

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10907 OF 2017

Kailash Sakharam Kodre and Another ..Petitioners

Vs.

State of Maharashtra and Others ..Respondents

Mr. Gaurav Potnis i/b Pallavi Potnis, for the Petitioners.

Mrs. Madhubala Kajale, "B" Panel Counsel, for Respondent Nos. 1 to 3.

Mrs. R. S. Khadapkar, for Respondent No.4.

CORAM:-K. K. TATED & B. P. COLABAWALLA,JJ.
DATE :- AUGUST 1, 2018.

P. C.:

This Writ Petition has been filed under Article 226 of the Constitution of India seeking a declaration that the acquisition in respect of 1000 sq.mtrs. of land from Survey No. 57/2 situated at village Mundhwa, Tal Haveli, Dist. Pune has lapsed. The consequential prayer is seeking a direction to release the said land from acquisition.

2 It is the contention of the Petitioners that the acquisition proceedings have lapsed in the facts of the present case by virtue of Section 24 (2) of the Right to Fair Compensation and Transparency in

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Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the New Land Acquisition Act”)

3 It is not in dispute before us that the present acquisition proceedings were initiated under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and not under the provisions of the Land Acquisition Act, 1894.

4 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.”

5 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 third that 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.

6 In the facts of the present case, it is admitted before us that the acquisition proceedings were not initiated under the Land Acquisition Act, 1894 (as contemplated under Section 24 (2) of the New Land Acquisition Act) but under the provisions of the Maharashtra Regional and Town Planning Act, 1966. This being the case, the very first condition for lapsing as required under Section 24 (2) itself is not fulfilled. We, therefore, find the argument of Mr. Potnis that lapsing has taken place because possession has not been taken and compensation has not been paid to his client as wholly misconceived.

7 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 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.

8 Faced with this situation, Mr. Potnis, the learned counsel appearing on behalf of the Petitioners submitted that this decision of the Full Bench of this Court has been challenged in the Apex Court and the Apex Court has passed an order *inter alia* posting the challenge to the Full Bench judgment after decision of the Supreme Court in **Indore Development Authority and Others v/s Manoharlal and Others in SLP (C)No. 9036-9038 of 2016 and connected matters** which is currently pending before the Five Judge Bench of the Supreme Court. He, therefore, submitted that this matter be stood over until the Apex Court decides the correctness or otherwise of the decision of this Court in the case of **Mehtab Laiq Ahmed Shaikh and Others (supra)**.

9 We are unable to agree with this submission. The Supreme Court has merely stated that it will decide this issue after its decision in the case of **Indore Development Authority and Others (supra)**. The Supreme Court has not in any way restrained us from deciding the matters on the basis of the ratio laid down by the Full Bench of this Court. The Full Bench's decision is clearly binding upon us. We do not think that merely by one of the parties challenging the decision of the Full Bench before the Supreme Court would in any way stop us from following the said decision and passing appropriate orders accordingly. We, therefore, do not find any substance in this argument.

10 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”.

11 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.

12 Faced with this amendment, Mr. Potnis submitted that this amendment is only prospective in nature and would not apply in the present Writ Petition as this Writ Petition was 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 Petition 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 Petition and it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J.)