at Rs.25,699.62 inclusive of 15% solatium and compensation for the houses was determined at Rs.18,726.60 inclusive of 15% solatium. They have stated that only an amount of Rs. 3071/- was paid to their predecessor-in-title, i.e., late Maruti Tone for removing the debris situated on the acquired land. However, the

compensation amount was withheld.

6. Mr. Tushar Thombre, District Resettlement Officer, has filed an affidavit on behalf of respondent Nos.1 to 4 and 6. In paragraph 3 of the affidavit in reply, this is what has been stated:

*“3. With reference to Para No. 3 of the petition, I say that it is correct that, on 10/10/1975 the award was passed by Land Acquisition Officer of the said lands in favour of predecessor of petitioner i.e. Maruti Tatoba Tone & others. The said lands were acquired by Special Land Acquisition Officer for the construction of Walekhindi irrigation tank situated at Walekhindi, Taluka – Jath, District – Sangli. The name of Late Maruti Tone was entered to 7/12 extract, of land bearing Gat No. 182, 190, 191 & 193 as Karta of family. Others lands bearing Gat No. 26, 28 & 31 are in the name of family of petitioners. After passing the award of Land Acquisition Act, 1894 an amount of Rs.25,699.62 was granted towards compensation of land and the amount of Rs.18,726.60 was granted towards compensation of house property. Out of which Rs.4,964.55/- was paid towards compensation of land Gat No. 182, 190, 191 & 193 in which name of Late. Maruti Tone shows as “Karta” of the family. Remaining amount of Rs.20,735.05 was kept back because partition suit was pending amongst the representatives of Late. Maruti Tone. An amount of Rs. 16,284/- was paid to owners of house properties. Notices were issued to the concerned land owners to receive balance amount of compensation. Hereto annexed and marked as **Exhibit-I** is the copy of the notices issued to the concerned land owners. The representatives of Late. Maruti Tone never turned up to receive the balance amount of compensation. The statement regarding withholding of the amount till decision of R.T.S. Case is not correct, hence denied. The amount were paid to the predecessor of petitioners on 17/10/1975 and 04/02/1977. Hereto annexed and marked as **Exhibit-II** is the copy of acknowledgment.*

7. In order that the provisions in section 24(2) of 2013 Act are attracted, broadly, following parameters have to be fulfilled:

(i) The award in-question should have been published five years before the date of commencement of 2013 Act, which is 1st January 2014;

(ii) The physical possession of the acquired land must have not been taken; or

(iii) The compensation in pursuance of the award must have not been paid.

8. There is no dispute that the award in-question was made on 10th October 1975, which is much before the period of five years stipulated in section 24(2) of 2013 Act. There is no issue of possession because it appears that the acquired land has been submerged in the dam waters. The petitioners, however, assert that the compensation in terms of award has, till date, not been paid to them and therefore, the provision of section 24(2) of 2013 Act are squarely attracted.

9. If the affidavit-in-reply on behalf of the respondents is perused, there is no denial that the compensation of Rs.25,699.62 was determined in the award. There is a statement in the affidavit that out of the same, an amount of Rs.4964.55/- was paid towards compensation of the acquired property. There is, however,

an admission that the balance compensation of Rs.20,735.05 was “*kept back*” because partition suit was pending amongst the representatives of Late Maruti Tone.

10. There is also a statement in the affidavit that the notices were issued to the concerned land owners to receive the balance compensation and the copies of the notices are marked as Exhibit - “I” to the affidavit. Thereafter, a statement is made that the representatives of Late Maruti Tone never turned up to receive the balance amount of compensation. The deponent of the affidavit has however, omitted to mention in the affidavit in reply that the notices marked as Exhibit – “I” are dated 22nd December 2015 and 22nd February 2016. There is neither any statement made in the affidavit that such notices were ever served upon the petitioners nor is any acknowledgment produced to substantiate the service.

11. There is a receipt produced on record to the effect that an amount of Rs. 3605.25 was paid to Maruti Tone on 17th October 1975. This is broadly consistent with what is stated by the petitioners in paragraph 3 of the petition that an amount of Rs.3071/- was paid to Late. Maruti Tone.

12. From the material on record, therefore, it is quite clear that except for the payment of Rs.3605.25 to Late. Maruti Tone on 17th October 1975, the compensation amount for the acquired land as determined in the award has not been paid to the

petitioners or their predecessor-in-title. In fact, this position is not even disputed. All that is stated in the affidavit-in-reply is that the compensation amount of Rs.20,735.05 was “*kept back*” because partition suit was pending amongst the representatives of Late Maruti Tone. Such “*keeping back*” of compensation was not at all contemplated under the 1894 Act. There are specific provisions in the 1894 Act i.e., Sec 31 (2) to deal with the payment/deposit of the compensation amount whenever there is any dispute as to the persons entitled to receive the same.

13. From the receipt produced at Exhibit-'II', it is not at all clear as to whether the amount of Rs.3605.25 constitutes a part of compensation for the acquired land or not. In paragraph 3 of the petition, the petitioners have made a specific averment that an amount of Rs.3071/- was paid to Late. Maruti Tone for removing debris situated in the suit property. There is no specific denial to this averment.

14. That apart, the petitioners have placed on record the communication dated 3rd June 2010 addressed by the Special Land Acquisition Officer No.6, Sangli to the District Resettlement Officer, Sangli, in which, it is clearly stated that no compensation has been paid to the petitioners or their predecessor-in-title, even though, their lands stand acquired vide award dated 10th October, 1975. This communication is annexed to the petition as Exhibit-'K' (page 90).

15. In the affidavit-in-reply, the respondents have merely stated that the contents of paragraph 12, where there is reference to Exhibit-'K' are not correct and are hence denied. There is also a statement that initially the amount of compensation was paid to the predecessor-in-title of the petitioner, i.e., Late. Maruti Tone. Such a statement hardly constitutes any denial of the averments in paragraph 12 of the petition. In any case, the respondents, were duty bound to explain the communication dated 3rd June 2010 addressed by the Special Land Acquisition Officer to the District Resettlement Officer. The affidavit-in-reply is in fact filed by the District Resettlement Officer and therefore, it was his duty to at least state whether such a letter was received from the Special Land Acquisition Officer.

16. On basis of material on record, it is quite clear that the compensation amount as determined under the award was not paid to the petitioners or their predecessor-in-title. There is a serious dispute as to whether the amount of Rs.3071 paid to the predecessor-in-title of the petitioner constitutes a part of the compensation amount or not. From the pleadings, which have not been specifically denied, it does appear that this amount pertains to some compensation to assist the process of rehabilitation that is removal of debris from the acquired property. In any case, mere payment of Rs.3071, when the award itself has determined compensation at Rs. 25,699.62, hardly constitutes any payment of compensation in terms of the award.

17. The notices dated 22nd December 2015 and 22nd February 2016, which were claimed to be addressed to the petitioners can hardly ward off the statutory effect of section 24(2) of the 2013 Act. In the first place, there is no evidence that such notices were indeed served upon the petitioners. Secondly, by the time such notices were addressed, the legal effect of provisions in section 24(2) of the 2013 Act had already set in. Subsequent offer of compensation therefore, neither saves nor revives proceedings, which stand lapsed by operation of law.

18. Section 24(2) of the 2013 Act begins with *non-obstante* clause and states that notwithstanding anything contained in subsection (1), in case of land acquisition, proceedings initiated under the 1894 Act, where an award under section 11 has been made five years or more prior to the commencement of 2013 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 provisions of the 2013 Act.

19. The legislative fiction of deemed lapsing of acquisition proceedings sets in on coming into force of the 2013 Act, where, the conditions prescribed under section 24(2) of the 2013 Act stand fulfilled. Therefore, there is no question of revival of lapsed acquisition proceedings upon the respondents merely addressing the notices on 22nd December 2015 and 22nd February 2016 to the

petitioners requiring them to collect compensation in respect of the acquired land. The fact that such notices were addressed in the year 2015 and 2016, without even the claim that part of the compensation already stands paid fortifies the petitioners' contention that no compensation whatsoever was paid in respect of the acquired land and the amount of Rs.3071 paid to Late Maruti Tone was in order to enable him to clear debris from the acquired land. Similar inferences can also be legitimately drawn from the document marked as Exhibit 'K' to the Petition.

20. Mr. Vijay Patil, learned counsel for respondent No.5, relies on the decision of the Hon'ble Supreme Court in the case *Mahavir and ors. vs. Union of India and anr. - (Special Leave Petition (c) Diary No. 24781 of 2017 decided on 8th September 2017)*, to submit that the present petition is barred by delay and laches and therefore, no relief ought to be granted to the petitioners.

21. The decision in *Mahavir V/s. Union of India (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 owners deliberately do not collect the compensation, the provisions of Section 24(2) do not come to their rescue.

22. The facts and circumstances in the present case are entirely different. There is overwhelming material on record including in the form of admission that the compensation amount in terms of the award was never paid to the petitioners or their predecessor-in-title. In paragraph 3 of the affidavit-in-reply, there is no doubt a statement that notices were issued to the concerned land owners to receive the compensation amount. However, as noted earlier, these notices are dated 22nd December 2015 and 22nd February 2016, i.e., much after the acquisition proceedings were deemed to have lapsed in terms of section 24(2) of 2013 Act. Again, there is no evidence produced as regards the service of this notices as well. The facts and circumstances, in the present case, therefore, are not at all comparable to the facts and circumstances in the case of *Mahavir vs. Union of India (supra)*.

23. The cause of action for instituting the petition arose on 1st January 2014 when the 2013 Act came into force. The petitioners are rustic villagers, whose properties were acquired in the year 1975 and till date, they were not even paid any compensation. In such circumstances, the petition, which was instituted in July 2016, cannot be said to be barred by delay and laches.

24. Besides, as stated in *M/s Dehri Rohtas Light Railway Company Limited v/s. District Board, Bhojpur and ors – (1992) 2 SCC 598*, “The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches”. In the present case, the respondents have not demonstrated any irreversible alteration in their possession, on account of any alleged delay attributable to the petitioners. Accordingly, we are unable to accept Mr. Patil's contention that the petitioners be denied reliefs on the ground of any delay or laches.

25. Upon cumulative consideration of all the facts and circumstances, we partly allow this petition and we hold and declare that the acquisition proceedings in respect of the said property stand lapsed.

26. Since, the said property, stands already submerged in dam water, it is not possible to issue any directions for restoration of possession. However, the relief in terms of prayer clause (d) of the

petition, can be and is required to be granted in the facts and circumstances of the present case. In prayer clause (d), the petitioners have applied for an appropriate writ to direct the respondents to reinitiate acquisition proceedings for the acquisition of the said property under the 2013 Act.

27. This petition is accordingly, partly allowed. It is hereby held and declared that the acquisition proceedings in relation to the said property described in paragraph 3 of this judgment and order stands lapsed. Further, the respondents are directed to reinitiate acquisition proceedings and to acquire the said property under the 2013 Act. The acquisition proceedings is to be completed within a period of one year from today.

28. Rule is made absolute to the said extent only. There shall however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)