

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 8614 OF 2017****Chatrapati Shrimant Udayan Maharaj****Pratapsinh Maharaj Bhosale****..... Petitioner****VERSUS****State of Maharashtra & Ors.****..... Respondents**

Mr.G.S.Godbole, a/w. Mr.V.S.Kapse, i/b. Mr.S.D.Chavan for the Petitioner.

Mr.A.V.Anturkar, Senior Advocate, i/b. Mr.R.C.Barge for the Respondent no.4.

Mrs.Ashwini A.Purav, A.G.P. for the State – Respondent nos. 1 to 3.

**CORAM : R.D. DHANUKA &
S.M.MODAK, JJ.**

DATE : 17TH FEBRUARY, 2022.

P.C:-

Rule. Learned A.G.P. waives service for the respondent nos. 1 to 3. Learned counsel waives service for the respondent no.4. By consent of parties, writ petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks declaration that the acquisition proceedings in respect of the lands bearing Survey Nos.6-4(1), 6-4(2) and 6-3 admeasuring 6 hectares and 23 Ares situated at Village Khindwadi, Taluka and District Satara and the award dated 31st March, 1990 have

lapsed in view of section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the said RFCTLARR Act, 2013) and for other reliefs.

3. It is the case of the petitioner that the petitioner is the owner of the agricultural land described in prayer clause (a) of the petition. On 31st March, 1990, the Land Acquisition Officer declared an award in respect of the said land. On 29th November, 2010 and 18th February, 2011, the Land Acquisition Officer has claimed to have taken possession of the said land. It is however the case of the petitioner that the physical possession of the land continues with the petitioner and his tenants.

4. Mr.Godbole, learned counsel for the petitioner invited our attention to various documents annexed to the petition and would submit that though the respondents have placed reliance on the possession receipt and panchanama annexed at pages 71 and 73 of the petition, no notice before taking possession of the said land was issued by the authority. It is submitted that the respondent nos. 1 to 3 have

failed to establish that the possession of the said land has been taken from the petitioner. He submits that the compensation amount is deposited on 2nd August, 2010 i.e. after more than 20 years of the award made by the SLAO but not in Court.

5. Learned A.G.P. placed reliance on various averments made in the affidavit in reply and would submit that the possession of the land has been already taken from the petitioner. The amount is deposited in P&L Account.

6. Mr.Anturkar, learned senior counsel for the respondent no.4 on the other hand submitted that after complying with the provisions of the LA Act, the Special Land Acquisition Officer had declared award on 31st March, 1990. The first and second panchanamas were made on 29th November, 2010 and on 18th February, 2011 respectively. He invited our attention to the order passed by the Division Bench of this Court in Writ Petition No.7419 of 2010 filed by this client and also order dated 8th October, 2012 passed in the writ petition filed by the tenants of the petitioner i.e. Writ Petition No. 1483 of 2011. He submits that this Court in the said order has clearly recorded that the

possession had been taken over on 18th February, 2011. This fact has been also stated on affidavit. The award in relation to the said land was passed on 3rd April, 1990 and has already become final. This Court also recorded that the title in the land has already vested in the Authority consequent to taking over possession thereof. The fact that the possession was taken over from the petitioners during the pendency of this petition would make no difference.

7. Insofar as the submission of Mr.Godbole, learned counsel for the petitioner that no notice was issued by the Deputy Collector before taking possession of the said land is concerned, learned senior counsel invited our attention to the notice dated 11th February, 2011 annexed at page 63 of the petition. He submits that the copy of the said notice is annexed by the petitioner himself in the writ petition and thus cannot be allowed to say that no notice was issued or served on his client before taking possession of the land in question.

8. In his rejoinder argument, Mr.Godbole, learned counsel for the petitioner tenders a copy of the order dated 12th November, 2021 passed by the Hon'ble Supreme Court in Miscellaneous Application

Diary Nos. 6807/2021 in Civil Appeal Nos. 886-894 of 2014 filed by the Collector, Pune & Ors. vs. Harakchand Misirimal Solanki & Ors. along with interim application for condonation of delay and would submit that the Hon'ble Supreme Court has directed the Registry to list those matters along with Civil Appeal No.877 of 2014 and other connected matters. He submits that the review application is pending before the Hon'ble Supreme Court.

9. It is not in dispute that the Special Land Acquisition Officer has deposited the compensation amount not in Court but in P&L Account. Insofar as the issue as to whether possession of the land was taken from the petitioner or not is concerned, the reference to the Court order dated 6th September, 2017 passed by this Court in this writ petition would be apposite. In paragraph (2) of the said order, this Court recorded the statement made by the learned senior counsel for the petitioner herein that with regard to the possession, there is a dispute between the parties since the revenue record indicates that the possession has been taken over by the Land Acquisition Officer, but physical possession, according to the petitioner, is with him.

10. We have perused the notice dated 11th February, 2011 at page 63 of the petition issued by the Deputy Collector to the petitioner as well as the tenants calling upon them to remain present and to handover possession on 18th February, 2011. The said notice has been annexed by the petitioner himself in the writ petition. In the writ petition filed by the petitioner it is averred and more particularly in paragraph (2) that although the said award was made on 31st March, 1990 and although the respondents claimed to have taken possession of the said land, the possession of the land is with petitioner.

11. The petitioner had also filed an application under section 48 of the LA Act before the learned Minister which admittedly came to be dismissed. The respondents have placed reliance on the possession receipt as well as panchanama showing the factum of the possession taken by the respondent nos. 1 to 3 from the petitioner. The said documents are supported by statement made in the affidavit in reply filed by the State Government before this Court.

12. In the writ petition filed by the tenants bearing no. 1483 of 2011, this Court recorded the finding that the possession was taken over on

18th February, 2011. The said fact had been stated on affidavit. The award in relation to the said land was passed on 3rd April, 1990 which had already become final. Since the title in the land has already vested in the authority consequent to taking over possession thereof, nothing more can be done in the said writ petition filed by the tenants. This Court also recorded the fact that the possession was taken over from the petitioners therein during the pendency of this petition would make no difference.

13. It is not the case of the petitioner that after possession of the land was taken from the tenants by the respondent nos. 1 to 3, the respondent nos. 1 to 3 had once again handover possession of the land to the petitioner. The said order passed by this Court on 8th October, 2012 filed by the tenants of the petitioner in Writ Petition No. 1483 of 2011 attained finality. The learned counsel for the petitioner could not demonstrate even today before this Court that his client was in possession after the date of panchanama and possession receipt.

14. The Hon'ble Supreme Court in case of **Indore Development Authority vs. Manoharlal & Ors.**, (supra) has held that the word 'or'

used in section 24(2) of the said Act of 2013 between the 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 the 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.

15. In our view, since the possession of the land was already taken by the respondent nos. 1 to 3, the twin requirement for lapse of the acquisition as construed by the Constitution Bench of the Hon'ble Supreme Court in the said judgment, the acquisition proceedings initiated by the respondent nos. 1 to 3 have not lapsed. The principles laid down in case of ***Indore Development Authority vs. Manoharlal & Ors.***, (supra) apply to the facts of this case.

16. Insofar as reference to the order passed by the Hon'ble Supreme Court passed on 12th November, 2021 in Miscellaneous Application

Diary Nos. 6807/2021 in Civil Appeal Nos. 886-894 of 2014 filed by the ***Collector, Pune & Ors. vs. Harakchand Misirimal Solanki & Ors.***, is concerned, Mr. Godbole and Mr. Kapse, learned counsel for the petitioner pointed out that the said review application filed by the Collector, Pune is filed in the judgment of the Hon'ble Supreme Court in case of the ***Pune Municipal Corporation & Anr. vs. Harakchand Misirimal Solanki & Ors. (2014) 3 SCC 183*** and not in the judgment of the Constitution Bench in case of ***Indore Development Authority vs. Manoharlal & Ors.***, (supra).

17. Be that as it may, the judgment delivered by the Hon'ble Constitution Bench of the Hon'ble Supreme Court in case of ***Indore Development Authority vs. Manoharlal & Ors.***, (supra) holds the field and applies to the facts of this case. We are respectively bound by the principles laid down by the Hon'ble Supreme Court in the said judgment. Even if the compensation amount is not deposited in Court, since possession of the land was already taken, land acquisition proceedings would not lapse.

18. In our view, writ petition is devoid of merit and canvasses the issues contrary to the principles of law laid down by the Hon'ble

Supreme Court in case of ***Indore Development Authority vs. Manoharlal & Ors.***, (supra) and thus deserves to be dismissed. We accordingly pass the following order :-

(a) Writ Petition No. 8614 of 2017 is dismissed. Rule is discharged. No order as to costs.

(b) Mr. Godbole, learned counsel for the petitioner seeks continuation of the *ad-interim* relief passed by this Court on 6th September, 2017 directing the parties to maintain *status quo* with regard to the possession. Since this Court is of the view that the possession was already taken from the petitioner by the respondent nos. 1 to 3, there is no question of continuation of the said *status quo* order dated 6th September, 2017. Application for continuation of the *ad-interim* protection granted by this Court is accordingly rejected.

[S.M.MODAK, J.]

[R.D.DHANUKA, J.]