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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**WRIT PETITION NO. 11554 OF 2018**

|                                 |                |
|---------------------------------|----------------|
| Keshav Baburao Raut             | .. Petitioner  |
| Vs.                             |                |
| The State of Maharashtra & ors. | .. Respondents |

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Mr. Y.B. Lengare for the petitioner.  
Mr. M.M. Pable, AGP for State.  
Mr. U.B. Nighot for respondent Nos.7A to 7D and 8.

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**CORAM : NARESH H. PATIL, CJ. &  
M.S. KARNIK, J.  
RESERVED ON : 19<sup>th</sup> DECEMBER, 2018  
PRONOUNCED ON : 8<sup>th</sup> JANUARY, 2019**

**ORDER (PER M.S.KARNIK, J.) :-**

By this Petition filed under Article 226 of the Constitution of India, the petitioner seeks a declaration that the land acquisition proceedings in respect of the land bearing Gat No. 572 (old) corresponding New Gat No. 317 ad-measuring 1 Hector 43 R, situated at Village Rautwadi (Shikrapur), Taluka – Shirur, District – Pune has lapsed in view of the provisions of Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013” for short). The petitioner is also challenging allotment order dated 22/11/2017 passed by the respondent No.4 – The Additional Collector, Pune, in favour of respondent Nos.7 and 8.

2. Respondent No.6 issued a Notification under Section 4 of the Land Acquisition Act, 1894 (the old Act) on 17/8/1987. The declaration under Section 6 of the old Act was made on 16/2/1989. An Award under Section 11-A of the old Act was made on 6/5/1991.

3. Learned Counsel for the petitioner contends that the respondent No.3 awarded enhanced compensation of Rs.16,07,008/- on 27/6/2005. Out of that an amount of Rs.8,00,000/- was deposited in the Union Bank and rest of the amount paid to the brother of the petitioner. The petitioner has not received compensation. According to learned Counsel for the petitioner, the petitioner is still in physical possession of the said land and he is residing in the house property constructed on the

said land. Learned Counsel for the petitioner contends that the possession was never taken by following the due process of law. Relying on Section 24(2) of the Act of 2013, learned Counsel for the petitioner submits that as the Award is passed more than 5 years prior to commencement of the Act of 2013 and possession is not taken by following due process of law nor compensation is paid to petitioner, the land acquisition proceedings therefore have lapsed. Learned Counsel for petitioner submits that the petitioner is entitled to retain possession in view of the lapsing of acquisition proceedings.

4. Learned Counsel for petitioner submits that Award is not passed within stipulated period of two years from the date of declaration under Section 6 and therefore, entire land acquisition proceedings are vitiated. It is further submitted that possession was never taken in accordance with law. According to learned Counsel for petitioner, respondent No.6 has prepared the panchanama behind the back of the petitioner and in the absence of the land holder. The possession is taken on

2/7/1991. No notices were served on the petitioner as well as his brother before taking possession. Even his sisters who are having share in the said land were not noticed.

5. An affidavit-in-reply has been filed on behalf of respondent No.6 which is duly affirmed by Shri Sunil Gajanan Gadhe, Deputy Collector Land Acquisition No.22, Collector Office, Pune. It is submitted that Kondiba Baburao Raut, brother of the petitioner, was head of the family which included the petitioner. Respondent No.6 issued notice under Section 4(1) of the old Act in the name of original land owner Shri Kondiba Baburao Raut, family head of petitioner's family. The said notice under Section 4(1) was accepted by original landlord Shri Kondiba Baburao Raut. It is further submitted that when respondent authorities went on site to take possession of the said land in Gat No. 572 (New Gat No.317), the landlord refused to hand over possession. Therefore, possession was taken by drawing a panchanama on 2/7/1991.

6. It is submitted that thereafter compensation amount under the Award was accepted in equal share by the petitioner and his brother Shri Kondiba Baburao Raut on March, 1993. Learned AGP invited our attention to the vouchers from the Revenue Department which is at Exhibit 'D' indicating that Kondiba Baburao Raut as well as Keshav Baburao Raut had accepted compensation amount of Rs.24,124/- and Rs.24,125/- respectively and have duly signed on the vouchers in March, 1993.

7. It is further pointed out that Shri Kondiba Baburao Raut applied to the respondent No.6 under Section 28(A) of the old Act to get enhanced compensation amount. The compensation amount was enhanced to Rs.16,07,008/-. Enhanced amount of compensation was accepted by Shri Kondiba Baburao Raut on 3/12/2012 as head of the family.

8. Learned AGP lays much emphasis on the communication dated 22/4/2015 by which the petitioner

requested respondent No.6 to enter the name of District Rehabilitation Officer in the 7/12 Extract of land in Gat No. 572 (New Gat No. 317). In the said communication the petitioner also admitted that he had accepted compensation amount declared by the respondent No.6.

9. Learned Counsel for respondent Nos. 7 and 8 supports the stand taken by learned AGP.

10. We have heard learned Counsel for the parties. Considered the submissions advanced.

11. Following are undisputed facts :-

- (a) the acquisition under the old Act is for Chaskaman Project ;
- (b) Section 4 Notification is issued on 17/8/1987;
- (c) declaration under Section 6 was made on 16/8/1989;
- (d) an Award is passed on 6<sup>th</sup> May, 1991, entitling

the land owner's compensation of Rs.48,000/-. The petitioner has admittedly accepted a sum of Rs. 24,125/- towards his share of compensation under the Award in March, 2013.

12. The respondent No. 6 has submitted that all the notices are issued under the old Act on the original landlord Shri Kondiba Baburao Raut in his capacity as head of the petitioner's family. The record indicates that by a panchanama dated 6/5/1991 physical possession of the subject land was taken in presence of two witnesses. The payment vouchers indicate that compensation awarded under Section 11-A is paid to Shri Kondiba Baburao Raut and the petitioner in the sum of Rs.24,124/- and Rs.24,125/- respectively. The petitioner has admitted that he has received the amount being his 50% share.

13. It is further material to note that Shri Kondiba Baburao Raut has applied under Section 28(A) of the old Act to get enhanced compensation. Under Section 28(A), respondent

No.6 enhanced compensation to Rs.16,07,008/-. It is interesting to note that the petitioner himself has averred that by the petitioner's notices dated 17/1/2013 and 19/1/2013 he has informed respondent Nos. 1,3,5 and 6 to give half of the enhanced compensation amounting to Rs.8,03,504/- to the petitioner. The petitioner has come out with a case that he is entitled to half share in enhanced compensation and that the respondents have not paid him compensation to the extent of his share.

14. We further find that the present Petition is filed only after an allotment order dated 22/11/2017 is made by respondent No.4 allotting the said land in favour of the respondent Nos.7 and 8. The said land is allotted to respondent Nos.7 and 8, who are project affected persons of the Thitewadi Project.

15. The affidavit-in-reply filed by the respondent No.6 records that there was resistance to hand over possession

pursuant to the Award under Section 11-A which was made on 6/5/1991 and therefore, physical possession had to be taken on 2/7/1991 by drawing a panchanama in presence of two panchas. It is admitted by the petitioner that 50% of the compensation amount of his share to the extent of Rs.24,125/- was received by him in March, 1993. Even in respect of enhanced compensation which was awarded under Section 28(A) pursuant to an application made by Kondiba Baburao Raut, brother of the petitioner, the petitioner has stated in this Petition about his informing respondent Nos.1,3,5 and 6 to give half of the enhanced compensation amounting to Rs.8,03,504/- to the petitioner. The respondents have also placed on record a copy of the communication dated 22/4/2015 made by the petitioner to respondent No.6 that he has no objection for recording the name of the District Rehabilitation Officer in the 7/12 Extract of the said land and further that the petitioner had accepted compensation amount awarded by respondent No.6.

16. It is thus clear that having voluntarily accepted

compensation awarded under Section 11 to the extent of 50% share of the petitioner, it is then not open for the petitioner to challenge the acquisition on the ground of non receipt of his share in the enhanced compensation under Section 28(A). The petitioner in fact had called upon the respondent to give him 50% share in enhanced compensation. According to the respondents, the payment of enhanced compensation is made over to the brother of the petitioner being head of the family. If at all the petitioner has any right, the same can only be in respect of his share in enhanced compensation. It is always open for the petitioner to resort to appropriate remedies in law to recover his share in enhanced compensation if already paid to his brother.

17. It is also one of the contention of the petitioner that the acquisition proceedings are vitiated as the Award is not passed within stipulated period of two years from the date of declaration under Section 6. Following circumstances are required to be taken into consideration while dealing with this

submission :

- (a) an Award is made on 6/5/1991 ;
- (b) the petitioner admittedly in receipt of 50% share of the compensation ;
- (c) the possession of the property is taken by panchanama dated 6/5/1991 ;
- (d) even in respect of enhanced compensation awarded under Section 28(1), the petitioner informed the respondents in the year 2013 that he should be given half share in the enhanced compensation amounting to Rs.8,03,504/-. The sequence of events and the conduct of the petitioner would disentitle him to any relief in this Petition.

We are therefore not inclined to entertain this plea in the exercise of writ jurisdiction at such a belated juncture. Moreover, the petitioner has approached this Court only after the allotment orders are issued in favour of respondent Nos. 7 and 8.

18. Learned Counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in the case of **Raghubir**

**Singh Sehrawat vs. State of Haryana & ors. (2012 AIR SCW 240)** to submit that the factum of the petitioner's possession has to be examined in the light of the propositions culled out in paragraph 18 of the said decision of the Hon'ble Supreme Court.

It would be material to refer to paragraph 18, which reads thus :

“18. In *Banda Development Authority, Banda v. Moti Lal Agarwal and others* (2011) 5 SCC 394, the Court referred to the judgments in *Balwant Narayan Bhagde v. M. D. Bhagwat* (supra), *Balmokand Khatri Educational and Industrial Trust vs. State of Punjab* (1996) 4 SCC 212, *P.K. Kalburqi v. State of Karnataka* (2005) 12 SCC 489, *NTPC Ltd. vs. Mahesh Dutta* (supra), *Sita Ram Bhandar Society vs. Govt. of NCT of Delhi* (2009) 10 SCC 501 and culled out the following propositions:

"(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 panchnama 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 panchnama. 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."

19. In our opinion, the conduct of the petitioner in the facts of the present case is very telling. After an Award was passed on 6/5/1991, the landlords refused to hand over possession of the land. By a panchanama dated 2/7/1991 the possession of the land had to be taken as there was resistance by the land owners. Thereafter, on 29<sup>th</sup> March, 1993, the petitioner accepted his share of 50% compensation in the awarded amount. The petitioner's brother Kondiba Baburao Raut filed an

application for enhancement of compensation under Section 28(1). The compensation was enhanced to Rs.16,07,008/- and the said amount was paid to Shri Kondiba Baburao Raut as the head of the family on 3/12/2012 by cheque No.101019. It is the petitioner's own case in paragraph 8 of the Petition that by notices dated 17/1/2013 and 19/1/2013, the petitioner informed the respondents to give half share in the enhanced compensation amounting to Rs.8,03,504/- to petitioner. By an application dated 24/2/2015 petitioner informed respondent No.6 that as he had accepted the compensation amount declared by respondent No.6, he has no objection if the name of the District Rehabilitation Officer be recorded in the 7/12 Extract of the land. Thus the circumstances on record indicate that not only compensation amount is paid but even possession of the land was taken by the respondents in accordance with the principle culled out by the Hon'ble Apex Court in the case of **Raghubir Singh Sehrawat** (*supra*).

20. In this view of the matter, we do not find any merit

in the present Petition. The Petition is dismissed with no order as to costs.

21. Learned Counsel for the petitioner submitted that presently he is in possession and that he may be protected for sometime as he is in occupation of the dwelling house. In the interest of justice, we direct the parties to maintain status quo for a period of six weeks from today.

**(M.S. KARNIK, J.)**

**( CHIEF JUSTICE)**