

JPP

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

WRIT PETITION NO.9390 OF 2014

Mr. Chandrakant Hanumant Kautkar & Ors. ... Petitioners.

V/s.

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

Mr. Prabhanjan Gujar for the Petitioners.

Ms. S.S. Bhende, Asstt. Govt. Pleader for the Respondents.

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

DATE : JULY 11, 2017.

P.C. :-

The Petitioners, by way of this Writ Petition under Article 226 of the Constitution of India, have sought relief under Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

2. The land in question is the Gat No. 1418 admeasuring 1 Hecter and 48 Ares situated at Village Kalus, Taluka Khed, District Pune. A notification under section 4 of the Land Acquisition Act of 1984 was published on 25 September 1997. A declaration under

Section 6 was published on 30 April 1998. The Award was declared on 31 March 2000 and part of Gat No. 1418 was sought to be acquired.

3. Heard Mr. Gujar, learned Counsel for the Petitioner and Ms. Bhende, Asstt. Govt. Pleader for the Respondents.

4. The learned Counsel for the Petitioner, though has raised several contentions in the Writ Petition, has restricted the challenge under Section 24(2) of the Act of 2013.

5. Section 24(2) of the Act of 2013 reads thus :-

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

(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.”

Thus, 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.

6. 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, the 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. In the affidavit-in-reply filed by Shama Sushilkumar Pawar, Deputy Collector, Pune, it is stated that the compensation amount is not paid to the Petitioner and same is lying in the Personal Ledger Account of the office. The question is what is the effect of deposit of the compensation in the Personal Ledger Account.

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

8. The aspect of compensation as regards Section 24(2) of Act of 2013 has been dealt by the Apex Court in the cases 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. As per Section 31(2) of the Act of 1894, if the compensation is not accepted or collected by the Claimant, the compensation has to be deposited by the Collector in the Court where the reference can be made under Section 18 of the Act of 1894. 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 ensue. This view has been followed in subsequent decisions by the Apex Court and the Division Benches of this Court.

9. In the result, the contention of the Petitioners that the land acquisition proceedings have lapsed since the compensation is

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

not paid as per Section 24(2) of the Act of 2013, will have to be upheld.

10. Accordingly, the Writ Petition is allowed directing that the acquisition proceedings in respect of the land in question have lapsed by virtue of Section 24(2) of the Act of 2013. No order as to costs.

(N.M. JAMDAR, J.)

CHIEF JUSTICE