

Sequeira

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

WRIT PETITION NO. 9181 OF 2015

Shri.Maruti Dadu Lokre
(deceased through legal heirs)

1a. Suresh Maruti Lokare & ors.

.. Petitioners

Vs

The State of Maharashtra & ors.

.. Respondents

Mr.Vinod Sangavikar i/b Umesh Mankapure, for Petitioners.

Mr.P.B.Sawant-AGP, for Respondent Nos.1 to 4.

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

Date : July 10, 2017.

P.C. :

The Petitioner has approached this Court by way of the Writ petition under Article 226 of the Constitution of India seeking writ to declare that the proceedings of acquisition in respect of the land have lapsed.

2. The petitioner has sought the following relief -

'(b) This Hon'ble Court be pleased to declare that the land acquisition in respect of Chikotra Project for Gat No.137 situated at Dhamne, Tal.Aajra, District-Kolhapur shall be deemed to have lapsed

by virtue of provisions of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and released from such acquisition and shall become available for the Petitioners for their agriculture purpose or otherwise'.

3. We have heard Mr. Sangavikar, learned Counsel for the petitioners and Mr. Sawant, AGP for the respondent – State.

4. The land in question i.e. Gat no.137 is situated at village Dhamne, taluka Aajra, District Kolhapur. The notification under section 4 of the Land Acquisition Act, 1894 was issued on 29 May 1997. The notification under section 6 of the Act of 1894 was issued on 7 May 1998. The Award was made on 21 December 1999.

5. Since the case of the Petitioner is based on section 24(2) of the Act of 2013, it will be necessary to reproduce the said provision. Section 24 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 91), 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.”

6. 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.

7. According to the Petitioner, the possession of the land is still with the Petitioner. In the reply affidavit filed by the Deputy Collector Kolhapur, it is asserted that the possession is taken on 10 October 2002 and on 4 December 2002 possession of the land is handed over to the project affected person. Considering the rival contentions, we find that in the present case the factum of possession is a seriously disputed question and it is not possible for us to adjudicate upon the same in a petition under Article 226 of the Constitution of India.

8. There is however one more ground urged by the

Petitioner i.e. 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 amply made clear by the Apex Court in the case of *Delhi Development Authority v/s. Sukhbir Singh and Ors.*²

9. The Deputy Collector in the affidavit has stated that the compensation due to the Petitioner is deposited in Government Personal Ledger Account. The question is whether deposit of compensation in Government Personal is a payment as envisaged under section 24(2) of the Act of 2013.

10. 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

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

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

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. This view has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

11. 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 Petitioners are 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.

12. Accordingly, the Writ Petition is allowed directing that the acquisition proceedings in respect of the lands 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