

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1702 OF 2022**

Dilip Dattu Dhande & Anr.

....Petitioners

V/s

Maharashtra State, through
The Collector, Solapur and Ors.

.....Respondents

Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Ranjit D. Shinde for the
Petitioners.

Mr. C.D. Mali, AGP for the Respondent Nos.1 to 6/State.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 25, 2022

P.C.:-

1] This Petition is against concurrent findings recorded by the Courts below, thereby refusing prayer for temporary injunction. Based on the title, Petitioners initiated suit for injunction.

2] In the said proceedings, Petitioners claim that their predecessor Nirdas claimed his title by Deed dated 10/07/1975 from Yashwant. According to the Petitioners/Plaintiffs, even if suit property is subjected to acquisition, possession of the same was never taken over by the competent authorities, as such acquisition, if any, lapsed. As such, Petitioners are entitled for relief of temporary injunction.

Drawing support from the judgment of the Apex Court in the matter of *Indore Development Authority vs. Manoharlal and Others* reported in **(2020) 8 SCC 129** so also provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it is claimed that Respondents can take over possession from the Petitioners only by taking recourse to the fresh acquisition proceedings. The support is drawn from the observations made in para 366 of the said judgment in *Indore Development Authority*, cited supra and particularly paras 366.1, 366.2 and 366.3, 366.4 and 366.5 which read thus:-

“366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014, the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the

window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries

(landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.”

3] Mr. Anturkar, learned Senior Counsel appearing on behalf of the Petitioners would invite attention of this Court to the revenue record in relation to the suit property so as to substantiate his claim that possession of the suit property is with the Petitioners as they are cultivating the land under the title to it.

4] Mr. Mali, learned AGP appearing on behalf of the Respondent Nos. 1 to 6 would oppose the prayer, as according to him, the issue is squarely covered by the judgment of the Apex Court in the matter of *Shiv Kumar and Another vs. Union of India and Others* reported in **(2019) 10 SCC 229**. According to him, purchaser like the Petitioners, of the acquired land after Section 4 Notification issued under the Land Acquisition Act 1894 does not acquire any right in the land as sale in his favour is *void ab initio* and he is not entitled to claim the land under the provisions of law. He has invited my attention to the fact that the award in relation to acquisition of the suit property has been declared on 21/01/1983 and in 7 X 12 Extract name of the Respondents is already mutated. As such, according to him, no case for interference is made out and the Petition is liable to be dismissed.

5] I have considered the submissions.

6] Petitioners are claiming their right through Sale Deed dated 30/05/2005 whereas the award for acquisition of land in the case in hand was delivered on 21/01/1983. As such, in view of the law laid down by the Apex Court in the matter of *Shiv Kumar* cited supra, Petitioners hardly get any lawful title to the land in question as their purchase is post Section 4 Notification issued under the Land Acquisition Act, 1894. Para 22 of the said judgment in *Shiv Kumar* reads thus :-

22. “Void is, ab initio,” a nullity, is inoperative, and a person cannot claim the land or declaration once no title has been conferred upon him to claim that the land should be given back to him. A person cannot enforce and ripe fruits based on a void transaction to start claiming title and possession of the land by seeking a declaration under Section 24 of the 2013 Act; it will amount to conferment of benefit never contemplated by the law. The question is, who can claim declaration/ rights under section 24(2) for the restoration of land or lapse of acquisition. It cannot be by a person with no title in the land. The provision of the

2013 Act cannot be said to be enabling or authorizing a purchaser after Section 4 to question proceeding taken under the 1894 Act of taking possession as held in *U.P. Jal Nigam [(1996) 3 SCC 124]* which is followed in *M. Venkatesh [(2015) 17 SCC 1]* and other decisions and consequently claim declaration under Section 24 of the 2013 Act. What cannot be done directly cannot be permitted in an indirect method.”

7] In the aforesaid backdrop, claim of Mr. Anturkar that Petitioners are entitled for benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would be hardly of any significance as his claim for title to the suit property is post Section 4 Notification, which transaction in the light of above stated position of law became void-ab-initio. That being so, no case for interference in extraordinary jurisdiction is made out. Petition as such, fails and same stands dismissed.

(NITIN W. SAMBRE, J.)