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

WRIT PETITION NO. 9397 OF 2015

Mr. Jagadish Ekanath Patil @ Mhatre and Ors. ... Petitioners.

V/s.

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

Mr. Rajesh Patil, for the Petitioners.

Mr. S.S. Bhende, Asstt. Govt. Pleader for Respondents 1 to 3.

Mr. Ashutosh M. Kulkarni for Respondent 4.

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

DATE : JUNE 21, 2017.

P.C. :-

Rule. Rule made returnable forthwith. Taken up for final disposal.

2. Heard the learned Counsel for the parties.

3. By this Writ Petition, the following reliefs have been sought :-

“(a) This Hon'ble Court, in its jurisdiction and power under Article 226 and 227 of the Constitution of India, be pleased to call for records and proceedings of land

acquisition pertaining to land Survey No. 321, Hissa No.3 + 5, admeasuring 18 gunthas situated at village Kharghar, Taluka Panvel, District Raigad, from the Respondents and after perusal thereof issue a writ of mandamus or any other appropriate writ, or order, declaring that the land acquisition proceedings has lapsed in respect of said lands belonging to the Petitioners by virtue of Section 24(2) of The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

(b) This Hon'ble Court in its jurisdiction and power under Article 226 of the Constitution of India be pleased to issue a writ, order or direction quashing and setting aside the acquisition proceedings, in respect of the said land bearing Survey No.321, Hissa No.3+5, of the Petitioner.

(c) This Hon'ble Court in its jurisdiction and power under Article 226 of the Constitution of India be pleased to issue a writ, order or direction quashing and setting aside the acquisition proceedings, in respect of the said land bearing Survey No.321, Hissa No. 3+5, in view of letter dated 23rd August, 1975, thereby exempting the said land from acquisition.

(d) This Hon'ble Court in its jurisdiction and power under Article 226 of the Constitution of India be pleased to issue a writ, order or direction quashing and setting aside the Award No. 349 dated 8 July 1986 passed by Special Land Acquisition Officer, Metro Centre No.3, Panvel.”

4. The Petition questions the acquisition of lands, whose details specified in the Petition. A notification under Section 4 of the

Land Acquisition Act of 1894 was issued on 3 February 1970. Declaration under Section 6 of the Act of 1894 was published on 22 October 1972. The Award was passed on 8 July 1986.

5. The present Writ Petition was filed invoking the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 for declaration that the acquisition proceedings in respect of the lands in question have lapsed.

6. It is stated by the Petitioners that the proceedings have lapsed as the possession of the lands has not been taken from the Petitioners and compensation has not been paid to the Petitioners. Reply affidavit has been filed. It is stated in the reply that the possession of the land has been taken and since the owners of the lands have refused to accept the compensation of the amount payable to them, the same has been deposited in the Treasury Office under the caption of 'Revenue Deposit'.

7. Since the claim is based under Section 24 of the Act of 2013, it is necessary to reproduce the said provision, which reads as follows :-

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases – (1) Notwithstanding anything contained in

this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) -

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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.”

8. 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. 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 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.

9. As regard the question of possession is concerned, the assertion of the Petitioners has been seriously controverted by the Respondent – Authorities. Considering the rival contentions, we find that the factum of actual physical possession in the present case is a seriously disputed question of fact and it is not possible for us to finally conclude as regard the aspect of actual physical possession. However, that does not mean that the Petitioners are not entitled to any relief as there is one more ground put forth by the Petitioners that is, non-payment of compensation.

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

10. In the present case the stand of the Respondents is that the amount of compensation is deposited in the Government Treasury.

11. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt with in the decision of the Apex Court in the case 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 provision 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 compensation in the Court, is a mandatory provision. 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 follow. This view has followed in subsequent decisions by the Apex Court and the Division Benches of this Court. It is a settled position that the deposit of compensation in the Government Treasury is not a compliance with Section 24(2) of the Act of 2013.

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

12. 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.

13. The Writ Petition is accordingly allowed. It is declared that the acquisition proceedings in respect of the lands which are the subject matter of the present Writ petition have lapsed. Rule is made absolute in above terms. No order as to costs.

(N.M. JAMDAR, J.)

(CHIEF JUSTICE)