

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.2747 OF 2014

Premraj Murlidhar Shinde
and anr.

.. Petitioners

Versus

The State of Maharashtra and ors.

.. Respondents

Mr A.K. Gawali, Advocate for petitioners
Mr S.B. Yawalkar, A.G.P. for respondents no.1 to 4
Mr S.T. Shelke, Advocate for respondent no.5

- WITH -

CIVIL APPLICATION NO.655 OF 2019
IN

WRIT PETITION NO.2747 OF 2014

Uttam Aba Sasane

.. Petitioners

Versus

Premraj Murlidhar Shinde and ors.

.. Respondents

Mr A.P. Gunge, Advocate for applicant
Mr A.K. Gawali, Advocate for petitioners in W.P.
Mr S.B. Yawalkar, A.G.P. for respondents no.1 to 4 in W.P.
Mr S.T. Shelke, Advocate for respondent no.5 in W.P.

- WITH -

CIVIL APPLICATION NO.15634 OF 2016
IN

WRIT PETITION NO.2747 OF 2014

Hemant Haribhau Ugale and ors.

.. Applicants

Versus

Premraj Murlidhar Shinde and ors.

.. Respondents

Mr Mahesh S. Deshmukh, Advocate for applicants
Mr A.K. Gawali, Advocate for petitioners in W.P.
Mr Y.B. Yawalkar, A.G.P. for respondents no.1 to 4 in W.P.
Mr S.T. Shelke, Advocate for respondent no.5 in W.P.

- WITH -

WRIT PETITION NO.2067 OF 2014

Bibhishan Rajaram Shinde and ors.

.. Petitioners

Vesus

The State of Maharashtra and ors.

.. Respondents

Mr A.K. Gawali, Advocate for petitioners
 Mr S.B. Yawalkar, A.G.P. for respondents no.1 to 3
 Mr S.T. Shelke, Advocate for respondent no.4

- WITH -
 CIVIL APPLICATION NO.4735 OF 2014
 IN
 WRIT PETITION NO.2067 OF 2014

Abhiman Tukaram Ugale and ors. .. Applicants

Versus

Bibhishan Rajaram Shinde and ors. .. Respondents

Mr Sandeep S.Deshmukh, Advocate for applicants
 Mr A.K. Gawali, Advocate for petitioners in W.P.
 Mr Y.B. Yawalkar, A.G.P. for respondents no.1 to 3 in W.P.
 Mr S.T. Shelke, Advocate for respondent no.4 in W.P.

- WITH -
 WRIT PETITION NO.2748 OF 2014

Sudam Gopinath Shinde and anr. .. Petitioners

Versus

The State of Maharashtra and ors. .. Respondents

Mr A.K. Gawali, Advocate for petitioners
 Mr S.B. Yawalkar, A.G.P. for respondents no.1 to 4

- WITH -

WRIT PETITION NO.10231 OF 2018

Hemant Haribhau Ugale and ors. .. Petitioners

Versus

The State of Maharashtra and ors. .. Respondents

Mr Mahesh S. Deshmukh, Advocate for petitioners
 Mr S.B. Yawalkar, A.G.P. for respondents no.1 to 3
 Mr S.T. Shelke, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA AND
 ANIL S. KILOR, JJ.**

DATE : 21.09.2019

ORAL ORDER (Per S.V. Gangapurwala)

1. All these writ petitions are based on similar set of facts and involve common question of law. To avoid rigmarole, are decided by common judgment.

2. The petitioners are seeking declaration that the acquisition proceedings undertaken by respondent no.3 stands lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to 'Act, 2013' for brevity). The lands of the petitioners were acquired pursuant to award dated 10.9.1991 passed by respondent no.3 under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to 'Act, 1894' for brevity).

3. The case of the petitioners is that the physical possession of the land acquired by the respondents under award dated 10.9.1991 has not been obtained by the respondents and as such, in view of Section 24 (2) of Act 2013, acquisition stands lapsed.

4. Mr Gawali, learned Counsel for the petitioners strenuously contends that the award has been passed in favour of the petitioners on 10.9.1991 acquiring the writ land of the petitioners. The petitioners have also received the compensation amount as awarded. The petitioners filed references under Section 18 of the Act, 1894. The references were allowed, however, the petitioners have not withdrawn the enhanced compensation. Mr Gawali, the learned Counsel submits that the act of filing references under Section 18 of

Act 1894 so also accepting the amount of compensation as per the original award would not disentitle the petitioners from claiming benefit under Section 24 (2) of the Act, 2013. By statutory fiction as per Section 24 (2) of the Act 2013, the acquisition stands lapsed on failure of the respondent to obtain possession of the land of which the award is passed on 10.9.1991.

5. Learned Counsel for the petitioners to substantiate his contention relies on paragraph 23 of the original award dated 10.9.1991 and submits that Special Land Acquisition Officer, while passing the award has observed that the acquiring body has taken the possession by private negotiations and as such, it will be liable to pay the rental compensation. Reference is also made to the final order in the award to the effect that the acquiring body has prior to the award taken possession by private negotiations. According to learned Counsel, the said recitals in the award *ex facie* are erroneous, more particularly in view of the affidavit filed by the respondent-State and the document of possession receipt on record by the respondents. According to the respondent-State, the possession of the acquired land has been obtained on 20.8.1992 and 21.8.1992 i.e. after the date of passing the award. The recitals in the original award passed by the Special Land Acquisition Officer and the affidavit filed by the respondent-State itself disproves the case of the respondents that the possession was taken.

6. Learned Counsel for the petitioners further submits that in the revenue record, the names of the petitioners are recorded as owners

and possessors. The name in the possession column is always recorded by the revenue officer as per the actual state of affairs. The said aspect also needs to be considered.

7. According to learned Counsel for the petitioners, while taking possession under Section 16 of the Act, 1894, the mandatory procedure has to be followed. To substantiate his contention, learned Counsel relies on the judgment of Apex Court in case of **Velaxan Kumar v. Union of India**, reported in **2015 (4) SCC 325**. The learned Counsel to buttress his contention on the concept of deemed lapsing of acquisition on account of possession not handed over, relied on the judgment of Apex Court in case of **M/s Magnum Promoters Pvt. Ltd. versus Union of India and others**, reported in **(2015) 3 SCC 327**. The learned Counsel submits that the respondents have to take actual physical possession of the land and not paper possession so as to vest the acquired land with the Government. Reliance is also placed on the judgment of Apex court in case of **Raghubir Singh Sehrawat Vs State of Haryana and others**, reported in **AIR 2012 (SC) 468**. Learned Counsel submits that the possession has to be taken by written agreement from the party. The mode of taking possession would be the authority shall go upon the land and to do some act which would indicate that the authority has taken possession of the land.

8. Learned A.G.P. submits that the possession has been delivered by the petitioners to the respondent-State. The possession receipts have been executed by the petitioners in favour of the respondent-

State. It is not open for the petitioners to resile from their stand. The respondent-State has taken possession on 20.8.1992 and 21.8.1992 from the petitioners. The petitioners have also exercised the statutory right to get enhanced amount of compensation. The reference Court has passed award under Section 18 of the Act 1894. In the award also, it is rightly mentioned that the possession has been handed over to the respondent-State. The petitioners have also admitted that the possession is delivered to the respondent-State by them in the application under Section 18 of the Act, 1894. The petitioners in their dispute in reference under Section 18 have accepted that the possession has been delivered.

9. Mr Deshmukh, learned Counsel for intervenors also echoes the arguments advanced by learned A.G.P.

10. Mr Gawali, learned Counsel for petitioners submits that mere statement in the application filed by the petitioners under Section 18 of Act, 1894 would not be sufficient to dispel the proof of actual physical possession being delivered. The documents and the 7/12 extracts on record would depict that possession is still with the petitioners. The said documentary evidence shall have to be considered. The same would have presumptive value.

11. With the assistance of learned Counsel for the parties, we have considered the submissions. Before we advert to the submissions advanced by Counsel for the parties, it would be proper to refer to the relevant provisions. Section 24 (2) of the Act, 2013 reads thus :

“24. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Provided that whether an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

12. Section 24 (2) of the Act, 2013 is beneficial provision. Sub-section (2) of Section 24 of the Act, 2013 begins with the non obstante clause. The effect of Sub-section (2) of Section 24 of Act, 2013 is that if the award under Section 11 of the Act, 1894 is passed five years or more prior to the commencement of the Act, 2013 but the physical possession of the land has not been taken or the compensation has not been paid, the proceedings shall be deemed to have lapsed.

13. The matter would revolve round the aspect of the possession.

14. The respondent-State is required to demonstrate that the physical possession of the land has been obtained. In a case of **Ragbir Singh Sehrawat Vs State of Haryana and others** (supra), the Apex Court had referred to the judgment in a case of **Balwant Narayan Bhagde Vs. M.D. Bhagwat** reported in **(1976) 1 SCC 700**. In the said case, it is held that the manner of obtaining possession would depend upon the nature of the land. There can be no hard-and-fast rule laying down what act would be sufficient to constitute obtaining the possession of land. The Apex Court observed as under :

“ But here, in our opinion, since the land was laying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive-transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.”

15. The possession receipt is placed on record with the affidavit by the State wherein it is shown that the possession has been delivered

by the petitioners. The act of delivery of possession was the voluntary act. At the relevant time, there was no obstruction in delivery of the possession and execution of possession receipt. The recitals of the possession receipt demonstrates that the petitioners voluntarily gave the possession of the land in favour of the respondent and they did not have any complaint. The possession receipt is not disputed. Subsequently, after the possession of the land has been taken, the order is passed by the Special Land Acquisition Officer reducing the assessment of the land revenue.

16. It is a matter of record that after the award is passed, the petitioners filed applications under Section 18 of the Act, 1894. The copies of the applications are placed on record by the respondents. Paragraph 20 of the application filed by the petitioners under Section 18 of Act, 1894 for enhancement of compensation before the reference Court reads thus :

“20. The petitioner was residing in the acquired land. He was compelled to change his residence and the place of business. The land Acquisition Officer has not awarded reasonable expenses incidental charges.”

In paragraph 25 of the application, the petitioner states thus :

“ At the time of taking of possession of the acquired land, the land was ploughed and was made ready for sowing crop; sugarcane/jower/Bajara/groundnut/ lucern gress was standing in the land and the Special Land Acquisition Officer should have paid the damages for the same to petitioner.”

17. The petitioner, Bibhishan in the examination-in-chief on oath states as under :

“ The opponent has acquired lands with standing crops but opponent have not paid rent, damages and crop damages to us since taking over possession.

The petitioner Abhiman, in his deposition, also reiterates the same statement.

18. After the evidence is recorded, the judgment is delivered by the reference Court under Section 18 of the Act, 1894. The reference Court held that the petitioners are entitled for interest at the rate of 15% p.a. for the subsequent years from the date of possession. The Court has granted it from the earlier date of 1988.

19. It would appear that after the award is passed in the year 1991, the petitioners received the amount of compensation. After receiving the amount of compensation, the petitioners preferred reference under Section 18 of the Act, 1894 seeking enhanced compensation. In the reference application, the petitioners accepted that the respondent has taken the possession. In the deposition on oath also, the petitioners accepted that the possession has been delivered to the respondent. The Tahsildar also records that the possession has been delivered by the petitioners and the petitioners have either signed the receipt or put their thumb impressions upon it. The recitals in the application of the petitioners under Section 18 of the Act, 1894 and the statements on oath would be an admission *proprio vigore*, as is held by the Apex Court in case of **Thiru John & Anr. Vs. Returning Officer & Ors.** reported in **AIR 1977 SCC 1724**. The Apex Court observed that :

“ It is well-settled that a party's admission as defined in sections 17 to 20 fulfilling the requirements of section 21, Evidence Act is substantive evidence proprio vigore. An admission, if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so" and until the presumption was rebutted the fact admitted must be taken to be established.”

The petitioners on oath in the application under Section 18 of the Land Acquisition Act so also oral deposition affirmed before the reference Court that the possession has been obtained by the respondents. The admission of the petitioners on oath before the reference Court way back in the year 1992 would be sufficient to non suit the petitioners. The petitioners in no uncertain terms have accepted that the possession has been taken.

20. There is also nothing on record to substantiate that at the time when the respondent took possession of the land, the possession was taken with the standing crops. If the lands were ploughed and barren, then in that case the possession could have been taken just by inspecting the property, going on the spot and getting executed possession receipt and it would not be necessary to make a declaration by beat of drum or otherwise.

21. The petitioners cannot be allowed to approbate and reprobate. On one hand in reference under Section 18 of the Act 1894 claim

interest at the enhanced rate, plead and depose on oath that the possession has been taken by the respondent – State and now, on the introduction of Act of 2013 to seek benefit enshrined in sub-section (2) of Section 24 of the Act, 2013 take somersault and plead otherwise. The same would not be permissible.

22. The High Court while exercising its extra ordinary jurisdiction under Article 226 of the Constitution is duty bound to have all the relevant facts and circumstances into consideration and decide for itself whether the Court should use its judicial discretion to grant relief to the petitioner. This Court, while exercising its powers under Article 226 of the Constitution, apart from being a Court of law is also Court of equity and in granting relief under Article 226 of the Constitution, the Court shall bear in mind the conduct of the party invoking the jurisdiction. The suppression of the material facts with an intent to mislead the Court would disentitle a party to any relief from this Court in its writ jurisdiction. Non-disclosure of true and faithful facts in issue would tantamount to suppression of facts. The suppression of such material facts would disentitle the petitioner to any relief from this Court under its extra-ordinary discretionary jurisdiction. This Court would not exercise its jurisdiction in favour of a litigant suppressing material facts in the petition. The Apex Court in a case of **Arunima Vs. Union of India and ors.**, reported in **2007 (6) SCC 120** has observed that, a person invoking the discretionary jurisdiction of the Court cannot be allowed to approach it with a pair of dirty hands.

23. In light of the above, no relief can be granted to the petitioners.

Writ Petitions stand dismissed. No costs.

24. In view of disposal of Writ Petitions, pending civil applications are also disposed of.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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