

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11440 OF 2014

Shri. Babu Bhagoji Gorade	}	
and Ors.	}	Petitioners
versus		
Ld. Divisional Commissioner,	}	
Pune Division, Pune and Ors.	}	Respondents

WITH
CIVIL APPLICATION NO. 2218 OF 2016
IN
WRIT PETITION NO. 11440 OF 2014

Shivaji Tukaram Patil	}	
and Ors.	}	Applicants
in the matter of		
Shri. Babu Bhagoji Gorade	}	
and Ors.	}	Petitioners
versus		
Ld. Divisional Commissioner,	}	
Pune Division, Pune and Ors.	}	Respondents

WITH
CIVIL APPLICATION NO. 1199 OF 2017
IN
WRIT PETITION NO. 11440 OF 2014

Shri. Suresh Satyappa	}	
Shelke and Ors.	}	Applicants
in the matter of		
Shri. Babu Bhagoji Gorade	}	
and Ors.	}	Petitioners
versus		
Ld. Divisional Commissioner,	}	
Pune Division, Pune and Ors.	}	Respondents

Mr. Vijay Patil with Mr. Manoj Patil for
the petitioners.

Mr. A. P. Vanarase-AGP for State.

Mr. Pradeep Dalvi for the applicants in
CAW/2218/2016.

Mr. Anand Patil for the applicants in
CAW/1199/2017.

**CORAM :- DR. MANJULA CHELLUR, C.J. &
N.M.JAMDAR, J.
DATE :- JUNE 21, 2017**

P.C. :-

1. The petitioners before this court are seeking a declaration in respect of the land acquisition proceedings so far as the land in question in Gat No. 418/1, admeasuring 8 hectares 51 ares situated at Kagal, Taluka Kagal, District Kolhapur. According to the petitioners, though the mutation records indicate that the land is transferred to the name of the State and possession is taken, in fact, possession is not taken from the petitioners. They also contend that compensation amount payable towards the acquisition of the land is also not paid to them. Therefore, according to them, in terms of sub-section (2) of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) the acquisition proceedings get lapsed and therefore, a declaration has to be made to that effect.

2. An affidavit of the State is placed on record. Since there was some difference in the stand taken by the State with regard to payment of compensation, an additional affidavit is also filed.

However, in both affidavits, according to them, physical possession of the property was taken by way of mutation entry. It is surprising to note that physical possession of the property was taken on 30th September, 2012, but the mutation entry is dated 11th June, 2012 in terms of the additional affidavit. To our understanding, mutation entries would come only after the land gets vested in the State. In order to say that the land got vested with the State, possession has to be taken.

3. Be that as it may, we will not proceed further on the said issue and decide whether physical possession was taken over or it is only the mutation entry possession, since one of the two conditions is enough under sub-section (2) of section 24 of the 2013 Act to make the land acquisition proceedings lapsed. That is non-payment of compensation. It is well-settled proposition that mere offering by notice to pay compensation or requiring the owner or interested person to attend the office of the Collector or the Land Acquisition Officer to take compensation amount would not amount to payment of compensation in terms of sub-section (2) of section 24 of Act 30 of 2013, unless and until such amount is paid to the land loser complying with the procedure as contemplated under the Land Acquisition Act, 1894 as to how compensation amount has to be deposited in a civil court, if the

owner or interested person were to refuse to receive the compensation offered by the State. If a procedure is contemplated to make payment or deposit the compensation amount in a particular manner, the same has to be done in the said manner, otherwise, it cannot be the payment of compensation in terms of the enactment. This is well-settled in the case of *Pune Municipal Corporation and Anr. vs. Harakchand Misirimal Solanki and Ors.*, **2014(3) SCC 183**.

4. In the above circumstances, we proceed to dispose of the writ petition by adverting our mind only with regard to the payment of compensation and not opining on merits so far as physical possession of the property or whether possession was taken over in terms of the Land Acquisition Act, 1894. In the present case, since the compensation amount was not deposited in civil court in terms of section 31 of the Land Acquisition Act, 1894, we opine that the acquisition proceedings, so far as the land of the petitioners' subject property in the writ petition, gets lapsed. It is needless to say that the parties are at liberty to pursue further course of action, if necessary, in accordance with law.

5. Since we have not opined with regard to the possession, the civil applications filed by interveners need not be considered and

accordingly they are dismissed as infructuous. So far as the land acquisition proceedings, we declare that the land acquisition proceeding in respect of the said survey number is lapsed.

(N. M. JAMDAR, J.)

(CHIEF JUSTICE)