

Sequeira

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

WRIT PETITION NO. 9409 OF 2015

Ramchandra Krishnaji Kulkarni
- Deceased by his legal representatives
Smt.Annapurna Ramchandra Kulkarni & Ors. .. Petitioners

Vs

The Special Land Acquisition Officer No.4,
Kolhapur & Ors. .. Respondents

Mr.Sagar Mane, for Petitioners.
Ms.S.S.Bhende - AGP, for Respondent-State.

***CORAM : DR.MANJULA CHELLUR, CJ. &
N.M.JAMDAR, J.
Date : July 24, 2017.***

P.C. :

The petitioners have approached this Court by way of this Writ petition under Article 226 of the Constitution of India, for the following relief :

'(b) By a suitable Writ, order or direction, this Hon'ble Court be pleased to hold and declare that the proceedings for acquisition of the lands of the Petitioners bearing Gat Nos.73A, 73B, 73C and 73D at Village Tirwade, Tal.Bhudargad, District Kolhapur, made under the Award dated 02.10.1987

have lapsed since the possession of the lands has not been taken and the compensation is not paid till today, in view of the provisions of Section 24(2) of the Act of 2013, and accordingly it be declared that the Petitioners are entitled to deal with the said lands as if the same are not under acquisition / acquired'.

2. A notification under section 4 of the Land Acquisition Act, 1894 was issued on 13 January 1983. The declaration under Section 6 of the Act of 1894 was issued on 3 October 1983 and Award was made on 7 August 1987.

3. Heard Mr.Mane, learned counsel for Petitioners and Ms.Bhende, learned AGP, for Respondent-State.

4. The relief sought for by Petitioners is founded upon the Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It will be fruitful to reproduce the said provision, which 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.

5. As far as the first parameter is concerned, it stands satisfied since the award is dated 7 August 1987, i.e. five years prior to 1 January 2014. As regards the other two parameters i.e. the possession and the payment of compensation, a reply-affidavit has been filed on behalf of the Respondent-State by Dr.Sampat Kondaji Khilari, Deputy Collector (Land Acquisition No.12), Kolhapur dated 4 June 2017. It is stated therein as under -

“2. I say that on 13.1.1983, Preliminary Notification under Section 4 of Land Acquisition

Act, 1894 was issued and on 3.10.1983 declaration under Section 6 of the said Act was published in Maharashtra Government gazette. Thereafter, on 7.8.1987 Final Award was made. As the original land holder and his legal heirs who are the Petitioners herein did not accept the compensation amount, the same has been deposited in "Revenue Deposit" against the name of the original land holder. I say that the compensation amount has not been deposited in the reference court. I also say that the actual physical possession of the land in question has not been taken by the Competent Authority and the Petitioners are in possession of land in question'.

6. From the above stand of the Respondents, it is clear that the possession of the land in question has not been taken and the Petitioners are still in possession. The compensation has been deposited in the Revenue deposit. The Apex Court in the case of *Pune Municipal Corporation and Anr. v/s. Harakchand Misirimal Solanki and Ors.*¹ has laid down that the deposit of compensation in a Revenue deposit is not 'compensation paid' as envisaged under Section 24(2) of the Act of 2013. This legal position settled by the Apex Court has been followed in various decisions.

7. Since it is an admitted position that the amount of compensation has not been 'paid', and the possession of the lands is not taken from the Petitioners as per the mandate of Section 24(2) of the Act of 2013, the Petitioners are entitled to the relief prayed for.

1. 2014(4) Mh. L.J.566

8. In the result, the Writ petition is allowed by declaring that the land acquisition proceedings in respect of 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