

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9744 OF 2011

1] Shri. Sarjerao Khashaba Thorat
2] Shri. Shamrao Dnyanu Thorat,
3] Shri. Bhagwan Dagdu Pol,
4] Bhagwan Dattatray Thorat,
5] Balkrishna Ananda Thorat,
All aged Adult, Occupation
Agriculture, R/o OND,
Taluka Karad, District Satara.

...Petitioners

Versus

1] The State of Maharashtra,
through the Secretary,
Revenue Department,
Mantralaya, Mumbai – 400 032.
2] The Deputy Collector & Spl.
Land Acquisition Officer No. 7,
Satara.
3] The Divisional Commissioner,
Pune Revenue Division, Pune.

...Respondents

Mr. Sagar Mane, a/w Mr. N.V. Bandiwadekar, for the
Petitioners.

Mr. P.P. Kakade, for the Respondents.

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

DATE : 17 April 2017

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

1. Rule returnable forthwith, respondents waive

service. By consent of the parties, heard finally.

2. Petitioners, who claim to be the owners of land bearing Gat No. 538, admeasuring 0.67 Ares situated at Village Ond, Taluka Karad, District Satara, which was acquired by the respondents under the Land Acquisition Act, 1894 Act (for short "***the 1894 Act***"), have filed this petition contending that the land acquisition proceedings have lapsed in view of provisions of Subsection 2 of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "***the 2013 Act***").

3. The case of the petitioners is that the land of the petitioners was subject matter of acquisition for a public purpose namely, for construction of a Government Rest House. In regard to the acquisition in question, notification under Section 4 of the 1894 Act dated 6 July 1992 came to be published in the Government Gazette dated 6 August 1992. It was published in the daily newspaper on 14 July 1992. A notice on the notice board of the village Chawadi was put up on 21 November 1992

and lastly, displayed on the notice board of Tahasildar's office on 23 November 1992. The petitioners have stated that an enquiry under Section 5-A of the 1894 Act was held by the Special Land Acquisition Officer. Objections as raised by the petitioners were not accepted and a notification under Section 6 of the 1894 Act was issued on 16 February 1994 and published in the Government Gazette on 3 March 1994. Lastly, the said notification was displayed on the notice board of the village Chawadi and the notice board of the village Panchayat on 23 March 1994. The petitioners aver that thereafter a notice dated 28 March 1994 under Sub-sections (3) and (4) of Section 9 of the 1894 Act was served on the 40 land owners as also an enquiry was held on 7 June 1994. An award under Section 11 was made on 31 January 1996. Pursuant to the award, a notice under Section 12(2) of the 1894 Act came to be issued on 7 June 1996 and land acquisition compensation of Rs. 6,02,171/- was awarded to the petitioners.

4. In paragraph 6 of the petition, the petitioners have

averred that despite the award made on 31 January 1996, physical possession of the land was not taken over from the petitioners. It is stated that the petitioners had not received any notice calling upon the petitioners to remain present on the land to handover the possession. The case of the petitioners is that they have residential premises on the part of the land which they continue to occupy along with their family members. The petitioners have stated that they are also paying the grampanchayat taxes and the revenue levy to the village Talathi. The assessment receipts are placed on record of the petition.

5. The case of the petitioners is that the acquisition proceedings are rendered illegal on two fold grounds. Firstly, for the reason that notification under Section 6 is not declared within a period of one year from the date of publication of the notification under Section 4(1) of the 1894 Act as Section 6 sub-para (ii) of the first proviso would provide. It is thus, contended that Section 6 notification itself is rendered illegal, as the notification made under Section 4(1) was lastly published on 23

November 1992 and the declaration under Section 6 came to be issued on 16 February 1994 (published in the Government Gazette on 3 March 1994) and lastly, published on the notice board of Tahasildar's office on 23 March 1994 which is clearly after a lapse of about 13 months. Secondly the land acquisition would lapse by operation of law in view of the provisions of Section 24(2) of the 2013 Act, as neither the physical possession of the land has been taken over by the respondents nor the amount of the land acquisition compensation, as determined under the award is paid to the petitioners, when the award is admittedly passed, more than five years prior to coming into force of the 2013 Act.

6. A reply affidavit has been filed by the Deputy Collector Land Acquisition, Satara. We feel it appropriate to extract the relevant paragraphs of the reply affidavit, whereby the respondents admit that the possession of the land is not taken over from the petitioners, as also that the notification under Section 6 of the 1894 Act was not issued within a period

of one year from the issuance of Section 4 notification as Section 6 sub para (ii) of the first proviso would provide. Paragraphs 9, 11 and 13 of the reply affidavit state as under :-

“9. With reference to para no. 8, I say that award is passed for acquisition of the said land in the year 1996, that till today the said acquisition has not been actually effected, in as much as the actual and physical possession of the acquired land has not been taken from the Petitioners and other land holders, and even the revenue records is not mutated to record the name of the Acquiring Body therein.

11. With reference to para no. 10, I say that it is the contention of the Petitioner that, notification under Section 4 was issued on 6/7/1992 and it was published in Maharashtra Government Gazette on 6/8/1992. It was lastly published on the Notice Board of the office of Tahsil on 23/11/1992. The declaration under Section 6 came to be made on 16/2/1994 and was published in Government Gazette on 3/3/1994. It was lastly published on the Notice Board of Tahsil office on 23/3/1994, as required under Section 6 of the said Act. The Petitioners state that therefore the said publication of Section 6 declaration is not within the period of one year from the date of publication of the notification under Section 4 of the said Act. Therefore the declaration under Section 6 is illegal, bad in law and in breach of the provisions of Section 6 of the said Act. Hence, the said declaration under Section 6 is liable to be quashed and set aside is admitable.

13.

In this case, award made under Section 11 on 31/1/1996 thereafter no any step have been taken till today as per Land Acquisition Act 1894 till today, therefore proposal is lapsed and Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed.”

7. We have heard the learned Counsel for the parties. On perusal of the pleadings as placed on record, it is clear that the provisions of Subsection (2) of Section 24 of the 2013 Act have become squarely applicable. Indisputably, the award in question was passed on 31 January 1996, which is more than five years prior to coming into force of the 2013 Act, as brought into effect on 1 January 2014. Further the respondents have clearly admitted in the reply affidavit that the possession of the land in question has remained with the petitioners. The respondents also do not deny that the amount of compensation is not paid to the petitioners. What is significant, is that even the case of the petitioners as initially pleaded that the Section 6 notification would be rendered illegal in view of the same being issued after a lapse of one year, contrary to the provision of

Section 6 sub-para (ii) of the first proviso, has also been admitted by the respondents. It is therefore, crystal clear that on the grounds of challenge as urged on behalf of the petitioners and as noted above, the land acquisition proceedings qua the petitioners' land would be required to be held as invalid and nonest.

8. Resultantly, the petition is required to be allowed. We accordingly, pass the following order.

- (i) The acquisition proceedings qua the petitioners' land bearing Gat No. 538, admeasuring 0.67 Ares situated at Village Ond, Taluka Karad, District Satara being the subject matter of acquisition under notification dated 16 February 1994 issued under Section 6 of the Land Acquisition Act, 1894 are illegal being violation of sub-para (ii) of the first proviso to Section 6 of the Land Acquisition Act, 1894 as also the

acquisition proceedings stand lapsed in view of the provisions 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 make it clear that our orders pertain only to the lands which are subject matter of this petition and no adjudication is made as regards the legality and validity of acquisition of other lands if any, which may have formed subject matter of acquisition under Section 6 notification and the award.

(iii) This Judgment and Order will not preclude the respondents from initiating fresh acquisition proceedings qua the lands in question if the same are acquired for a public purpose as per the provisions of the Right to Fair Compensation

and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013.

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

[G.S. KULKARNI]

[CHIEF JUSTICE]