

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4746 OF 2016

Mr.Badshah Husain Shaikh and ors. .. Petitioners
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.Sagar A.Joshi, for the Petitioners.
Mr.V.S.Gokhale, 'B' Panel AGP for Respondents No. 1 & 2.

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATE : 07th DECEMBER, 2018

ORDER (PER M.S.KARNIK, J) :

. Rule. Rule made returnable forthwith and the matter is heard by consent of the parties.

2. The Petitioners by filing this Petition under Article 226 of the Constitution of India seek to challenge the acquisition of land bearing Survey No. 1788 (part) admeasuring 1 hector 96 Are situated in Village – Velapur, District – Solapur (hereinafter referred to as 'the said land' for short). The said land is

acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act' for short). The Petitioners have further prayed for a declaration that the acquisition of the said land stands lapsed and that the said land no longer vests with the Respondents .

The facts of the case in a nutshell are as under :

3. The Petitioners belong to the Muslim community. According to the Petitioners, the said land is being used as a burial ground by the Muslim community since last so many years.

4. A notification under Section 4 of the said Act was issued on 27/06/1991. The declaration under Section 6 of the said Act was issued on 27/08/1992. Respondents No.2 – the Special Land Acquisition Officer No. 1, Solapur made an award on 03/05/1994 in respect of the said land and the other adjoining lands.

5. Learned Counsel for the Petitioners submits that though the award was made as far back as on 03/05/1994, the possession of the said land was never taken over by the Respondents. Learned Counsel urged that the Muslim community even now is using the said land as a burial ground.

6. Learned Counsel pleads that as a consequence of Respondents not taking possession pursuant to award, land acquisition proceedings under the said Act shall be deemed to have lapsed in view of the provisions of the Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the Act of 2013'). In support of his submission that Petitioners are still in possession, learned Counsel invited our attention to the 7/12 extract at Exhibit 'A'. He therefore prayed that the present Petition deserves to be allowed.

7. Per contra, learned AGP on behalf of Respondents No. 1 & 2 invited our attention to the affidavit-in- reply affirmed

by Shri Sanjay Baburao Teli – Special Land Acquisition Officer No.1, Solapur. Learned AGP pointed out that the acquisition was for the purpose of construction of ST Stand at Velapur. According to him, Shri Nishikant Namdev Shinde was the holder of the said land which is new tenure land. Shri Nishikant Namdev Shinde voluntarily gave a statement on 06/10/1990 that he has no objection for allotting the said land for construction of ST Stand at Velapur. In fact even the possession of the said land was handed over to the Maharashtra State Road Transport Development Corporation on 06/10/1990. It is thereafter the notification was published under Section 4 of the said Act on 27/06/1991.

8. Learned AGP further submits that the Petitioners are neither the owners of the said land nor they are interested persons. Learned AGP seriously disputes the contention of the Petitioners that the said land is used as a burial ground. According to him, there are no records to indicate that the said land is being used as a burial ground. Learned AGP submits that

the entire compensation as per award has been paid to the owner of the said land - Shri Nishikant Namdev Shinde. Learned AGP questions the locus of the Petitioners to challenge the acquisition as they are neither the owners or persons interested. According to him in respect of an award passed as far back as on 03/05/1994, the Petitioners approached this Court only in 2016, therefore, the Petition deserves to be dismissed on the ground of delay and laches.

9. Heard learned Counsel for the parties. It is the Petitioners's case that the said land is being used as a burial ground by the Muslim community since last so many years. According to the Petitioners though the award is passed as far back as on 03/05/1994, the possession of the said land was never taken and even now the said land is being used by the Muslim community as a burial ground.

10. To examine the present controversy it would be material to reproduce Section 24 of the said Act, 2013.

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

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, (1 of 1894), –

a) Where no award under [section 11](#) of the said [Land Acquisition Act](#) has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

b) Where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said [Land Acquisition Act](#), as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the [Land Acquisition Act](#), 1894, (1 of 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 land holdings 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.”

11. Let us examine the Petitioner's case with

particular reference to Sub-Section 2 of Section 24. Sub-Section 2 of Section 24 provides that in case of land acquisition proceedings under the said Act, where an award under Section 11 has been made five years or more prior to the commencement of this Act (2013 Act) but the physical possession of the land has not been taken or compensation has not been paid, the said proceedings shall be deemed to have lapsed. It could thus be seen that Sub-Section 2 of Section 24 will come into operation only if it can be established that pursuant to making of an award under the said Act, the physical possession of the said land has not been taken five years or more prior to the commencement of the Act of 2013.

12. To establish that the said land is being used as a burial ground, the Petitioner relied upon 7/12 extract at Exhibit 'A'. However, perusal of the said 7/12 extract reveals that the same is in respect of Survey No. 3140 and not in relation to the said land i.e. Survey No. 1788 (part). Even the statement annexed to the award dated 03/05/1994 in respect of the said

land indicates the name of the owner as one Shri Nishikant Namdev Shinde. Respondent No.2 has placed on record the statement dated 06/10/1990 given by Shri Nishikant Namdev Shinde that he has no objection for allotting the said land for construction of ST stand at Velapur. In the said statement it is recorded that Shri Nishikant Namdev Shinde voluntarily handed over possession of the said land to the Divisional Controller, Maharashtra State Road Transport Development Corporation. It is thereafter that the acquisition proceedings culminated into an award and even the compensation amount has been paid to the holder of the land - Shri Nishikant Namdev Shinde.

13. It could thus be seen that in respect of an award made on 03/05/1994 pertaining to the said land, the record clearly reveals that not only the compensation is paid to the owner/holder of the land but even the physical possession has been taken. Even otherwise, Petitioners are now raising disputed questions of fact as regards possession which is not open for us to examine in this Petition.

14. The Petitioners are admittedly not the owners or holders of the land in question. It is their case that the land cannot be acquired as the same is used as a burial ground for the Muslim community. Except a statement made in the Petition that the said land is being used as a burial ground, there is nothing on record to substantiate this plea. In our opinion, admittedly when the award was made as far back as on 03/05/1994 and the materials on record clearly indicate that not only compensation is paid but even possession of the said land has been taken, the plea of lapsing of the acquisition under the provisions of Section 24 of the Act of 2013 is not available for the Petitioners to raise.

15. The present Petition is therefore devoid of any merits. The same is therefore dismissed. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)