

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

WRIT PETITION NO.7660 OF 2017

Harishchandra Kathod Khare & others .. Petitioners

V/s.

The State of Maharashtra and Others .. Respondents

WITH

WRIT PETITION NO.6501 OF 2017

Jaydeep Ashok Bhoir .. Petitioner

V/s.

The State of Maharashtra and Others .. Respondents

Mr.Vijay Killedar for the petitioner in both the Writ Petitions

Mr.Prashant P. Chavan with Ms.Chaitali Kandare i/b M/s.Navdeep Vora
Associate for the respondent no.4 in both the Writ Petitions

Ms.PN.Diwan, A.G.P for the respondent no.1 in both the Writ Petitions

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 19, 2018

PC. :

1 Heard the learned counsel for the parties.

2 The issue involved in both the Writ Petitions is identical. Hence, same are disposed of by common order.

3 By Writ Petition No.7660 of 2017, petitioner under Article 226 of the Constitution of India, is seeking a writ of mandamus or any other appropriate writ in the nature of writ of mandamus against the Respondent and declaration that the acquisition proceeding in respect of the lands bearing Survey No.68/3, 68/5, 68/6, 69/2, 69/4, 69/5, 70/3 and 68/2A, 84/1 situated at Village Pale, Taluka-Ambernath, District Thane have lapsed in view of the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “said Act”).

4 The petitioner also prayed for an order of injunction refraining the Respondent from disturbing the petitioners' possession in respect of above mentioned Suit lands till the hearing and final disposal of the petition.

5 In Writ Petition No.6501 of 2017, petitioner under Article 226 of the Constitution of India is seeking writ of mandamus or any other appropriate writ in the nature of writ of mandamus and for declaration that the acquisition proceedings in respect of the lands bearing survey No.68/4B, 70/4B and 70/10 situated at Village Pale, Taluka Ambernath, District Thane have lapsed in view of the provisions of Section 24 of the said Act and also an order of injunction refraining from disturbing their possession till the hearing and final disposal of

the present Writ Petition.

6 It is the case of the petitioner that though the Respondent acquired the land as per the provisions of Maharashtra Industrial Development Act, 1961 (for short 'the said MID Act'), till today, they are in possession of the said land. Therefore, in view of Section 24(2) of the said Act, acquisition lapsed. He further submits that the petitioner obtained copy of panchnama prepared by respondent showing that the possession was taken by them which is undated. Therefore, there is no question of relying on such panchnama which is not permissible at all in law. Therefore, this court be pleased to declare that acquisition proceeding carried out by the respondent under the MID Act has been lapsed.

7 It is to be noted that in the present proceeding the Respondent MIDC filed their affidavit-in-reply dated 04.04.2018 in Writ Petition No.7660 of 2017 and specifically stated in paragraph 5.7 that the Special Land Acquisition Officer has handed over possession of the land to the MIDC on 3.11.2008. Paragraph 5.7 reads thus:

“5.7 I say that subsequent to the Notification under Section 32 (1) of the MID Act the Petitioners were issued notice calling upon him to hand over the possession of acquired land. I say that the Special Land Acquisition Officer has thereafter taken possession of the acquired lands belonging to Petitioners by drawing Panchnama and thereafter the Special Land Acquisition Officer has handed over possession of the land to the MIDC on 03.11.2008. Thus, the vesting of land in State Government took place in the year 2008 upon publication of Notice under Section 32(1) of the MID Act and handing over of possession to MIDC had been completed in the year 2008.

Annexed hereto and marked as “Annexure “V” is the copy of the said Possession Receipt.”

8 MIDC also placed on record possession receipt dated 11.12.2008 Exhibit 5 to their affidavit-in-reply. These documents clearly shows that possession was taken by the acquiring body immediately thereafter. Same thing is in Writ Petition No.6501 of 2017.

9 It is to be noted that during the course of argument, the learned counsel for the petitioner fairly admitted that the issue involved in both the Writ Petitions about lapsing of acquisition in view of section 24 of the said Act is already decided by the Division Bench of this court in the matter of *M/s.Super Electrical and Engineering vs. The Collector, Pune and Ors. in Writ Petition No.3564 of 2013 and Writ Petition No.9620 of 2012 by order dated 11.07.2017 (Coram: Dr.Manjula Chellur, C.J. & N.M.Jamdar, J) and in the matter of Vitthaldas Tribhuvandas Bagadia and Anr. vs. The State of Maharashtra and Ors. in Writ Petition No.285 of 2012 (Aurangabad Bench) by order dated 20.12.2017*. In judgment dated 11.07.2017 in Writ Petition No.3564 of 2013, the Division Bench of this court categorically held that the said MID Act is a special Act. Therefore, there is no question of applicability of Section 24 of the said Land Acquisition Act. Paragraph 6 of this judgment reads thus:

“6. On a reading of the provisions i.e. sub-section (5) of section 33 of the Maharashtra Industrial Development Act, 1961, it is apparent that a reference is made to the Land Acquisition Act, 1894 so far as sections 24 and 27 are concerned, only for the purpose of adopting a formula to determine compensation by

the Collector, instead of a different formula under the Maharashtra Industrial Development Act, 1961, sub-section (5) says that the formula enumerated under sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 could be adopted for arriving at the quantum of compensation. By any stretch of imagination, one cannot say that it could be understood as every provision of the Land Acquisition Act, 1894 would be applicable to the Maharashtra Industrial Development Act, 1961 and the Rules, which only mandates that the Collector has to pass an award as expeditiously as possible i.e. within one year or within a further period of 12 months as the State Government may allow, depending upon the case or class of cases. This provides an obligation on the part of the Collector to complete the determination of quantum of compensation normally within one year, but under exceptional cases, within two years, as provided in the Rules. There is no mentioning of lapse of any proceedings positively either under the statute i.e. sub-section (10) of section 33 or under the Rules. In the absence of such provision, one cannot infer that if the determination of compensation, even in the exceptional cases, were to be made within two years, after two years, the proceedings would lapse. Our opinion is further strengthened by the provision of payment of interest vide section 38 of the Maharashtra Industrial Development Act, 1961, where, it says that if the amount of such compensation is not paid or deposited on or before taking possession of the land, the Government shall pay the amount of compensation determined with interest thereon at the rate of 4% from the time of taking possession until it shall have been paid or deposited. Such an embargo is foisted on the mechanism so that the Collector would determine the compensation within two years and it cannot be understood as lapsing of proceedings of acquisition.”

10 Even Division Bench of this court in the matter of **Vitthaldas Tribhuvandas Bagadia and Anr. vs. The State of Maharashtra and Ors.** (Supra) specifically held that the provisions of Section 24 of the said Land Acquisition Act, 2013 is not applicable if the acquisition is

done under the said MID Act. Paragraph 84 of the said judgment reads thus:

“84. In so far as the submission of the learned counsel for the petitioners that the respondents not having paid compensation to the petitioners and not having taken possession of the land within six months from the date of the alleged award and thus the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and more particularly Section 24 stands attracted to the facts of this case and thus State Government will have to issue a fresh notification for acquisition of land and will have to pay market rate of the land in question is concerned, in our view, there is no merit in this submission of the learned counsel. The land in question was not acquired under the provisions of the Land Acquisition Act, 1894. The provision of Section 24 of the said LARR Act, 2013 would not apply to the land acquisition proceedings in question. Be that as it may, none of the conditions under Section 24 of the said Act are attracted in the facts of this case.”

11 The learned counsel for the petitioner submits that the petitioner in Writ Petition No.285 of 2012 challenged the judgment before the Apex Court (being diary No.10392 - 2018).

12 In view of the above mentioned facts and the issue involved in the present Writ Petition about applicability of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of acquisition under the said MID Act, is already decided by two Division Bench judgments, we do not find any reason to entertain the present Writ Petition. Hence, both the Writ Petitions stand dismissed in view of the

issue covered by earlier two Division Bench judgments of this court.

13 No order as to costs.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)