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

WRIT PETITION NO. 8993 OF 2015

Mr. Dinkar Mukund Marathe & Ors.

Through their Constituted Attorneys

Mr. Digambar Sakhambar Bhat.

... Petitioners.

V/s.

The Special Land Acquisition Officer,

Surya Project, Dahanu, District Thane & Ors. ... Respondents.

Mr. K.K. Malpathak for the Petitioners.

Mr. P.G. Sawant, Asstt. Govt. Pleader for the Respondent – State.

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

DATE : JULY 12, 2017.

P.C. :-

The Petitioners, by way of this Writ Petition under Article 226 of the Constitution of India, have sought a writ seeking a declaration that the land acquisition proceedings in respect of the land bearing Gat No.160 situated at Village - Govane, Taluka – Dahanu, District – Thane, have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

2. Heard Mr. Malpathak, learned Counsel for the Petitioners and Mr. Sawant, Asstt. Govt. Pleader for the Respondents.

3. A Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 27 September 1988 and published on 30 October 1988. A Notification under Section 6 of the Act of 1894 was published on 5 October 1989. The Award was passed on 4 October 1991.

4. It is the contention of the Petitioners that the possession of the land still continues with the Petitioners and the compensation has not been paid which will result in lapsing of acquisition 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 (1), 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. As regard the aspect of possession is concerned, in the reply filed by the Deputy Collector, Surya Project, Dahanu, District – Thane, it is stated that the possession of the land was taken for the purpose of quarry and stone crushing. It is stated that the land was used for the project and after the canal work in the year 1996, the purpose of acquisition is complete and acquired land is of no further

use. It is stated that correspondence has ensued in the form of a proposal to declare the land as surplus, but it is categorically asserted that the land is in possession of the State. The Petitioners assert otherwise. After hearing the learned Counsel on this issue, we find that the aspect of possession is a seriously disputed question of fact.

7. Be that as it may, the Petitioners have raised another ground, that is non-payment of compensation. 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.

8. It is the stand of the Respondent – State that since the Petitioners did not come forward to collect the amount of compensation, it was deposited in the Revenue Deposit Account. 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

1. Writ Petition No. 3238 of 2014

2. AIR 2016 SCC 4275.

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

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. It was held that Section 31(2) of the Act of 1894, which envisages deposit of the 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, since it is an admitted position that the amount of compensation has not been paid as per the mandate of Section 31(2) of the Act of 1894, the Petitioners are entitled to a declaration that the land acquisition proceedings initiated in respect of the land in question have lapsed in view of Section 24(2) of the Act of 2013.

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

(N.M. JAMDAR, J.)

CHIEF JUSTICE