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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6676 OF 2016

Sachin Ananta Bhelke ...Petitioner.
vs
The State of Maharashtra through Special
Land Acquisition Officer & Anr. ...Respondents

WITH
WRIT PETITION NO. 6667 OF 2016
WITH
WRIT PETITION NO. 6668 OF 2016
WITH
WRIT PETITION NO. 6669 OF 2016
WITH
WRIT PETITION NO. 6670 OF 2016
WITH
WRIT PETITION NO. 6671 OF 2016
WITH
WRIT PETITION NO. 6675 OF 2016
WITH
WRIT PETITION NO. 6677 OF 2016
WITH
WRIT PETITION NO. 6678 OF 2016
WITH
WRIT PETITION NO. 6679 OF 2016
WITH
WRIT PETITION NO. 6681 OF 2016
WITH
WRIT PETITION NO. 6749 OF 2016
WITH
WRIT PETITION NO. 6750 OF 2016
WITH
WRIT PETITION NO. 6754 OF 2016
WITH
WRIT PETITION (ST) NO. 15801 OF 2016

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Mr Mahesh A. Parab I/b Prawatak Pathak for the Petitioners in all Petitions.
Mr Sagar Kaursija I/b T.D.Deshmukh for Respondent No.2 in all petitions.
Mrs Pushpalata N. Diwan AGP for Respondent No.1.

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CORAM : K.K.TATED, &
B.P.COLABAWALLA, JJ.
AUGUST 03, 2018.

P.C. :

By all these Writ Petitions, the Petitioners have prayed for a direction that the acquisition of the Petitioners' land in each of these Petitions have lapsed by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the New Land Acquisition Act").

2 It is not in dispute before us that in all these Writ Petitions the acquisition proceedings were initiated under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") and not under the provisions of Land Acquisition Act, 1894. In fact, the affidavit filed by the Government clearly states that the acquisition is initiated as

per the provisions of Section 126(2) of MRTP Act and the notification to that effect dated 23rd February, 1977 is also annexed as Exh 1 to the said affidavit. Even the advocates for the petitioners did not dispute this factual position.

3 Section 24(2) of the New Land Acquisition Act reads thus:-

> "24.(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 holding 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."

4 What can be seen from sub-section 2 of Section 24 is that for lapsing to take place, three conditions have to be fulfilled. Firstly, the land acquisition proceedings have to be initiated under the provisions of the Land Acquisition Act, 1894. Secondly, an award has to be made under Section 11 of

that Act prior to five years from the commencement of the New Land Acquisition Act and thirdly, physical possession of the land has not been taken or compensation has not been paid. It is only when all these three conditions are fulfilled, can it be said that the acquisition proceedings have lapsed by virtue of Section 24 (2) of the New Land Acquisition Act.

5 In the facts of the present case, in all these Writ Petitions, it is an undisputed fact before us that the acquisition proceedings were not initiated under the Land Acquisition Act, 1894 (as contemplated by Section 24 (2) of the New Land Acquisition Act) but under the provisions of the MRTP Act. This being the case, the very first condition for lapsing of acquisition as required under Section 24 (2) itself is not fulfilled. We, therefore, find the argument made on behalf of the Petitioners that lapsing has taken place either because possession has not been taken and or compensation has not been paid as wholly misconceived.

6 In any event of the matter, we find that the Full

Bench of this Court in the case of **Mehtab Laiq Ahmed Shaikh and Others v/s State of Maharashtra and Others** reported in **2017 (6) Mh.L.J. 408** has clearly taken a view that since Section 24 (2) of the New Land Acquisition Act provides for different time frames and lapsing of acquisition on default, it cannot be applied to acquisitions initiated under Sections 125 to 127 of the MRTP Act. The Full Bench has opined that the MRTP Act has not undergone any change from its character as a complete code. The Full Bench also takes a view that Section 24 (2) of the New Land Acquisition Act will apply only if the acquisition proceedings are initiated under the Land Acquisition Act, 1894 and cannot apply if they are initiated under Sections 125 to 127 of the MRTP Act. This decision of the Full Bench is clearly binding on us.

7 It would also not be out of place to mention that the New Land Acquisition Act has been amended and Section 105A has been inserted in the Act, which reads thus:-

SECTION 105-A

"(1) Subject to sub-section (2), the provisions of this Act shall not

> apply to acquisition of land under the enactments specified in the Fifth Schedule.
> (2) The State Government may, by notification, within one year from the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this act relating to the compensation, rehabilitation and resettlement as may be specified in the notification, as the case may be:
>
> Provided that, no such notification shall be issued except on a resolution passed by both Houses of the State Legislature".

8 We must mention that this is a Maharashtra amendment which came into effect from 26th April, 2018. What this provision clearly stipulates is that subject to sub-section 2 of Section 105A, the provisions of the New Land Acquisition Act shall not apply to the acquisitions of land under the enactments specified in the Fifth Schedule. The Fifth Schedule clearly mentions the Maharashtra Regional and Town Planning Act, 1966.

9 Faced with this amendment, the learned advocate for the Petitioner submitted that this amendment is only

prospective in nature and would not apply to the present Writ Petitions as they were filed prior to 26th April, 2018. Though we are not fully convinced with this argument, we are not going into the issue whether Section 105A is prospective or retrospective in nature. It would suffice to state that the issue in the present Writ Petitions is squarely covered by the decision of the Full Bench of this Court in the case of **Mehtab Laiq Ahmed Shaikh and Others (supra)**. This being the case, we find no merit in the Writ Petitions and they are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

10 Ad-interim orders, if any, passed in any of the Writ Petitions stand vacated forthwith.

(B.P.COLABAWALLA, J.) **(K.K.TATED, J.)**