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

WRIT PETITION NO. 9516 OF 2015

Mr. Govinda Joti Gaikwad and Ors. ... Petitioners.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. Pradeep Thorat for the Petitioners.

Mr. P.B. Sawant, Asstt. Govt. Pleader for Respondents 1 to 3.

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

DATE : JULY 10, 2017.

P.C. :-

Heard Mr. Pradeep Thorat, learned Counsel for the Petitioners and Mr. P.B. Sawant, Asstt. Govt. Pleader for the Respondents.

2. Short question that arises for consideration in this Writ Petition is whether the Petitioners are entitled to benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and consequent declaration that the acquisition proceedings in respect of the lands in question have lapsed.

3. The prayer clause of the Petition reads thus :

(a) that this Hon'ble Court be pleased to declare that the acquisition of the said properties being lands bearing Gat Nos. 709/8, 738/2A, 738/3, 738/5, 739/5, 740/7 and 740/8 situate at Narharwadi at Rehmatpur Taluka, District : Satara in pursuance to the Award dated 10 November 1978 published under Section 11 of the Land Acquisition Act, 1894 have lapsed.

4. A declaration under Section 4 of the Land Acquisition Act of 1894 was published on 25 April 1974 and 28 April 1977. A Notification under Section 6 of the Act of 1894 was issued on 18 April 1974 and published on 21 April 1977. The Award was passed on 10 November 1978. Thereafter, the Petitioners filed an administrative appeal before the Divisional Commissioner, Pune contending that there was a partition in the family of the Petitioners and therefore, acquisition of the land for the purpose of resettlement was not warranted. This Appeal was dismissed. Thereafter, Writ Petition No. 947 of 1985 was filed by the Petitioners, which was dismissed by this Court on 3 November 2009. The Special Leave Petition filed by the Petitioners was permitted to be withdrawn on 18 July 2014. According to the Petitioners, the Petition was withdrawn to seek benefit under the Act of 2013, which had come into force by then.

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 – (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.”

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. Section 24 of the Act of 2013 reads thus :-

7. In view of the affidavit-in-reply filed by the State it is clear that all parameters envisaged under Section 24(2) of the Act of 2013, are attracted. In the affidavit-in-reply filed by Mr. Amrut Malkari Natekar, Special land Acquisition Officer, Satara, he has stated as under :-

“ 5. I say that the physical possession of the acquired land is not taken from the Petitioner and the same is lying with the Petitioner. As far as the compensation part is concerned, notices under Section 12(2) was issued to the Petitioner calling upon them to receive compensation amount, however, they failed to approach and the same compensation amount is deposited in the revenue deposit in Satara, Treasury Office. In view of the above appropriate order may be passed.”

8. The Award is dated 10 November 1978. It is an admitted position that the possession of the land in question is not taken from the Petitioners. It is not stated by the Respondent – State in the reply that the State was prohibited in any manner from taking over the possession. Even assuming possession of the lands is taken from the Petitioner, the aspect of compensation still remains.

9. 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

1. Writ Petition No. 3238 of 2014

is, physical 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.

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 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.

2. AIR 2016 SCC 4275.

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

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)