

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

WRIT PETITION NO.9477 OF 2017

Shri Maruti Bhaguji Gholap	... Petitioner
v/s	
State of Maharashtra and others	... Respondents

Mr Sandeep M. Phatak for Petitioner.
Mrs Pushpalata M. Diwan, AGP for Respondent Nos.1 to 3.

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

DATE : JUNE 21, 2018.

P.C. :-

1. This Writ Petition has been filed seeking a declaration that the land acquisition proceedings including the Notification dated 28th October 1985 issued under section 4 of the Land Acquisition Act 1894 which finally culminated in an award dated 29th April 1987 in respect of agricultural land bearing old Gat No.190, corresponding new Survey no.75, admeasuring 00 H 80 R, situated at Village Pangari, Taluka Khed, District Pune

(hereinafter referred to as the “acquired property”) has lapsed by virtue of provisions of sub-section (2) of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the “New Land Acquisition Act”). The only argument canvassed before us by Mr Phatak, learned counsel appearing on behalf of the Petitioner was that the hearing of this Petition be deferred till the issue of section 24(2) of the new Land Acquisition Act and its interpretation be decided by the Constitution Bench of the Supreme Court in the case of Indore Development Authority v/s Shailendra Verma and others, reported in (2018) 1 SCC 733.

2. According to Mr Pathak, the Supreme Court in the case of State of Haryana v/s M/s G.D. Goenka Tourism Corporation Ltd., (SLP (C) No.8453 of 2017 dated 21st February 2018), has opined that it would be appropriate if pending a final decision on making a reference (which now has been made) to a Larger Bench, the High Courts be requested not to deal with any case relating to interpretation of section 24 of the new Land Acquisition

Act. He submitted that looking this direction of the Supreme Court, we defer the hearing of this Writ Petition on merits.

3. On the other hand, the learned Assistant Government Pleader brought to our attention the statements made by the Government in its affidavit in reply dated 4th October 2017. In the affidavit in reply, it has been stated that Respondent No.3 had issued notice to land owners including the Petitioner under section 4(1) and section 12(2) of the Land Acquisition Act, 1894. It has thereafter been further stated that the Respondent – Authority went on the site to take possession of the acquired property and the land owners willingly handed over possession of the same. To establish that possession has been handed over, the Government has annexed a panchanama which could be found at page 84 of the paper-book. She submitted that this panchanama clearly records that possession has been handed over to the Government and which panchanama has been signed by the Petitioner. She submitted that as far as compensation is concerned, the Petitioner has never disputed that the same has

been paid over to him. This being the case, there was no question of deferring the hearing of this Petition as section 24 of the new Land Acquisition Act had no application at all to the facts and circumstances of the present case. She submitted that in the facts and circumstances of the present case, there was no question of any lapsing of acquisition as contemplated by section 24 of the new Land Acquisition Act and therefore this petition be dismissed in limine.

4. We have heard learned counsel for the parties at length and have perused the papers and proceedings in the Writ petition as well as the affidavit in reply filed on behalf of the Respondent Nos.2 and 3. Mr Pathak, learned counsel appearing on behalf of the Petitioner fairly conceded before us that as far as compensation is concerned, the same has been duly received by his client. He submitted that the only ground, according to the Petitioner, on which acquisition has lapsed is that the physical possession of the acquired property has not been taken by the Government and hence by virtue of section 24(2), the acquisition

lapses.

5. We are unable to agree with the submission of Mr Pathak. Exh.D, (page 84 of the paper-book) is the panchanama showing that possession of the acquired property has been duly taken by the Government. This panchanama clearly records that possession was voluntarily handed over by the Petitioner to the Government and which panchanama has been signed by the Petitioner. When we inquired with Mr Pathak whether he is disputing the signature of the Petitioner, he fairly stated before us that the panchanama has been duly signed by the Petitioner. He, however, submitted that it was a paper possession and that he was in actual possession of the acquired property. We are unable to accept this argument either. The Supreme Court, in the case of Banda Development Authority, Banda v/s Moti Lal Agarwal, reported in (2011) 5 SCC 394, at paragraph 37 has succinctly set out as to how possession is to be taken with reference to acquired land. The Supreme Court has stated that no hard and fast rule can be laid down as to what act would constitute taking of possession

of the acquired land but has given certain instances as set out in the said paragraph. paragraph 37 of this decision reads thus :-

“37. The principles which can be culled out from the abovenoted judgments are :

(i) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.

(ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchanama will ordinarily be treated as sufficient to constitute taking of possession.

(iii) If crop is standing on the acquired land or building / structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building / structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchanama. Of course, refusal of the owner of the land or building / structure may not lead to an inference that the possession of the acquired land has not been taken.

(iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring / designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document

in the presence of independent witnesses and getting their signatures on such document.

(v) If beneficiary of the acquisition is an agency / instrumentality of the State and 80% of the total compensation is deposited in terms of section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.”

6. In the facts of the present case, it is the case of the Petitioner that there is standing crop on the acquired property. This being the case, it would be covered by clause (iii) of paragraph 37 of the decision of the Supreme Court in Banda Development Authority (supra). Clause (iii) clearly stipulates that if crop is standing on the acquired land then by merely going on the spot by the concerned authority will not by itself, be not sufficient to taking possession. Ordinarily, in such cases, the Authority will have to give notice to the occupier of the building / structure or the person who has cultivated the land and take independent witnesses and get their signatures on the panchanama. This clause indicates that refusal of the

owner of land to handover possession

may not lead to an inference that possession has not been taken. In the facts of the present case, we find that the panchanama at page 84 complies with clause (iii) of paragraph 37 of the decision of the Supreme Court.

7. Faced with this situation, Mr Phatak submitted that if one looks at the panchanama (page 84), the same is not signed by two independent witnesses. This being the case, the possession has not been taken as laid down by the Supreme Court in clause (iii) of paragraph 37 of the decision in Banda Development Authority (*supra*).

8. We have gone through the decision of the Supreme Court in the case of Banda Development Authority in some detail. We find that in the facts of the present case, there was no question of two independent witnesses signing the panchanama in view of the fact that that possession has been voluntarily handed over by the Petitioner to the Respondents. This fact is not even disputed before us by Mr Phatak, and correctly so. This being the case, we
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do not think that there is any irregularity in the Government taking possession of the acquired property merely on the ground that two independent witnesses had not signed the panchanama. When the owner of the land viz. the Petitioner himself had voluntarily signed the panchanama which clearly records that possession of the acquired property was voluntarily handed over to the Government, there was no necessity for the panchanama to be signed by two independent witnesses. This being the case, we find considerable force in the argument of the learned AGP that section 24 has no application to the facts of the present case.

9. Under normal circumstances and looking at the facts of this case, we would have been justified in imposing heavy costs against the petitioner but considering that the Petitioner is senior citizen and 85 years of age, we impose nominal costs of Rs.5,000/-. The costs shall be paid by the Petitioner within a period of six weeks from today to the Legal Aid Committee, High Court, Bombay.

10. In view of the foregoing discussion, we find no merit in this Petition. It is accordingly dismissed.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)