

Sequeira

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

WRIT PETITION NO. 10830 OF 2015

Shri Keshav Nanasaheb Bhondve and others. .. Petitioners
Vs
State of Maharashtra and others. .. Respondents

Dr.Arun Barthakur a/w Ms.Jaymala Raut, for Petitioners.
Mr.A.P.Vanarase – AGP, for Respondent Nos.1 to 3.
Mr.Vijay Patil, for Respondent No.4.

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

DATE : JUNE 14, 2017.

P.C.:

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal.

2. By this petition, the Petitioners have sought following relief -

'That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, or order calling for the records and files leading to the acquisition of the said land bearing Survey Nos.207/1 admeasuring 72R, and Survey No.207/5 admeasuring 2R, situate at Village Ravet, Shinde Vasti, Pune, and after examining the legality, validity, propriety, or otherwise of the impugned acquisition proceedings in respect of the said lands be pleased to

declare and set aside the proceedings initiated by the Notification published under Section 4 of the 1894 Act in the Government Gazette dated 12.03.1970; the declaration of public purpose by notification published under Section 6 of the 1894 Act in the Government Gazette dated 03.02.1972; the award dated 23.09.1986 made in respect of the said lands; the panchnama of possession dated 22.06.1990 and the possession receipt dated 22.06.1990 as automatically lapsed under Section 24(2) of the 2013 Act'.

The foundation of the claim of the Petitioners is section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The subject matter of the Petition is the land specified in the prayer clause reproduced above. Notification under section 4 of Land Acquisition Act 1894 was issued on 12 March 1970. Notification under section 6 of the Act of 1894 was issued on 3 February 1972. Award was published on 23 September 1986. An application was made by the father of the Petitioners to Tahsildar Haveli, on 19 November 1986 to cancel the acquisition. Compensation was deposited in the Revenue Deposit. The Petitioners refused to accept the compensation. On 22 June 1990, a panchanama was carried out in respect of possession. The Petitioners filed a Special Civil Suit No.837 of 2015 seeking a permanent injunction against Respondents. The civil suit was withdrawn by Petitioners on 29 September 2015, to file a writ petition under Article 226 of the Constitution of India. Thereafter, the present

petition is filed.

4. We have heard Mr.Barthakur, learned Advocate for Petitioners, Mr.Vanarase, learned Assistant Government Pleader for Respondent nos.1 to 3 and Mr.Vijay Patil, learned Advocate for Respondent no.4.

5. It will be necessary to reproduce Section 24 of the Act of 2013 which reads thus :-

“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.”

6. 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 applicability of Section 24(2) of the Act of 2013 it is enough that either of the above two 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

7. As far as the aspect of possession is concerned, affidavit in

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275

reply has been filed by the Chief Executive Officer of the Pimpri Chinchwad New Town Development Authority, i.e. the Respondent no.4. It is asserted in the reply that the area falls within the jurisdiction of the new township of the Respondents set up by Respondent Authorities and the possession of the land was taken on 22 June 1990. It is asserted that for almost last thirty years the Authority is in possession. Mr.Barthakur the learned counsel for Petitioners, sought to urge various grounds regarding the aspect of possession and the competency of the authorities to take possession. Mr.Patil, the learned counsel for the Respondent Authority submitted that such submissions regarding competency of the authorities cannot be raised after thirty years of the Authority taking possession.

8. After considering the rival contentions, we are of the opinion that the factum of possession in this case is a seriously disputed question of fact and it cannot be stated with certainty that this factor is in favour of the Petitioners. However, this would not mean that the Petitioners are not entitled to any relief as there is one more ground of challenge raised by the Petitioners i.e. non-payment of compensation.

9. In the case at hand, it is the assertion of the Respondents themselves that, the amount of compensation has been deposited in the Government Treasury. Since it is an admitted position that the

compensation has not been paid as envisaged under section 24(2) of the Act of 2013, the Petitioners are entitled to declaration as sought for. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt with by 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 provisions of Section 24 of the Act of 2013 and Section 31 of the Act of 1894. The Apex Court 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 meaning that it is not paid as per Section 31(2) of the Act of 1894. The Apex Court has 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 ensue. Deposit of compensation in Government Treasury is not a payment as per section 24(2) of the Act of 2013. This dicta has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

10. It is declared that the acquisition of land Survey Nos.207/1 admeasuring 72R, and Survey No.207/5 admeasuring 2R, situate at Village Ravet, Shinde Vasti, Pune, has lapsed.

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

11. Rule is made absolute in above terms. No order as to costs.

(N.M.JAMDAR, J.)

CHIEF JUSTICE