

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9849 OF 2014

1.Shri. Murlidhar Raghu Jagtap	)
2.Shri.Datta Baburao Jagtap	)
3.Shri.Dilip Baburao Jagtap	)
4.Indubai Baban Rakshe	)
5.Shantaram Shripati Jagtap	)
6.Laxman Shripati Jagtap	)
7.Bhagwat Shripati Jagtap	)
8.Sou.Malan Suresh Ovhal	)
9.Sou.Shalan Kaluram Ovhal	)
10.Smt.Krushnabai Shripati Jagtap	)
all residing at Thergaon Gaonthan, Thergaon	)
Pune-411033	)...Petitioners

Versus

1.Special Land Acquisition Officer No. 22	)
Collectorate Compound, Dist.Pune	)
2.The Collector, Pune	)
3.The Commissioner, Pune	)
4.The PimpriChinchwad, New Township	)
Development Authority, Nigdi, Pune	)
5.State of Maharashtra.	) ...Respondents

*Mr.PK.Dhakephalkar, Senior Advocate with Mr.Shriram Kulkarni i/b.
Mr.Chaitanya Nikte, for the Petitioners.*

Mr.S.G.Aney, Senior Advocate with Mr.Vijay Patil, for Respondent No.4.

Mr.N.P.Deshpande, Addl.Govt. Pleader, for the State-Respondents.

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

Reserved on :- JANUARY 23, 2017

Pronounced on :- MARCH 8, 2017.

ORAL JUDGMENT: (Per G.S.Kulkarni,J.)

1. The Petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India contending that the land acquisition has 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 (for short "2013 Act"). The Petitioners have prayed for the following reliefs:-

"a) That this Hon'ble Court be pleased issue appropriate order or direction calling for the record and proceedings pertaining to the impugned award dated 23-09-1986 and all the acquisition proceedings pertaining to the suit land and after examine the same be pleased to declare that the said proceedings and the award dated 23-09-1986 has been lapsed in respect of the suit land;

b) That this Hon'ble Court be pleased quash and set aside that the acquisition proceedings initiated vide award dated 28.09.1986 (annexed at Exh-A") and the award itself in respect of the suit land;

c) Pending hearing and final disposal of the abovesaid Petition the effects and consequences award dated 23-09-1986 kindly be stayed.

d) Pending hearing and final disposal of the above said Petition the respondents, their agents, their representatives, their servants or anybody claiming through them be restrained by an order of temporary injunction to from taking any steps in respect of the suit property.

e) Interim and ad-interim relief in terms of prayer clause (b) and (c) above may kindly be granted;

f) Such other and further relief as this Hon'ble Court deems fit in the facts and circumstances of the case;"

In nutshell the facts are:-

2. The Petitioners case is that they were the owners of piece and parcel of land being 2/3rd share in Survey No.4/12 and Survey No.4/8 situated at Thergaon, Taluka Mulshi, District Pune (for short 'the said land').

3. A notification dated 9 March 1970 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Land Acquisition Act') came to be issued by the Commissioner, Pune Division. On 12 September 1972 a corrigendum was issued to the Section 4 Notification. On 12 September 1972 a notification under Section 6 of the Land Acquisition Act came to be issued. By a further notification dated 13 December 1984 certain lands came to be excluded from the acquisition. On 28 September 1986 an award came to be passed under Section 11 of the Land Acquisition Act determining the compensation payable in respect of the said land.

4. After the award was passed, one Shivaji Kisan Jagtap had approached the Commissioner, Pune Division, by making an application under Section 48(1) of the Land Acquisition Act seeking withdrawal of the land from acquisition. This application ultimately came to be rejected by the Commissioner by an order dated 3 October

2006. Being aggrieved by this decision, Shivaji Kisan Jagtap approached this Court by filing Writ Petition No.110 of 2007 inter alia praying for a direction that the application filed under Section 48(1) be decided afresh. There is no dispute that the prayer clause in the said petition also included the Petitioners' land. By an ad-interim order dated 8 January 2007 a Division Bench of this Court directed that the parties to maintain 'status quo', in respect of the petition lands. Thereafter, by an order dated 3 December 2007 the said Writ Petition was admitted and the ad-interim order of status quo was continued during the pendency of the Petition. The Writ Petition is pending final hearing and as such the status quo order is in operation as on date. The Petitioners' have also filed some interim applications in the said Writ Petition seeking intervention and have also prayed for deleting the Petitioners' land from the said petition as also a prayer is made for allotment of 12.5% returnable land. The Petitioners have averred that in the said application, the Petitioners inadvertently pleaded that the possession has been delivered by letter dated 2 July 1999. The Petitioners also referred to a letter dated 7 August 2001 wherein the Petitioners have stated that the possession is taken on 12 July 1999 and clarified that in fact on 12 July 1999 the Petitioners' statement is recorded that the Petitioners are ready and willing to hand over the possession. The case of the Petitioners is that the statement made in that application was in the light of allotment of 12.5% land and in fact the possession was never delivered. It is averred that in any case because of the status quo orders passed in Writ Petition No.110 of 2007, the possession of the land could not

have been taken by the Respondents unless the said orders were to be vacated. The Petitioners therefore have averred that in view of the orders of status-quo, the possession of the land has continued with the Petitioners.

5. The Petitioners refer to two letters dated 1 October 2014 addressed by Respondent No.1-the Special Land Acquisition Officer. In one of the letters, Respondent No.1 states that due to certain encroachments and on account of the pending writ petition, the possession of the land was not taken by the Respondent. In the second letter Respondent No.1 clarified that the compensation payable in respect of survey No.4/12 (Petitioners' land) of Rs.51,243.30 ps has been deposited in the treasury.

6. It is thus the case of the Petitioners that neither the possession of the land is taken under the said Award nor the amount of compensation has been paid to the Petitioners. The Petitioners therefore contend that Section 24(2) of the 2013 Act has become applicable, and by operation of law as both the ingredients namely of possession being not taken and the amount of compensation being not paid, and the fact that the Award under Section 11 of the Land Acquisition Act was made five years or more, prior to the commencement of the 2013 Act, has resulted into the land acquisition, being deemed to have lapsed, by virtue of the said provisions. The Petitioners in support of this submission have relied on the decision of the Supreme Court in the case *Pune Municipal Corporation & Anr.*

Vs.Harakchand Misirimal Solanki & Ors. ^{1.}

7. We may observe that this petition though filed on 14 October 2014, Respondent Nos.1 to 3 and 5, though have entered appearance, have chosen not to file any reply affidavit. However, Respondent No.4-Pimpri Chinchwad New Township Development Authority which is the beneficiary of the acquisition, has filed an affidavit of opposition. The affidavit inter alia justifies the land acquisition to be in public interest. Relying on the order of status-quo dated 8 January 2007 passed by this court in Writ Petition No.110 of 2007 which is continued by the subsequent orders, the contention is that the possession of the acquired land could not be taken by the Land Acquisition Officer and handed over to Respondent No.4, for the purposes of the new township of Pimpri Chinchwad. It is therefore submitted that Section 24(2) of the 2013 Act would have no application, as the physical possession of the land could not be taken, though the Awards have been passed much prior to commencement of the 2013 Act, only on account of the status-quo orders passed by this Court.

8. As regards the second issue about payment of compensation, it is submitted that the compensation was deposited on 5 December 1985 by Respondent No.4 with the Special Land Acquisition Officer in respect of the lands covered under the subject Award dated 23 September 1986. It is, therefore, contended that as

¹ 2014(3) SCC 183

Respondent No.4 has deposited the said amount with the Special Land Acquisition Officer, Section 24(2) of the 2013 Act would not be applicable. In support of the submissions, learned Counsel for Respondent No.4 has placed reliance on an order dated 12 January 2016 passed by the Supreme Court in the case of “*Yogesh Neema & Ors. Vs. State of M.P. & Ors.*” in *Special Leave Petition (C) No.10742 of 2008* to contend that as regards the counting of period covered by the interim orders, for the purpose of application of Section 24(2) of the 2013 Act, the issue has been referred for consideration of the larger bench.

9. We have heard the learned Senior Counsel for the parties. We have also perused the pleadings as filed by the respective parties who are before us. There is no dispute that on 3 September 1970 a notification under Section 4 of the Land Acquisition Act came to be issued and thereafter, on 12 September 1972 a notification under Section 6 of the Land Acquisition Act came to be issued. There is also no dispute that the award in question, under which the land of the petitioners was acquired, was passed on 28 September 1986. The Petitioners contend that the land acquisition proceedings have lapsed on both the counts as provided under Section 24(2) of the 2013 Act namely on the possession of the land being not taken by the Respondents as also the compensation having been not paid to the Petitioners under the Award, which admittedly came to be passed five or more years prior to coming into force the 2013 Act.

10. As regards the first issue namely possession having been not taken by the Respondents and on that count the acquisition would lapse under sub-section (2) of Section 24 of the 2013 Act, the case of the Respondents is that they were prevented from taking possession in view of the status quo order dated 8 January 2007 passed by this Court in Writ Petition No.110 of 2007 preferred by Shivaji Kisan Jagtap and others. There is no dispute that the order of status quo as passed by this Court was applicable to the Petitioners' land. As noted above, the said Writ Petition was preferred by some of the land owners whose lands were also subject matter of the same acquisition proceedings and who had challenged an order whereby their applications under Section 48(1) of the Land Acquisition Act, for withdrawal of these lands from acquisition was rejected. Even assuming that the Respondents are correct in contending that after the status-quo order dated 8 January 2007 and which was continued till date, they could not take possession of the land, however, the fact remains that the Award itself is of the year 1985 and the status-quo order came to be passed in the year 2007 which is almost after 22 years from the date of the Award. There is nothing placed on record to show that any attempt was made on the part of the Respondents to take possession. Be that as it may, the issue of possession need not detain us any further inasmuch as the alternate issue as envisaged under Section 24(2) of the 2013 Act is also raised by the Petitioners to contend that the acquisition has lapsed which we consider below.

11. In regard to the second issue of non-payment of

compensation, we find that the Petitioners had made a representation to the authorities demanding payment of compensation as noted above. There is nothing on record as placed on behalf of the State to show that the compensation has been paid to the Petitioners. Moreover, Respondent No.4 in the affidavit has stated that the amount of compensation has been deposited by Respondent No.4 with S.L.A.O. in respect of the lands covered under the award in question on 5 December 1985. If this be the position then in view of the decision of the Supreme Court in *Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.*, as also as held by the Division Bench of this Court in “*Shri. Bapuso Narayan Kulkarni (deceased) through Lrs and Ors. Vs. The State of Maharashtra and Ors.*”² and as held by this Bench in “*Santosh Dnyaneshwar Aher Vs. State Of Maharashtra Through Its Secretary And Ors.*” (Writ Petition No.3238 of 2015 decided on 17 January 2017) it can be taken to be a clear position in law that mere deposit of amount in the account of Special Land Acquisition Officer would not amount to payment of compensation to the Petitioners. This Petition therefore would succeed on the ground of non payment of compensation to the Petitioner being one of the requirements for lapse of the acquisition proceedings as sub-section 2 of Section 24 would provide.

12. As regards the contention as urged on behalf of Respondent No.4 that the order dated 12 January 2016 passed by the Supreme Court in *Special Leave Petition(C) No.10742 of 2008*

² 2016(3) Mh.L.J. 384

(Yogesh Neema & Ors. Vs. State of M.P. & Ors.), would not only be relevant in the context of the issue of possession but also in the context of payment of compensation. We do not agree. The said order of the Supreme Court in paragraph (1) records about the issue which fell for consideration of the Supreme Court, which is in the context of possession having been not taken over despite the Award being passed prior to five years from 1 January 2014 and the effect of the interim order of the High Court, on account of which possession of the acquired land could not be taken over by the State. The observations in that regard are clear and can be found in paragraph (1) of the order which read thus:-

“1. In the present Special Leave Petition apart from several other issues urged by the petitioners to challenge the order of the High Court upholding the acquisition under the provisions of the Land Acquisition Act, 1894, a question has been raised with regard to the applicability of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the 2013 Act”) and whether in view of the fact that the possession had not been taken over despite the award being passed five years prior to 1st January, 2014 the land acquisition proceedings have lapsed. It may be taken note of at this stage that the petitioners had been the beneficiaries of the interim order of the High Court as well as this Court on account of which possession of the acquired land could not be taken over by the State. It has also to be noted that the order of the High Court had upheld the acquisition in question and the writ petition(s) was dismissed.”

It is in this context that their Lordships considered the decision in the case of “*Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu & Ors.*”³ more particularly paragraphs 11 and 12 therein, and

³(2015) 3 SCC 353

made the following observations in paragraphs 3 and 4 to referring the questions as framed therein for consideration of the larger bench:-

“3. A consideration of the aforesaid paragraphs would go to indicate that what had prevailed with the coordinate bench of this Court to take the view in question is that the omission in Section 24(2) to specifically exclude the period covered by an interim order of this Court staying the acquisition proceeding is a conscious omission of the legislature and the courts cannot fill up such an omission. In paragraph 12 of the aforesaid decision the fact that similar situations in the Land Acquisition Act had been subsequently rectified by means of appropriate amendments to Section 6 and 11-A by bringing in Explanation thereto has also been noticed. The aforesaid decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association (supra) has been followed in large number of cases details of which have been laid before us. The decision of a three judge bench of this Court in Union of India and others versus Shiv Raj and others [(2014) 6 SCC 564] has also been laid before us.

4. We have considered the views expressed in Sree Balaji Nagar Residential Association (supra) and Union of India and others versus Shiv Raj and others (supra). At the outset, we clarify that upon reading the decision of the three judge bench of this Court in Union of India and others versus Shiv Raj and others, we do not find any view of the bench on the question arising, namely, whether the period during which the award had been remained stayed should be excluded for the purposes of consideration of the provisions of Section 24(2) of the 2013 Act. Insofar as the decision of the coordinate bench of this Court in Sree Balaji Nagar Residential Association (supra) is concerned, having read and considered paragraphs 11 and 12 thereof, as extracted above, it is our considered view that the legal effect of the absence of any specific exclusion of the period covered by an interim order in Section 24(2) of the 2013 Act requires serious reconsideration having regard to the fact that it is an established principle of law that the act of the court cannot be understood to cause prejudice to any of the contesting parties in a litigation which is expressed in the maxim “actus curiae neminem gravabit”. We accordingly take the view that the aforesaid question should receive the attention and consideration of a larger bench of this Court. The following two questions of law, according to us, would specifically require an authoritative pronouncement

for an appropriate adjudication on the factual controversy arising in the present case and in a large number of connected cases:

(i) Whether the conscious omission referred to in paragraph 11 of the judgment in Sree Balaji Nagar Residential Association (supra) makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

(ii) Whether the principle of “actus curiae neminem gravabit”, namely act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?”

We are therefore of the clear opinion that the above order of the Supreme Court would not assist Respondent No.4 to oppose the Petitioners' contention that the land acquisition has lapsed for non payment of compensation.

13. In any event the present case is not a case where the award came to be stayed by the orders passed by this Court in Writ Petition No.110 of 2007, but what is pressed into service on behalf of Respondent No.4 is the order of status-quo passed in the year 2007 which is required to be considered only qua the possession of the land as is clear from the prayers as made in the Writ Petition. The interim relief prayer which fell for consideration of the Division Bench for passing the order of status-quo was in terms of prayer clause (c), (page 80 of the paper book) by which the Petitioners therein prayed

that the Respondents be restrained by an order and injunction from disturbing and/or from dispossessing the peaceful possession of the Petitioners in respect of the land in question. Considering this specific prayer, the status-quo order as passed by the Division Bench in Writ Petition No.110 of 2007 is required to be read only qua the possession of the land in question. There cannot be any other reading much less to read the status-quo order qua the respondents being restrained from depositing the compensation in the Civil Court, as law would require.

14. In the light of the above discussion, the contention of the Petitioners that the acquisition has lapsed under the provisions of sub-section (2) of Section 24 of the 2013 Act on account of non payment of compensation, is required to be accepted. We accordingly allow this petition by the following order:-

ORDER

(i) We hold that the acquisition proceedings in relation to the lands of the Petitioners described in paragraph 2 of the Writ Petition stand lapsed in view of Sub-Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(ii) We also make it clear that the acquisition would stand lapsed only in relation to the lands subject matter of this Petition and no adjudication is made as regards the legality and validity of the acquisition of other lands which are subject matter of the aforesaid two Awards;

(iii) This Judgment and Order will not preclude the Respondents from initiating a fresh acquisition proceeding in respect of the acquired lands under the provisions of the said Act of 2013.

(iv) Rule is made absolute in the above terms. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)