

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10972 OF 2016

Laxmikant Vidyadhar Kulkarni and anr. ..Petitioners
Versus
The State of Maharashtra and ors. ..Respondents

Mr. Shriram S. Kulkarni, advocate for the petitioners.
Mrs. M. P. Thakur, AGP for the State.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 14th FEBRUARY, 2018.

P. C. :

Heard Mr. Kulkarni, learned counsel for the petitioners
and Mrs.Thakur, learned AGP for the State.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking declaration that the acquisition proceedings in respect of the subject land has lapsed by virtue of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. Prior to the year 1976, the petitioners were the owners of Gat No.409 admeasuring 10 Hectares 4 Ares situated at Village – Pathari, Taluka- Mohol, District – Solapur. Out of the said land, the area of 4 Hectare and 45 Ares was acquired for Ujani Project and the Gat

No.409 was divided into two parts viz. Gat No. 409/A and Gat No. 409/B. Subsequently in the year 1986 again, the land admeasuring about 2 Hectares 2 Ares came to be acquired from the petitioners' holding viz. Gat No.409/A.

4. On behalf of the respondents, one Shri Shravan Shreerang Kshirsagar, Special Land Acquisition Officer No.7, Solapur, has filed an affidavit dated 28th July, 2017. The affidavit discloses that the payment of compensation in respect of both lands acquired from the petitioners is given to the petitioners. Mr. Kulkarni, learned counsel for the petitioners, also does not dispute about receipt of compensation in respect of both the acquired lands. The Special Land Acquisition Officer has further stated that the possession of the acquired land is taken and it is shown in the name of the resettlement department. The petitioners are contesting this claim of the respondent-authority and asserted that the physical possession is still with the petitioners.

5. We are not inclined to accept the petitioners' submission in view of extract of mutation entries annexed at pages 11 and 13. At page 11 is the extract of mutation entry No.226 which is in respect of the first acquisition. This mutation entry shows that the possession of 4 Hectares and 45 Ares from Gat No.409 was taken from the petitioners in the presence of panchas and the name of the Collector was entered

into ownership column of the acquired land which was numbered as Gat No.409-B. So far as extract of mutation entry No.775 at page No.13 is concerned, it shows that the possession of the land acquired in second acquisition in the year 1986 was also taken in the presence of panchas and the Collector's name was recorded in the ownership column of the subject land.

6. The petitioners had earlier filed regular civil suit No. 209 of 2010 in the Court of Civil Judge, Senior Division, Solapur. The suit was filed against the State and Land Acquisition Officer seeking to restrain them from allotting the acquired land to the project affect persons. The prayer was also made for cancellation of the acquisition proceedings. So far as this suit is concerned, the Court has returned the plaint for want of proper jurisdiction and subsequently the petitioners have filed proceedings before the Collector. Nevertheless, the plaint disclosed that the possession of the acquired land is taken by the respondent-authority. In paragraph 5 of the plaint, avernment is made by the petitioners that in the year 1993, part of the acquired land was allotted to the project affected persons and after the said allotment, land admeasuring 2 Hectare 43 Ares from Gat No.409/B/2/B remained in possession of the respondent-authority.

7. Mr. Kulkarni, learned counsel for the petitioners, on the basis of 7/12 extract of Gat No. 409/B/2/B tried to make out case that the petitioners are in possession of the said land. The cultivation column of the land shows that the petitioners are in possession. However, this possession is illegal inasmuch as the respondent-authority had already taken possession of the said land from the petitioners in the presence of the panchas. Section 24(2) does contemplate physical possession, however, the petitioners cannot take advantage of their illegal possession and approach this Court claiming lapse of acquisition proceedings, that too, after 30 years.

8. To sum up, since we have come to the conclusion that the subject awards were passed in the year 1976 and 1986 and compensation is already paid to the petitioners, and the possession of the said land was also taken from the petitioners and some of the land is allotted to the project affected persons, we are not inclined to interfere with the impugned order. The writ petition is, accordingly, dismissed.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]