

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 306 OF 2014

Shri. Aadgonda Bandu Patil
Age:___ Occu: Agriculture
R/o. Chinchwad, Tal.Karvir,
Dist.Kolhapur.

...Petitioner

Versus

1.The State of Maharashtra
Through its Revenue and Rehabilitation
Department.

2.The Collector,
Kolhapur, Dist.Kolhapur

3.The Sub-Divisional Officer,
Kolhapur Division, Kolhapur and
Special Land Acquisition officer,
Kolhapur-12, Kolhapur.

...Respondents

Mr. Vishwanath S. Talkute, for the Petitioner.

Mr. P.P. Kakade, AGP for the Respondent-State.

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

DATE : 17 April 2017

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

1. Rule returnable forthwith. Heard finally by consent of the parties.

2. This Petition under Article 226 of the Constitution of India challenges the land acquisition proceeding pertaining to Gat No. 481 admeasuring 0 H 81 R situated at Village Chinchwad, Taluka Karvir, District Kolhapur, being the land belonging to the Petitioner. The contention of the Petitioner is that the land acquisition has lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "*the 2013 Act*").

3. In brief the facts are :-

The case of the petitioner is that the State Government by a notification declared an intention to acquire the lands for the purpose of Dudhganga Irrigation Project in

which village Chinchwad was shown within the benefited Zone of Dudhganga Irrigation Project. This included the petitioner's land. The relevant date for applying the slab limit under the Maharashtra Resettlement of Project Displaced Persons Act, 1976, was 2 November 1978.

4. To initiate the process of land acquisition on 7 July 1983 a notification under section 4 of the Land Acquisition Act, 1894 (for short "*the 1894 Act*") was issued this notification included the Petitioner's land. On 25 October 1983 objections were filed by the Petitioner under Section 5A of the 1894 Act *inter alia* stating that holding of the Petitioner was less than the slab limit as prescribed. The objections as taken by the petitioner did not bear any fruits and a notification under Section 6 of 1894 Act came to issued on 2 July 1986. Thereafter an award came to be declared on 24 November 1988.

5. In paragraph (i) page 9 of the petition, the petitioner has averred that the issue that the land acquisition in

regard to Village Chinchwad be deleted was under active consideration of the State Government. This was in view of the agitation undertaken by the Villagers that Village Chinchwad does not fall within the benefited zone of Dudhganga Irrigation Project. It is averred that in paragraph (j), the Petitioner was under the bona fide impression that acquisition has been withdrawn and therefore, the Petitioner did not challenge the same. It is also averred that the Respondent authorities also did not take possession of the acquired lands from Village Chinchwad. However, on 3 May 1987 Mutation Entry No. 1009 was recorded showing symbolic possession of the Petitioner's land being taken over to an extent of 0.49.3 Ares out of Gat No. 481. It is stated that further the petitioner has not accepted compensation. As regards possession of the acquired land the petitioner has stated, though the respondents allege that the same is taken over, by making entries in the revenue record, the actual physical possession of land Gat No. 481 to the extent of 81 Ares continues to be with the Petitioner. This fact was also pointed out by the Petitioner's letter dated 31 January 2013

addressed to Respondent No. 3, whereby the petitioner requested for deletion of the name of the Collector from the revenue record.

6. The challenge as initially raised in the petition was that the slab to acquire the Petitioner's land was wrongly applied and therefore the acquisition is rendered illegal applying the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976. However, by an amendment to the Petition which was permitted under the order dated 16 January 2014, the Petitioner has raised a challenge that the land acquisition has lapsed by operation of law in view of the provisions of Section 24(2) of the 2013 Act in as much as the physical possession of the land being not taken over by the Respondents despite the award being declared on 24 November 1988, as also on account of non payment of the amount of compensation. The Petitioner has thus contended that both the essential requirements of Sub-section 2 of Section 24 of the 2013 Act namely the possession of the Petitioner's land not

being taken over by the Respondents as also the amount of compensation not paid to the Petitioner stand satisfied for the acquisition to lapse.

7. On behalf of the Respondents' Reply Affidavit of Tahasildar (Resettlement) dated 15 June 2015 is placed on record. In paragraph 3 of this affidavit, the deponent has admitted that on 5 October 1989 the State Government had taken a decision to delete Village Chinchwad from the benefited Zone of Dudhganga Irrigation Project, however, a notification to that effect was not issued by the State Government. It is further stated that the Collector, Kolhapur by his letters dated 9 November 1989 and 31 August 2000 addressed to the Government had requested that such notification should not be issued, to delete the acquisition of these lands, situated at Village Chinchwad. It is stated that accordingly the Government took a decision, not to delete the acquisition of these lands, and that possession be taken. This was informed by the Government to the Collector by a letter dated 21 June 2001. In paragraph 4

of the reply though it is stated that the possession of the land was obtained by the Government on 3 May 1997 and a mutation entry to that effect was made in the revenue record, however a perusal of the possession receipt as annexed to the affidavit, does not indicate that the physical possession was handed over by the Petitioner to the Respondents. Also the possession receipt does not have the signature of the Petitioner. Further in paragraph 6 of the Reply affidavit, the deponent has stated that the Petitioner has not come forward to accept the compensation. The specific averment of the Petitioner that the possession of the land has remained with the Petitioner and the compensation is not paid by the Petitioner, has not been denied on behalf of the Respondents in the reply affidavit.

8. We have heard the learned Counsel for the parties. We have perused the contents of the writ petition and the reply Affidavit, as also the documents placed on record. It is not in dispute that the land of the Petitioner was subject matter of the acquisition for the purpose of rehabilitation of the persons

displaced by the Dudhganga Irrigation Project. It is also not in dispute that for a substantial time, as noted above, the State Government was considering the deletion of the land from acquisition situated at Village Chinchwad and subject matter of acquisition. The initial contention of the Petitioner that the acquisition is rendered illegal in view of the Respondents applying a wrong slab has become secondary in view of the subsequent challenge as raised by the petitioner that the acquisition would lapse under the provisions of Section 24(2) of the 2013 Act for the reason that neither the amount of compensation has been paid to the Petitioner nor the physical possession of the land was taken over by the Respondents. The Petitioner has made specific averments in this regard in the writ petition .

9. We find much substance in the contention as urged by the Petitioner on both the grounds as regards non-payment of compensation as also the physical possession being not taken over. It is quite apparent that the amount of compensation is

not paid to the Petitioner much less in the manner known to law, as also there is nothing on record as placed by the Respondents to show that the physical possession of the land has been taken over by the Respondents. In the Reply Affidavit, the Respondents have stated that as a mutation entry is made and a possession receipt dated 3 May 1997 is prepared the possession of the petitioner's land is taken over. However in our opinion this is not sufficient to come to a conclusion that the physical possession of the land is taken over in a manner known to law. We say so, as perusal of the possession receipt does not in any manner show that the Petitioner has handed over the possession of the land. The possession receipt also does not bear the Signature of the Petitioner or of any representative authorized by him. There is no prior notice of the purported panchanama or any material to show that the physical possession would be taken over of the petitioner's land at the specified time and the date. The specific averments of the Petitioner that he continues in to be in physical possession of the land is also not denied by the Respondents. On the other issue,

as regards payment of compensation, in paragraph 6 of the reply affidavit, there is a clear statement that the Petitioner has not come forward to accept the compensation. This clearly goes to show that the amount of compensation has not been paid to the Petitioner. On these facts, we are of the clear opinion that sub-section 2 of Section 24 of the 2013 Act, has clearly become applicable and the acquisition of the Petitioner's land is required to be held to have lapsed on account of the non-payment of compensation to the Petitioner as also the physical possession of the land being not taken over by the Respondents.

10. The law in the above context is well settled which we have considered in our decision dated 17 January 2017 in Writ Petition No. 3238 of 2015 in case of ***Santosh Dnyaneshwar Aher Vs. State of Maharashtra Through Its Secretary And Ors.***, referring to the enunciation of law in the decision of the Supreme Court in ***Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.***¹. The following observations in our decision are relevant in the

¹ 2014(3) SCC 183

context of non payment of compensation so as to conclude that the acquisition has lapsed under the provisions of the Section 24(2) of the 2013 Act.

8. *Thus, a perusal of Section 24(2) of the 2013 Act makes it clear that when an Award under the Land Acquisition Act was made five years or more prior to the commencement of the 2013 Act and compensation has not been paid, the land acquisition proceedings as initiated under the Land Acquisition Act are deemed to have lapsed by virtue of the application of Section 24(2) of the 2013 Act. The words used in sub-section (2) namely “compensation has not been paid” are relevant in the context of what Section 31 of the Land Acquisition Act would provide. Section 31 provides for payment of compensation or deposit of the same in the Court. Section 31 reads thus:-*

- “31. **Payment of compensation or deposit of same in Court:-** (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.*
- (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to*

the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

____ Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the (appropriate Government) instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

(emphasis supplied)

The application of Section 31 of the Land Acquisition Act qua the consequence of section 24(2) of the 2013 Act fell for consideration of the Supreme Court in the case of “**Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors**” (supra). The Supreme Court held that Section 31 makes a provision for payment of compensation or deposit of the same in the Court. The provision requires that the Collector

should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation, and if due to happening of any contingency as contemplated under Section 31(2) of the Land Acquisition Act, if the compensation was not paid, the Collector was under an obligation to deposit the amount of compensation in the Court, to which a reference can be made under Section 18 of the Land Acquisition Act. It was held that the mandatory nature of Section 31(2) with regard to deposit of compensation in the Court was further fortified by the provisions under Section 32, 33 and 34 of the Land Acquisition Act. In the context of a lapse of the land acquisition proceedings under sub-section 2 of Section 24 of the 2013 Act, their Lordships in paragraphs 17 and 18 held thus:-

“17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word “paid” to “offered” or “tendered”. But at the same time, we do not think that by use of the word “paid”, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression “paid” used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of

the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad[1]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

9. In a recent decision of the Supreme Court in **“Delhi Development Authority Vs. Sukhbir Singh & Ors.”** (supra) dealing with the case where the Respondent had contended that the amount of compensation was not paid and, therefore, acquisition has lapsed under Section 24(2) of the 2013 Act, their Lordships considering the earlier decision in **Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki & Ors.** (supra) in paragraph 14 held as under:-

“14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. These steps include the taking of physical possession of land and payment of compensation. What the

legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that 'or' should be read as 'and' must be turned down for two reasons. The plain natural meaning of the subsection does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act, and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition."

11. In view of the above discussion and the clear position in law, we have no hesitation to conclude that the petition deserves to succeed. We accordingly pass the following order :-

ORDER

(i) The acquisition proceedings pertaining to the land of the petitioner being Gat No. 481 admeasuring 0 H 81 Ares situated at Village Chinchwad, Taluka Karvir, District Kolhapur being the subject matter of acquisition under notification dated 7 July 1983 issued under Section 4 of the Land Acquisition Act, 1894, stand lapsed in view 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 the acquisition would stand lapsed only in relation 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 form subject matter of the Award.

(iii) This judgment and order will not preclude the Respondents from initiating fresh acquisition proceedings in respect of the acquired lands under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 if the same is required in public interest.

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

[G.S. KULKARNI]

[CHIEF JUSTICE]