

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 8334 OF 2014

Dashrath Balwant Barane

...Petitioner

*Versus*The Special Land Acquisition Officer No.22,
Pune And Ors.

...Respondents

*Mr.Mahesh Raul i/b. Mr.Kayval Shah, for the Petitioner.**Mrs.M.Pthakur, AGP for Respondent Nos.1, 2 and 3.**Mr.Deepak More with Mr.Nitesh Mohite, for Respondent No.4.**Mr.Vijay D.Patil, for Respondent No.5.*

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

DATE : **FEBRUARY 27, 2017**

ORDER: (Per G.S.Kulkarni,J.)

1. Rule returnable forth. Heard finally by consent of the parties.

2. The petitioner who claims to be the owner of land bearing Survey No.22/5 (part), Thergaon, Pune, admeasuring 4 H 27 R (for short 'the said land') has filed this petition praying for

the following relief:-

“(a) by appropriate writ, order or direction this Hon'ble Court be pleased to declare that the acquisition proceedings pursuant to the Award bearing No.LQ/24/SR/Thergaon/86 dated 23/9/1986 passed by the Special Land Acquisition Officer No.24, Pune have 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;”

3. The land in question was sought to be acquired by the State for the purpose of planned development and utilization of the land for “Pimpri Chinchwad Township area for industrial, commercial and residential purposes.” Accordingly, a notification under Section 4 of the Land Acquisition Act, 1894 (for short “1894 Act”) came to be issued on 9 March 1970 under which the Special Land Acquisition Officer (Respondent No.1) came to be appointed to perform function of the Collector under Section 5A of the Land Acquisition Act, 1894. On 12 September 1972 a notification under Section 6 of 1894 Act came to be issued. After adopting further proceedings, an award came to be passed on 23 September 1986.

4. The case of the petitioner is that on 15 November 1997 the respondent-State excluded large area of 2454 hectare

from the development and control of 'Pimpri Chinchwad New Town Development Authority' (PCNTDA) and further directed that Pimpri Chinchwad Municipal Corporation shall have entire control for development over the excluded area. By an order dated 27 October 2004 issued by the Commissioner of Pune, the old survey No.20/1/2 belonging to Maruti Laxman Dange came to be renumbered as No.20/1/1/2. Also a mutation entry No.6733 was made. From this land, possession of an area admeasuring 749.25 sq.meters was taken over by the Pimpri Chinchwad Municipal Corporation for construction of road and to the extent of the said area the name of Pimpri Chinchwad Municipal Corporation came to be recorded in 7/12 extract by Mutation Entry No.9456.

5. The case of the petitioner is that respondent No.1 issued a notice dated 3 September 2014 to the petitioner inter alia threatening coercive steps, namely of possession to be taken over by respondent No.1 of the land in question. It is thus the case of the petitioners that though about 27 years have passed from the date of the award, however, the physical possession of the land

had remained with the petitioner as also the amount of compensation has not been paid to the petitioner. The petitioner in supporting his case that the possession of the land has not been taken over by the respondents has placed reliance on the 7/12 extracts pertaining to the said land, which shows the name of the petitioner as also the name of Deputy Director, Town Planning in respect of an area of 155.25 sq.meters, used for the purpose of road. The entries for the period 2010-11, 2012-13 show the land under cultivation. The petitioner, therefore, submits that the acquisition of the land by operation of law would lapse in view of the provisions of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act'). It is thus contended that the respondents would not have any authority to take possession of this land. Accordingly, the petitioner is before us making the above prayer.

6. Respondent No.5-Pimpri Chinchwad New Town Development Authority has appeared as also a reply affidavit of Mr.Satishkumar Khadke, Chief Executive Officer, has been filed,

interalia stating that it was revealed from the record of the Special Land Acquisition Officer that a notice dated 26 November 1986 under Section 12(2) of 1894 Act was issued to the land owners, including the petitioner calling upon him to collect the compensation amount. It is stated that the petitioner was not interested in compensation and did not approach the concerned Land Acquisition Officer for receiving the compensation and did not collect the compensation amount which was deposited in the Revenue Deposit Account with the Government Treasury. It is stated that thereafter the said amount was transferred to the personal ledger account of the Special Land Acquisition Officer No.24 on 15 October 2003. The case of respondent No.4 is thus that as the petitioner himself chose not to collect the compensation amount which was deposited in the personal ledger account (PLA), of the Land Acquisition Officer and therefore the Petitioner cannot be heard to raise a plea under Section 24(2) of 2013 Act to contend that the acquisition has lapsed. As regards the possession of the land, the affidavit is completely silent.

7. By an order dated 17 September 2014 after hearing

the learned Counsel for the petitioner and the learned Assistant Government Pleader, while adjourning the matter for four weeks, this Court had directed that no coercive steps based upon the impugned notice dated 3 September 2014 be taken. Thereafter, hearing of this petition was adjourned on several occasions and the ad-interim order was continued. By a further order dated 9 December 2016, at the behest of the State Government to take instructions and to file reply, again the petition was adjourned for four weeks and the ad-interim order came to be continued. However, the respondents-State (respondent nos.1 to 3) did not file a reply affidavit. In these circumstances, we have no alternative but to proceed with the matter.

8. We have heard the learned Counsel for the petitioner, the learned Assistant Government Pleader for Respondent Nos.1 to 3, Mr. Deepak More with Mr. Nitesh Mohite, learned Counsel for Respondent No.4, and Mr. Vijay Patil, learned Counsel for Respondent No.5. We have perused the petition and the documents as placed on record as also the reply affidavit filed on behalf of Respondent No.5.

9. It is not in dispute that the land in question as described in paragraph 2(A) of the petition was the subject matter of acquisition for the purpose of Pimpri Chinchwad New Town Development Authority and in that regard a notification under Section 4 of the 1894 Act was issued on 9 March 1970, a notification under Section 6 of 1894 Act was issued on 12 September 1972 and on 23 September 1986 as award was passed under Section 11 of the 1894 Act.

10. Considering the record we are of the opinion that there is much substance in the contention as urged on behalf of the Petitioner, that both the ingredients of sub-section (2) of Section 24 of 2013 Act are attracted in the present case, for the petitioner to contend that by operation of law namely sub-section (2) of Section 24 of 2013 Act, the acquisition has lapsed. This is for the reason, that perusal of the impugned notice dated 3 September 2014 issued by the Deputy Collector (Land Acquisition No.22) addressed to the petitioner, clearly states that “ *it has been decided to take possession of the land*” in question namely Gat

No.22/5 (part) admeasuring 4 H 27 R called upon to be handed over respondent No.4. The notice states that if the petitioner had any objection, then, in that case the petitioner should approach the concerned authority within eight days and also inform the authorities 'whether any litigation with regard to the said land was pending or any prohibitory order is passed'. This notice therefore clearly shows that the possession of the land had remained with the petitioner and by virtue of this notice, the possession was sought to be taken over for the first time in the year 2014. This position as reflected in the notice dated 3 September 2014 has not been disputed by the respondents or in that regard by the State Government. It is thus quite clear that though the award is made on 23 September 1986, the physical possession of the land remained with the petitioner and was not taken over by the respondents and in fact steps to take over possession of the land for the first time were being initiated in September,2014 after coming into force of the 2013 Act.

11. As regards the second aspect in regard to payment of compensation, respondent No.4 in its reply affidavit has clearly

stated that initially the amount of compensation was not deposited by respondent no.4 with the personal ledger account of the Special Land Acquisition officer but was deposited in Government Treasury and thereafter, the amount was transferred to the personal ledger account of the Special Land Acquisition Officer. It is the case of Respondent no.4 that it is the petitioner who has not collected the amount. The State does not contend that the payment of compensation has been made to the petitioner or steps as mandated under Section 31 of 1894 Act have been taken.

12. The contention on behalf of Respondent No.2 that the petitioner has not approached the authorities to make payment of compensation which came to be deposited in the personal ledger account of the Special Land Acquisition Officer, cannot be accepted. The words used in sub-section (2) of Section 24 of 2013 Act namely "*the compensation has not been paid*" are relevant in the context of Section 31 of the 1894 Act which provide "*payment of compensation or deposit of the same in the Court*". The application of Section 31 of the Land Acquisition Act qua the

consequence of section 24(2) of the 2013 Act fell for consideration of the Supreme Court in the case of “***Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors***”¹. The Supreme Court held that Section 31 makes a provision for payment of compensation or deposit of the same in the Court. The provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation, and if due to happening of any contingency as contemplated under Section 31(2) of the Land Acquisition Act, the compensation was not paid, the Collector was under an obligation to deposit the amount of compensation in the Court, to which a reference can be made under Section 18 of the Land Acquisition Act. It was held that the mandatory nature of Section 31(2) with regard to deposit of compensation in the Court was further fortified by the provisions under Section 32, 33 and 34 of the Land Acquisition Act.

13. We have considered the above legal position in our decision in the case “***Santosh Dnyaneshwar Aher vs. State of***

¹ 2014(3) SCC 183

Maharashtra through its Secretary & Ors.”² as also followed by the Division Bench of this Court in the case “*Shri.Bapuso Narayan Kulkarni (deceased) through Lrs and Ors. Vs. The State of Maharashtra and Ors.*”³ wherein the Division Bench following the law laid down by the Supreme Court in the case of “*Pune Municipal Corporation & Anr. Vs.Harakchand Misirimal Solanki & Ors*” (*supra*) has held that deposit of the compensation amount in the PLA account is hardly of any significance, as PLA account is an account of the Government Treasury and deposit of compensation in the Government Treasury is of no avail and cannot be equivalent to compensation paid to the landowners/persons interested as Section 31(1) and (2) of the Land Acquisition Act would provide.

14. The above deliberation makes it evident that neither the possession of the land was taken over despite the award being declared on 23 September 1986 as also the amount of compensation has been paid to petitioner as Section 31 of 1894 Act would mandate. Thus, clearly the provisions of Section 24(2)

² Writ Petition no.3238 of 2015, order dt.17.1.2017.

³ 2016(3) Mh.L.J. 384

of 2013 Act have become applicable as both the possession of the land being not taken over and the amount of compensation having not been paid by Respondent Nos.1 to 3 to the petitioner, the acquisition would lapse.

15. Resultantly, the Writ succeeds and is allowed in terms of prayer clause (a).

16. There shall be no order as to costs.

17. Needless to observe that if the land in question is required for a public purpose, the respondents will be at liberty to acquire the same by initiating fresh acquisition proceedings as per the provisions of 2013 Act.

(G.S.KULKARNI, J.)

(CHIEF JUSTICE)