

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

CIVIL APPLICATION (st) NO. 25351 OF 2017
IN
WRIT PETITION NO. 4752 of 2015

Anant B. Malekar ... Applicant

In the matter between

Rahul Dattatraya Tanpure ... Petitioner

V/s.

Special Divisional Officer,
Bhor, Dist. Pune & ors. ... Respondents

Mr. Balasaheb R. Deshmukh for the applicant.

Mr. V.N. Sagare, AGP for the State.

Mr. Ajinkya Udane i/b. Smita Gaidhani for original petitioner in writ petition.

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***CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.***

9th July, 2018.

P.C.

The applicant seeks to recall the judgment and order dated 2nd March, 2017 passed by the Division Bench of this Court in Writ Petition No.4752/2015. By the said judgment and order the Division

Bench considering the facts and circumstances of the case and more particularly considering the reply affidavit filed on behalf of the State Government has held that the acquisition of the land in question has lapsed under the provisions of Section 24(2) of the the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act'). It was held that the acquisition had lapsed on both the counts namely for non-payment of compensation and for possession of the land being not taken over.

2. It is submitted by the learned Counsel that the subject piece of land was acquired by respondents by initiating the proceedings on 12th October, 2002. The panchnama was drawn on 26th December, 2005. Notice was issued on the same day and one more notice was issued on 28th January, 2008 to the land owner. It is the applicant's case that being a project affected person the said piece of land was allotted to him by the State on 5th June, 2012. The learned Counsel submits that the impugned order is passed in the petition wherein the applicant has not been made party.

3. The learned AGP on instructions of Officers present on record submits that the applicant is not a project affected person but a landless one. In that capacity he was allotted piece of land. The State is now in possession of the said plot of land. It is submitted that the applicant cannot as of right claim a particular piece of land. On behalf of the State other options are made available to the applicant for allotment of piece of plot/land.

4. We have perused the record placed before us, the order under re-call and considered the submissions advanced. We are not persuaded to accept the submissions as urged on behalf of the applicant. In the judgment and order dated 2nd March, 2017 the Division Bench after considering the material placed on record has held that application on the land in question has lapsed under Section 24(2) of the Act on account of non-payment of compensation to the original petitioner as also the possession of land owner being not taken over after the award was passed.

5. It is not in dispute that the land in question was never handed over to the applicant. The applicant also cannot claim any absolute right to claim a particular land even if he was to be a project affected person. The applicant has remedies to pursue his claim before the appropriate State authorities. In any event, the applicant has raised serious disputed questions of facts which cannot be subject matter of adjudication in an application of this nature.

6. In our opinion, the reliance placed by the applicant on the decision of the Supreme Court in **Mahavir & Ors. V/s. Union of India & anr. {2017 0 Supreme (SC) 1303}** and more particularly Paragraph-19 would not be of any avail to the applicant in as much as there is no material that the State Government has deposited the amount of compensation in the name and account of owners in the treasury. This decision would also not assist the applicant in as much as in the present case the acquisition has been held to have lapsed not only on account of non-payment of compensation but also on the ground of possession not being taken.

7. In the facts of the case, we do not find that order dated 2nd March, 2017 needs to be recalled. The Civil Application stands rejected.

(G.S.KULKARNI, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.