

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.282 OF 2018

(Prof. Prabhakar Kashinath Shende & Others ..vs.. The State of Maharashtra, through its Secretary,
 Ministry of Urban Development, Mumbai and others)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri K.H. Deshpande, Senior Counsel assisted by Shri R.D. Dhande,
 Counsel for the petitioners,
 Shri S.M. Ghodeswar, A.G.P. for respondent Nos. 1 to 3 & 6,
 Shri R.M. Bhangde, Counsel for respondent No.4,
 Shri S.K. Mishra, Senior Counsel assisted by Shri V.S. Mishra, Counsel for
 respondent 5.

CORAM : B.R. GAVAI AND
ROHIT B. DEO, JJ.
DATED : 27-09-2018

The petitioners by way of present petition have
 approached this Court seeking the following reliefs :

“(a) this Hon'ble Court be pleased to hold and declare that the Nagpur Metro Rail Corporation Limited (Respondent No.5) had filed proceedings on 25-2-2016 against the Petitioners under Section 4 of the Bombay Government Premises Eviction Act, 1955 bearing Case No.42 of 2015-16 before the Deputy Collector, Nagpur thus, demonstrates that possession of the land of the Petitioners was not taken by the Deputy Collector, Nagpur on 09-2-2016 as claimed ;

(b) this Hon'ble Court be pleased to issue an appropriate writ, direction in the nature of a Writ of Mandamus or any other writ, order, direction to seeking directions to quash and set aside the Notification issued by the Special Land Acquisition Officer, Pench Project, Nagpur under Section 4(1) of the Land Acquisition Act, 1894 dated 13-7-2006 (Annexure “A”) and Notification issued under Section

3 of the Land Acquisition Act in Land Acquisition Case No.2/A-65/2004-2005 dt. 15-5-2007 at Annexure-B.

In the alternate and without prejudice to the aforesaid prayers

(c) this Hon'ble Court be pleased to issue an appropriate writ, direction in the nature of a Writ of Mandamus or any other writ, order, direction to seeking directions to the Respondents to grant compensation to the Petitioners under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in regard to bearing Survey No.70, admeasuring 1 H.R. situated at Parsodi, Grampanchayat, Khapri (Railway), Tahsil Nagpur (Rural), District Nagpur Land Acquisition Case No.2/A-65/2004-2005 ;

(d) this Hon'ble Court be pleased to issue an appropriate writ, direction in the nature of a Writ of Mandamus or any other writ, order, direction to direct the Respondents to pay compensation for the damages incurred due to illegal detention and demolition of the property in regard to the building (dwelling house)/property of the Petitioners bearing Survey No.70, admeasuring 1 H.R. situated at Parsodi, Grampanchayat, Khapri (Railway), Tahsil Nagpur (Rural), District Nagpur on 9-11-2016;”

2. Heard Shri K.H. Deshpande, learned Senior Counsel for the petitioners, Shri S.M. Ghodeswar, learned Assistant Government Pleader for respondent Nos. 1 to 3 & 6, Shri R.M. Bhangde, learned Counsel for respondent No.4 and Shri S.K. Mishra, learned Senior Counsel for respondent 5.

3. The facts, in brief, giving rise to the present petition, as could be gathered from the material placed on record, are thus :

One Kashinath Shende was the owner of the property which is subject matter of the present petition. The notice under Section 4 of the Land Acquisition Act came to be issued on 13-7-2006. The declaration under Section 6 of the said Act came to be issued on 05-4-2007. On 16-2-2009 an award came to be passed holding that Kashinath was entitled to compensation amount of Rs.18,92,695/-. On 04-5-2009 respondent No.3 served a notice under Section 12(2) of the said Act to Kashinath to remain present before respondent No.3 on 28-5-2009. It is the contention of the petitioners that on 09-12-2009 the said Kashinath had died and therefore, the petitioners became the owners of the land in question as the legal heirs of Kashinath. On 10-5-2011 the Talathi issued a letter to petitioner No.1 under Sections 30 and 31 of the said Act informing that the Special Land Acquisition Officer shall be taking possession of the land on 18-5-2011. The petitioners replied to the said notice on 14-5-2011 stating therein that, the possession of the land was not taken by the respondents and the possession of the land is still with the petitioners.

It is the contention of the petitioners that they are still holding the possession of the land and as such prayer as claimed in the petition deserves to be granted.

4. Shri K.H. Deshpande, learned Senior Counsel submitted that on the date of which the alleged possession is taken Kashinath was not alive and as such the contention of the respondents that they have taken possession does not hold water. He submits that the possession could not have been taken from the dead person. The learned Senior Counsel relies on the judgment of the Hon'ble Apex Court in ***Velaxan Kumar v. Union of India & Ors.***, to contend that if the possession of the land is not taken, the land acquisition proceedings shall stand lapsed.

5. We are afraid, as to whether the contention as raised by the petitioners could be entertained by this Court, in view of the principles of judicial propriety. A similar challenge which is sought to be raised in the present petition has undergone scrutiny by the coordinate Bench of this Court, on more than one occasion.

6. The very same petitioners have approached this Court by way of Civil Writ Petition No.1358/2016 thereby challenging the award passed by the Special Land Acquisition Officer and taking a ground, in view of the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "2013 Act"). In the said case, a specific

statement was made on behalf of the respondent-Collector and Land Acquisition Officer that since the petitioners had failed to handover the possession of the land to the respondents, the respondents-Authorities took the possession of the land from the petitioners on 12-2-2015, after execution of the possession receipt in the presence of the panchas. After hearing the learned Counsel for the petitioners, the Division Bench of this Court consisting of Hon'ble Justice Smt. Vasanti A. Naik (as Her Ladyship then was) and Hon'ble Shri Justice V.M. Deshpande in its order dated 3.5.2016 observed thus :

“On hearing the learned Counsel for the parties and on a perusal of the provisions of Section 24(2) of the Act and the affidavit-in-reply filed on behalf of the respondent Nos.1 to 3, it appears that the relief sought by the petitioners cannot be granted. It is the case of the petitioners that the petitioners have not received the compensation towards the acquisition of the land till date. The respondent Nos.1 to 3 have deposited the compensation in the Court, as required by the provisions of Section 31 of the Land Acquisition Act, 1894. In compliance with the provisions of Section 31 of the Land Acquisition Act, the amount of compensation is deposited by the State Government before the Civil Judge (Senior Division), Nagpur on 10-1-2011 in Land Acquisition Case No.18/2011 since the petitioners refused to accept the compensation. After the respondents have deposited the amount in the reference Court in view of the failure on the part of the petitioners to receive the same, the provisions of Section 24(2) of the Act cannot be invoked. Also, we find on a perusal of the original record and proceedings that the possession of the land is secured by the respondents on 09-2-2015. The possession receipt shows that the petitioners were not ready to handover the possession of the land to

the respondents and hence, the respondents secured the possession of the land in the presence of the Panchas, the Deputy Collector and the Mandal Adhikari.

Since both the grounds on which the petitioners have challenged the award in view of the provisions of Section 24(2) of the Act of 2013 are baseless as we find that the possession of the land was secured by the respondents before the filing of the writ petition and the compensation was also deposited in the reference Court, in view of Section 31 of the Land Acquisition Act in the year 2011, the writ petition is dismissed with no order as to costs.”

7. It appears that being aggrieved by the judgment and order passed by the Division Bench of this Court dated 03-5-2016, the petitioners went before the Hon'ble Supreme Court. It will be relevant to refer to the contention raised by the petitioners before the Hon'ble Supreme Court as could be seen from the order passed by the Hon'ble Supreme Court dated 11-7-2016. We find it appropriate to reproduce the order of the Hon'ble Supreme Court, which reads thus :

“When the award in this case was passed in the year 2009 pursuant to the Notification under Section 4(1) of the Land Acquisition Act, 1894 issued in the year 2006, the whole purpose of acquisition was for construction of Nagpur Airport. Apparently, after long years, the same is now sought to be used for Nagpur Metro.

The learned counsel for the petitioner submits that this aspect was urged before the High Court, but there was no consideration. If this is so, it would be open to the petitioner to file a Review Petition before the High Court.

Subject to the above liberty, the Special Leave Petition is disposed of.”

8. In view of the liberty granted by the Hon'ble Supreme Court, the petitioners filed Miscellaneous Civil Application No.873/2016 seeking the review of the judgment and order passed in Writ Petition No.1358/2016. The Division Bench of this Court, after considering the submissions made by the petitioners, by an elaborate order, rejected the review application vide order dated 02-9-2016. We find that it will again be appropriate to reproduce the said order, as it also reflects on the conduct of the petitioners.

“We are afraid that the statement made by the learned counsel for the petitioners before the Hon'ble Supreme Court is factually incorrect. No such submission was made before us by the counsel for the petitioners on 03.05.2016. Had such a submission been made, since the order was dictated in the open Court, the counsel for the petitioners could have risen up to inform the Court that one more point was argued and this Court may include the same in the submissions made on behalf of the petitioners. However, this was not done as the petitioners' counsel had not argued the point of which a mention was made before the Hon'ble Supreme Court, when the matter came up before the Hon'ble Supreme Court on 11.07.2016. Even otherwise, as per the settled position of the law, if a submission is made before a particular Court or Forum and the submission does not find place in the judgment that is not rendered in the open Court, it would be necessary for the party to move the same Court or Forum before which the submission was made and make a grievance about the non-inclusion of the

submission in the order. It would be worthwhile to refer to Paragraph 61 of the judgment of the Hon'ble Supreme Court, reported in **(2003) 2 SCC 111** (Bhavnagar University Versus Palitana Sugar Mill (P) Ltd. & Others), in this regard. Since the submission as the one made before the Hon'ble Supreme Court, was not made before this Court, the counsel for the petitioners did not make a grievance before this Court at the time of rendering of the order, that is sought to be reviewed, in the open Court or even thereafter, that an important and relevant submission made by the counsel before the Court is not incorporated in the order and is not considered by the Court.

This is not the first case of the nature like the one in hand. We are now regularly coming across such matters in review applications wherein a reference is made to the orders of the Hon'ble Supreme Court, before which a statement is made by the counsel for the petitioners that a relevant submission, though was made before the High Court, is not considered. If such a statement is factually correct, we would be glad to redress the grievance of the concerned party, if made before us, at the time of rendering the judgment or the order or within a short time thereafter. We, however, find that the well accepted procedure that needs to be followed, as per the judgments of the Hon'ble Supreme Court, is not being followed and a statement is casually made before the Hon'ble Supreme Court by the parties approaching the Supreme Court that a particular submission that was made before the High Court is not incorporated in the order. We do not appreciate the conduct of such parties that indulge in making incorrect statements before the Superior Courts as the Superior Courts would not be in a position to gauge the correctness or otherwise of the statement. It is well settled that even if several grounds are raised in a petition and if some of them are not argued, the ones that are not argued are deemed to have been given up. It would be necessary to refer to the judgment of the Hon'ble Supreme Court reported in **(2008) 2 SCC 95** (Mohd. Akram Ansari Versus Chief Election Officer &

Others WITH Naved Yar Khan Versus Haroon Yusuf & Another), in this regard.

We reiterate that the point that the purpose of acquisition of the land of the petitioners was different from the purpose for which it is sought to be used now, was not argued before us on 03.05.2016. Though we are not hearing the matter on merits, the learned counsel for the applicants-original petitioners intends to place some judgments of the Hon'ble Supreme Court on record for proving the applicants' case on merits. We accept the judgments on record but, we are not dealing with the same as the submission made on behalf of the applicants before the Hon'ble Supreme Court was not made before us on 03.05.2016. The Hon'ble Supreme Court has observed that it would be open for the applicants to file a review petition before the High Court if the point that the acquisition was for one purpose and the land was being utilized for another, was argued before this Court. Since this point was not argued before us on 03.05.2016, we are not inclined to entertain the review application. Though we have placed the judgments of the Hon'ble Supreme Court in the cases of Kedar Nath Yadav Versus State of West Bengal & others and Savitri Devi Versus State of Uttar Pradesh & Others, on record, we decline to consider them, as in our considered view, an absolutely incorrect statement was made before the Hon'ble Supreme Court on 11.07.2016 that a particular point was argued before this Court and this Court has not dealt with same in the order dated 03.05.2016."

The Special Leave Petition challenging the said order came to withdrawn on 02-1-2017.

9. Not stopping at that, again a Civil Application (W) No.982/2017 came to be filed before this Court by the petitioners for recalling the order dated 3.5.2016. It will

be again appropriate to reproduce to the order dated 14-7-2017 vide which the said application is rejected, inasmuch as the same order would also reflect the conduct of the present petitioners.

“We find that the applicants are vexing the Court time and again, inasmuch as the writ petition filed by the applicants (petitioners) was dismissed by an order dated 03-5-2016. The said order was challenged by the applicants before the Hon'ble Supreme Court in a special leave petition. Since a statement was made before the Hon'ble Supreme Court on behalf of the applicants that a ground raised before the High Court at the time of hearing was not considered while dismissing the writ petition, the Hon'ble Supreme Court permitted the applicants to withdraw the special leave petition and file an appropriate application seeking a review of the order dated 03-5-2016. The review application filed by the applicants bearing Miscellaneous Civil Application No.873 of 2016 was dismissed with costs. After the review application was dismissed by the order dated 02-9-2016, the applicants filed a special leave petition before the Hon'ble Supreme Court, which was permitted to be withdrawn on 02-1-2017. After withdrawing the special leave petition, the applicants have again approached this court with an application for recalling the order dated 03-5-2016 in Writ Petition No.1358 of 2016.

We find that the applicants have abused the process of the court by filing the review application as also the present application for recalling the order dated 03-5-2016 in Writ Petition No.1358 of 2016. After the review application was dismissed, the applicants had approached the Hon'ble Supreme Court and the applicants were permitted to withdraw the special leave petition without any liberty. After the applicants have again filed the present application for seeking a recall of the order dated 03-05-2016.

Though the order dated 03-05-2016 that is sought to be recalled records reasons for rejecting the submissions canvassed on behalf of the applicants, the applicants have filed the application for recalling the order dated 03-05-2016 after the review application was dismissed. It appears that the applicants are vexing the court, time and again in respect of the issue that was decided by this court, by the order dated 03-05-2016 while dismissing the petition.”

10. Not only this, but the petitioners also approached this Court in Criminal Writ Petition No.984/2016 seeking therein various reliefs including compensation for illegal detention and illegal demolition of building of the petitioners. The Division Bench of this Court consisting of Hon'ble Shri Justice R.K. Deshpande & Hon'ble Shri Justice Manish Pitale, vide order dated 16-8-2017, referring to the order passed by the Division Bench of this Court in Writ Petition No.1358/2016 dated 03-5-2016 as well as review application and by observing as under, dismissed the criminal writ petition.

“In view of the above, the prayer in the present writ petition cannot be granted because all of them pertain to allegations regarding demolition of the building standing on the land in question after the possession was taken over. The prayer regarding initiation of criminal proceeding against the respondent for alleged high handedness can be taken care of, by the private complaint already filed by the petitioners before the Court of Judicial Magistrate First Class, Nagpur, bearing Criminal Application No.493/2016. As a result, no grievance of the petitioners survives in this petition, and hence, it is dismissed.”

11. Another Criminal Writ Petition No.493/2016 also came to be filed by the petitioners before this Court. The said petition came to be disposed of vide order dated 16-8-2017.

12 It could thus been said that the challenge with regard to the applicability of Section 24(2) of the 2013 Act has been considered by this Court in the civil writ petition not only once but thrice. Firstly, when the petition was dismissed, secondly, when the review application was dismissed and thirdly, when the application for recalling the order came to be dismissed. As observed by this Court in the earlier orders passed by the coordinate Bench, we also find that this petition is nothing but an abuse of process of law. By filing the present petition, the petitioners are seeking to reopen the issues which are already finally concluded by this Court.

13. In that view of the matter, we do not find any merit in the petition. The petition is devoid of substance and is liable to be dismissed. Hence, the petition is dismissed.

JUDGE

JUDGE

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