

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9114 OF 2013

Subhash Vinayak Deshpande And Ors. ...Petitioners

Versus

State Of Maharashtra And Anr ...Respondents

*Mr.Prathamesh Bhargude with Mr.Sugandh Deshmukh, for the Petitioner.**Mr.PPKakade, AGP for Respondent Nos.1 and 2.**Mr.N.PMule i/b. Mr.S.H.Gangal, for Respondent Nos.3 to 7.*

CORAM : **DR. MANJULA CHELLUR, C. J., & G.S.KULKARNI, J.**

DATE : **FEBRUARY 27, 2017**

P. C.

1. The petitioners have filed this petition challenging an order passed by the Divisional Commissioner, Pune Division dated 29 December 2008 whereby the petitioners' application under Section 48 (1) of the Land Acquisition Act, 1894 for deleting their lands bearing Gat No.1025 (part) admeasuring 0 H 51R situated at Village Shirval, Taluka-Khandala, District Satara, from acquisition have been rejected. The petitioners subsequently amended the petition and incorporated additional prayers, the relevant prayer being prayer clause (AA)

whereby the petitioners pray that the acquisition of the land has lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'). The averments supporting this prayer are made in the amended paragraph (7A) of the petition.

2. The land in question was acquired under the Maharashtra Project Affected Persons Rehabilitation Act, 1986 (for short 'the Resettlement Act'), after following the procedure as contemplated, resulting into a land acquisition Award No.396 dated 31 December 1997. It is the petitioners' case that in consequence of the award a mutation entry came to be made, to infer that the possession of the said land was taken over from one Rajendra Ganpat Petkar, who according to the petitioners had nothing to do with the land in question. The petitioners have averred that the grandfather of Rajendra G.Petkar was a tenant who had surrendered the tenancy rights. However, on the premise, that the possession of the land was not taken over from the petitioners, the petitioners made an application dated 6 April 2000 to the Divisional Commissioner requesting that under the provisions of Section 48 (1) of 1894 Act and

under Section 22 of the Resettlement Act, the land be withdrawn from acquisition. The Divisional Commissioner by an order dated 6 April 2000 granted a status-quo. By the impugned order dated 29 December 2008 the petitioners' application under Section 48 (1) of the 1894 Act came to be rejected on the ground that the possession of the land was already taken over from Mr.Rajendra Petkar on 3 April 1998 and thus the petitioner's application under Section 48(1) of the 1894 Act is not maintainable. Being aggrieved by this order, this petition has been filed.

3. During the pendency of this petition 1894 Act came to be repealed by the 2013 Act and according to the petitioners, the grounds to contend that the acquisition proceedings have lapsed as per section 24 (2) of the 2013 Act, have become available to the petitioners, in as much as the possession of the land was not taken over by the respondents as also the amount of compensation was not paid to the Petitioners.

4. On hearing the learned Counsel for the parties, what we find, is that the principal challenge to the legality of the order passed by the Divisional Commissioner dated 29 December 2008 is not

required to be gone into, if the petitioners succeed, on their contentions that the acquisition has lapsed, in view of the provisions of Section 24(2) of 2013 Act. We accordingly examine the contention of the petitioners as to whether the acquisition can be said to have lapsed as sub-section (2) of Section 24 of 2013 Act would provide.

5. In examining the contention of the petitioners that the acquisition has lapsed under 2013 Act, we may observe, that as regards the issue of possession of the land being taken over by respondent-State under the award, there is some factual dispute. According to the State Government, the possession was taken over from one Rajendra Petkar who appears to be legal heir of the tenant of the land in question. According to the petitioners, Rajendra Petkar could not have handed over the possession of the land as he had no legal right inasmuch as his grandfather had surrendered the tenancy. These are all factual issues which would require an inquiry. We do not propose to delve on this factual issues, for the reason that the second issue of non payment of compensation, as relevant in the context of section 24 (2) of the 2013 Act can also decide the fate of this petition.

6. The petitioners in paragraph 7A of the petition have made

specific averments that the Additional Collector (Land Acquisition) No.16, Satara by his letter dated 10 March 2014 addressed to the petitioners, has recorded that the amount of compensation has not been deposited in the Court. This letter shows that the petitioners have not received the amount of compensation though the land acquisition award acquiring the petitioners' land, is made as far as back on 31 December 1997. A reply affidavit dated 12 January 2017 is also filed on behalf of the State (respondent Nos.1 and 2), of the Deputy Collector/Special Land Acquisition Officer No.16, District Satara. As regards the case of the petitioners of non payment of compensation and the petitioners' averments to that effect as made in paragraph 7A of the petition, the deponent of this affidavit in paragraph 13 has categorically stated that *"There was dispute and petitioner and Pethkar have filed objection regarding compensation also. Hence, the amount of the compensation was not deposited."*

7. The above statement, in the reply affidavit filed on behalf of the State, makes it clear, that the compensation amount is not paid to the petitioners. Section 24(2) of 2013 Act is thus clearly attracted and as a consequence thereto the acquisition proceedings on account of non-payment of compensation would lapse. Admittedly, the award is

declared on 31 December 1997 that is more than five years of the 2013 Act coming into force. The law in this regard is well settled. (See: *“Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.”*¹) This Bench considered a similar issue in the decision in the case *“Santosh Dnyaneshwar Aher Vs. State of Maharashtra through its Secretary & Ors.”*².

8. As regard the contention of private respondent Nos.4 to 7 who claim rights in respect of the land in question under the Maharashtra Resettlement of Project Displaced Persons Act, we do not express any opinion, for the reason that if these respondents have any legal rights being project affected persons, for allotment of land under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1986 then, surely such rights cannot be extinguished and the respondent-State would be required to make land available to them. Further Section 24(2) of 2013 Act makes a clear provision that the same land can be acquired by the State for public purpose by re-initiating the process under 2013 Act.

9. In view of the above discussion, we allow this petition by

¹ 2014(3) SCC 183

²Writ Petition No.3238 of 2015, dated 17 January 2017

the following order:-

ORDER

(i) We hold that the acquisition proceedings in relation to the land of the petitioners being Gat No.1025 (part) admeasuring 0 Hectare and 51 R, situated at village Shirval, Taluka Khandala, District Satara stands lapsed in view of the provisions of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

(ii) We make it clear that the acquisition would stand lapsed only in relation to the land/subject matter of this petition and no adjudication is made in regard to the legality and validity of the acquisition of other lands which may be subject matter of the larger acquisition;

(iii) This Judgment and order will not preclude the respondent State from initiating fresh acquisition proceedings in regard to the acquired lands as per the provisions of the 2013 Act.

Writ Petition is disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)