

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9734 OF 2014
WITH
CIVIL APPLICATION NO. 3005 OF 2016

Mrs. Gangesh Kumari Kak	.. Petitioner
V/s	
State of Maharashtra & Ors.	.. Respondents

Mr. Anirban Tripathy for the petitioner.
Mr. PP. Kakade, AGP for respondent no.1.
Mr. Vijay Patil for respondent no.2.

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

DATE : 27th FEBRUARY 2017

P.C.:

Apparently the petitioner is before this Court in the third round of litigation questioning acquisition of land on the ground that possession was not taken over and compensation is not paid.

2. In the year 2013, Writ Petition No. 2571 of 2013 challenging the acquisition came to be filed and the same was disposed of on 9th April 2014. Apparently by that time, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “2013 Act”) has

come into effect from 1st January 2014. With regard to controversy of taking over possession, at para 5 of the said order this Court has made the following observations:

“5. While deciding the application under sub-section (1) of section 48, the Divisional Commissioner cannot go into the legality and validity of the Award. Under sub-section (1) of section 48 of the said Act, it is clearly provided that the power to withdraw the land from the acquisition can be exercised provided the possession of the acquired land is already not taken over. Affidavit of Shri Ashok Kumar Abrol, the Executive Engineer of the Maharashtra State Road Development Corporation Limited, shows that the possession was taken over on 26th May 1999. A photo copy of the possession panchanama has been annexed to the affidavit. There is a material on record to show that the possession was taken over in accordance with section 16 of the Act. The subsequent claim of the petitioner of being in possession on the basis of the cultivation is irrelevant. We hold that the Divisional Commissioner was justified in rejecting the application, as the possession of the acquired land was already taken over.”

3. In that view of the matter, we need not ponder over with regard to consequences of not taking possession of the property at this belated stage since the same has reached finality in terms of earlier order referred to above.

4. Then coming to payment of compensation, sub-section (2) of section 24 of the 2013 Act clearly indicates that if compensation is not paid once an award is passed before certain period when the Act came into existence, i.e. on 1st January 2014, the acquisition proceedings lapse. Since the consequence of non-payment of compensation in terms of section 31 of the Land Acquisition Act, 1894 (for short “1894 Act”) comes to the benefit of the petitioner, we have to opine that the acquisition proceedings, if any initiated earlier, get lapsed. The State has filed an affidavit wherein they have admitted that the compensation is deposited. If compensation is deposited in the treasury, same cannot be treated as payment in terms of section 31 of the 1894 Act.

5. In view of the above, the petition is allowed in part holding that the acquisition proceedings have lapsed.

6. In view of disposal of the petition, the civil application does not survive and stands disposed of.

(G.S. KULKARNI, J.)

CHIEF JUSTICE