

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9000 OF 2015

Dashrath Balwant Barne & Ors.] ... Petitioners

Versus

The Special Land Acquisition Officer No.22,]
Pune, & Ors.] ... Respondents

Mr. P. B. Shah i/b Mr, Kayval Shah for Petitioners.
Mr. P. P. Kakade, AGP for State.
Mr. Vijay Patil for Respondent No.4.
Mr. Deepak More for Respondent No.5.

CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.
DATE :- 16 MARCH 2017

ORDER (PER :- G. S. KULKARNI, J) :-

1. This petition under Article 226 of the Constitution of India, prays for the following principal 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.”

2. In nutshell, the facts are :-

The case of the petitioners is that the land bearing Survey No.23/2 situate at Village Thergaon, Taluka Mulshi, District Pune was originally owned by one Moru Mahadu Barne. The petitioners claim to be the legal heirs of one of the sons of More Mahadu Barne, namely Late Rambhau. There are *inter se* disputes between the other legal heirs of Moru Barne, as the petitioners say that they are not in good terms with the other members of the family as averred in paragraph 2 (H) of the petition.

3. Out of Survey No.23/2, land admeasuring 3 H 42 R was the subject-matter of acquisition for the public purpose of 'planned development and utilization of the lands in Pimpri Chinchwad Township area for industrial, commercial and residential purposes'. In this regard, on 09/03/1970, a notification under Section 4 of the Land Acquisition Act, 1894 (for short, '1894 Act') was issued. Thereafter on 12/09/1972, a notification under Section 6 of the 1894 Act was issued. On 23/09/1986, the Special Land Acquisition Officer No.24, Pune, declared an award under Section 11 of the 1894 Act.

4. On 15/03/2005, a notice came to be issued to the petitioners by the respondents to take possession of the land, being subject-matter of acquisition. The petitioners, however, state that possession of the land was never taken over. The petitioners' case is that the boundaries of the area acquired were not marked at any point of time. The petitioners aver that an alleged panchanama dated

15/05/2008 was prepared in regard to the land in question, alleged to be in the presence of one Dilip Bajirao Barne and Ramchandra Abaji Barne, who though are family members, are adversaries of the petitioners. The said panchanama is being disputed by the petitioners to show that the possession of the land was never handed over to the Pimpri Chinchwad New Town Development Authority – Respondent No.4. The petitioners aver that from the letter of the Chief Executive Officer of the New Town Development Authority dated 25/06/2012 to the Deputy Collector (Land Acquisition) No.22 pointing out the discrepancies in the land and calling for joint measurements, would clearly show that the possession receipt which was issued, was false and, in fact, there was no joint measurement taken. The petitioners further rely on a letter dated 28/05/2013 of the Deputy Director of Town Planning, Pimpri Chinchwad Municipal Corporation, addressed to respondent no.4 - Pimpri Chinchwad New Town Development Authority pointing out that details of the acquired lands were not furnished. This, according to the petitioners, also show that no measurement of the land at any point of time were undertaken nor any map was prepared demarcating the lands to be acquired. The petitioners also rely on a notice dated 21/07/2014 under Section 53 of the Maharashtra Regional and Town Planning Act, 1966, by respondent no.4 - Pimpri Chinchwad New Town Development Authority calling upon the petitioners to remove alleged illegal construction issued to the petitioners which, according to the petitioners, fortifies that the possession of the land is with the petitioners. The petitioners further rely on the property tax receipts to

show that they are regularly paying the said taxes. Petitioners rely on electricity bills to show that the possession of the land is with the petitioners. Similar documents are relied in respect of petitioner nos.2 to 6. The petitioners state that as late as 27/11/2013, the Special Land Acquisition Officer had issued a notice under Sections 12 (2) and 16 of the 1894 Act to about 122 persons from Survey No.23 (Part), including Smt. Venutai Rambhau Barne, amongst the petitioners and this would go to show that the possession was never taken over and that the possession receipt was a false document. The fact that there are structures standing on the land which is subject-matter of acquisition is also, according to the petitioners, clear in view of the voters list for general elections 2016. Thus according to the petitioners, physical possession of the land was never taken over by the Special Land Acquisition Officer despite a period of about 27 years having lapsed from the date of award.

5. Further case of the petitioners is that the amount of compensation is also not paid to the petitioners under the award dated 23/09/1986. These statements are made in paragraph 2 (F), 2(G) and ground 'C' at page 16 from the petition. Thus, the case of the petitioners is that both the requirements under sub-Section (2) of Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act') for the acquisition proceedings to lapse stand satisfied inasmuch as the possession is not taken over as also the amount of compensation, under the award has not been paid to the petitioners.

In support of their contention, the petitioners have placed reliance on the decision of Supreme Court in the case of *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*¹.

6. Respondent No.4 - Pimpri Chinchwad New Town Development Authority has appeared and filed a reply affidavit of Mr. Satishkumar Khadke, Chief Executive Officer. As regards possession of the land in question, the deponent has submitted that possession of the land was taken over by the Special Land Acquisition Officer. As regards the payment of compensation, the deponent has stated that a notice under Section 12(2) of the 1894 Act was issued to the land owners whose lands were acquired under the award dated 23/09/1986 and accordingly the owners of the lands from whom the petitioners are claiming, were also issued a notice dated 27/10/1986 calling upon them to collect the compensation amount. It is stated that however, the concerned persons did not approach the Land Acquisition Officer for receiving the compensation as they were not interested to collect the compensation amount. It is stated that the compensation amount was initially deposited in the Revenue Deposit Account in the Government Treasury and thereafter, the amount was transferred to the personal ledger account of the Special Land Acquisition Officer No.24 on 15/10/2003. The relevant averment in this regard can be found at para 4 which reads thus :-

¹ (2014) 3 Supreme Court Cases 183

“4. I say that from the record of the Special Land Acquisition Officer No.24, it appears that notice U/s. 12(2) of the Land Acquisition Act was issued to the Land owners whose lands were acquired under the subject award dated 23/9/86. I say that notice also appears to have been issued to the present petitioners herein calling upon them to collect the compensation amount. Copy of the said notice dated 27 October, 1986 is annexed hereto and marked as **Exhibit “1”**. It appears that the Petitioners were not interested in compensation and did not approach the concerned land acquisition officer for receiving the compensation. I say that the Petitioners themselves did not collect the compensation amount. I say that as the Petitioners failed to collect the compensation amount, the compensation amount was initially deposited in the Revenue Deposit Account in Govt. Treasury and thereafter, the amount was transferred to the personal ledger account of the Special Land Acquisition Officer No.24 on 15.10.2003. Copy of the relevant extracts showing the deposit in the personal ledger account is annexed and marked as **Exhibit “2”**.”

7. We may observe that though sufficient opportunity was available, the State Government has not placed any reply affidavit on record and therefore we proceed on the footing that the State does not dispute the facts as averred on behalf of the petitioners as also the case of respondent no.4 in the reply affidavit as referred by us.

8. On the above background, we have heard the learned Counsel for parties. It appears that there is no dispute on the acquisition of the land in question admeasuring 3H 42 R in Survey No.23/2 under an award dated 23/09/1986 with which petitioners

state be concerned. There appears to be a dispute on the possession of the land as there is a 'possession receipt' on the record of the State Government as referred by the petitioners. Contrary to this, there are several other documents which are relied upon by the petitioners to show they are in possession. In exercise of our jurisdiction under Article 226 of the Constitution of India, we cannot undertake an enquiry on these disputed question of facts as to whether the possession of the land was taken over under the award dated 23/09/1986. However, the issue of possession would become secondary in the context of Section 24(2) of the 2013 Act which provides for lapsing of the acquisition proceedings also on non-payment of compensation under an award which is passed five years prior to coming into force of the 2013 Act (the Act came into force on 01/01/2014) as urged by the petitioners. We, therefore, examine the contentions of the petitioners as to whether the amount of compensation was paid.

9. As noted above, the petitioners have categorically averred in the Writ Petition that the amount of compensation under the award was not paid to the petitioners. Respondent no.4, in the reply affidavit, has come out with a case that it is the petitioners who did not come forward to collect the amount of compensation and eventually the amount of compensation came to be deposited in the Revenue Deposit Account in the Government Treasury. Thereafter, the amount was transferred to the personal ledger account of the Special Land Acquisition Officer No.24 on 15/10/2003. These

averments and as noted by us in detail above, are not sufficient to hold that the amount of compensation has been paid to the petitioners in terms of what the 1894 Act would mandate. The law in this regard is well-settled. Mere deposit of the amount in the account of the said Special Land Acquisition Officer would not suffice requirement of Section 31 of the 1894 Act. To consider that the amount is actually paid to the persons whose lands are acquired, the amount of compensation was required to be deposited by the Special Land Acquisition Officer in the Civil Court as Section 31 would contemplate. This Bench has considered the issue extensively in the case of ***Santosh Dnyaneshwar Aher Vs. State of Maharashtra and Ors.***² referring to the provision of Section 31 of the 1894 Act and the law in that regard as laid down by the Supreme Court in the case of ***Pune Municipal Corporation (supra), Delhi Development Authority Vs. Sukhbir Singh & Ors***³ as also the Division Bench of this Court in ***Shri Bapuso Narayan Kulkarni (deceased) through LRs and Ors. Vs. the State of Maharashtra and Ors***⁴ to hold that deposit of the compensation amount in the account of Special Land Acquisition Officer is of no significance as such an account is an account of the Government Treasury and deposit of compensation in the Government Treasury cannot be equivalent to the compensation paid to the land owners / persons interested as Section 31(1) and (2) of the 1894 Act would provide. It was thus held that such contention that the amount have been deposited in the account of the Special Land Acquisition

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

³ AIR 2016 SC 4275

⁴ 2016(3) Mh.L.J. 384

Officer, cannot be accepted as payment of compensation to the land owners and in such a situation, it would be required to be held that the acquisition of land has lapsed.

10. Now coming to the facts of the case, the averments as made in the reply affidavit of respondent no.4 clearly go to show that the respondent no.4 had deposited the amount of compensation in the account of the Special Land Acquisition Officer and that no further steps were taken to deposit the amount in the Court as mandated by Section 31(1) and (2) of the 1894 Act. It would, thus, be required to be held that on account of non-payment of compensation to the petitioners by operation of law, the acquisition of land bearing Survey No.23/2 admeasuring 3 H 42 R would lapse.

11. In the circumstances, the petition is allowed in terms of prayer clause (a).

12. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)