

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PRACHI
PRANESH
NANDIWADEKAR

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CONTEMPT PETITION NO.7 OF 2022

IN

CONTEMPT PETITION (ST.) NO.3176 OF 2019

IN

WRIT PETITION NO.4172 OF 2016

1. Pandurang Pandit Borhade	)	
Age 75 years, Residing at Wada,	)	
Taluka Khed, District Pune.	)	
2. Prabhu Ranu Borhade	)	
Since deceased through legal heirs	)	
i. Shivaji Prabhu Borhade, Age 52 yrs.	)	
ii. Haribhau Prabhu Borhade, Age 65 yrs.	)	
iii. Pandharinath Prabhu Borhade, Age 60 yrs.)	)	
Residing at Village Wada,	)	
Taluka Khed, District Pune.	)	.. Petitioners

Versus

1. Dr.Rajesh B.Deshmukh	)	
The Collector of Pune	)	
Having office at New District	)	
Collector Building, Pune.	)	
2. Uttam Patil	)	
The District Resettlement Officer, Pune	)	
Having office at New District	)	
Collector Building, Pune.	)	

3. Vijaysinh Deshmukh)
 The Additional Collector Resettlement, Pune)
 Having office at New District)
 Collector Building, Pune.)
4. The State of Maharashtra)
 through the Chief Secretary)
 Mantralaya, Mumbai – 400 032.) .. Respondents

***ALONG WITH
 WRIT PETITION NO.9423 OF 2018***

1. Pandurang Shivram Nabage)
 Age 74 years, Occ. Agriculture,)
 R/at : Dingrajwadi,)
 Taluka Shirur, District Pune – 412 105.) .. Petitioner

Versus

1. The State of Maharashtra)
 through the Chief Secretary)
 Mantralaya, Mumbai.)
2. The District Collector,)
 Vidhan Bhavan, Pune – 411 004.)
3. Special Land Acquisition Officer)
 No.22, New Administrative Bldg.)
 2nd Floor, Pune – 411 001.)

4. Deputy Collector)
Resettlement Branch,)
Old Zilha Parishad Building,)
Pune - 411 004.)
5. Tahsildar Shirur)
Tahsildar Office, Shirur,)
Dist. Pune - 412 210.)
6. Gaon Kamgar Talathi)
Dingrajwadi, Tal. Shirur,)
Dist. Pune – 412 208.) .. Respondents

Mr.Sanjiv A. Sawant with Mr.Abhishek P. Deshmukh for the petitioner in CP/7/2022.

Mr.S.R.Nargolkar with Mr.Arjun Kadam for the petitioners in WP/9423/2018.

Mr.Karan S. Thorat, AGP for the respondent nos.2 to 4 in CP and for the respondent nos.1 to 5 in WP/9423/2018.

**CORAM : R.D. DHANUKA &
M.G. SEWLIKAR, JJ.**

RESERVED ON : 11th July 2022

PRONOUNCED ON : 1st August 2022

Judgment (M.G. SEWLIKAR, J.) :-

. The petitioners in Contempt Petition No.7 of 2022 have prayed for an action of contempt against the respondent nos.2 and 3 alleging wilful disobedience of the order dated 6th January 2020 passed by this Court in Contempt Petition No.3176 of 2019.

2. The petitioner in Writ Petition No.9423 of 2018 has prayed for a declaration that the acquisition proceedings in respect of Gat No.198 (old 1051) admeasuring 00 Hectare 40 R, situated at Mouje-Dingrajwadi, Taluka-Shirur, District – Pune are illegal and have lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the Act of 2013”). The petitioner seeks an order and direction to cancel the entries of lapsed acquisition in 7/12 extract of Gat No.198 and reinstate the entries in 7/12 extract before the acquisition proceedings.

3. The petitioners have prayed for a declaration that the acquisition proceedings in respect of Gat No.198 (old 1051) admeasuring 00 Hectare 20 R, situated at Dingrajwadi, Taluka-Shirur, District – Pune are illegal and contrary to the provisions of the Maharashtra Resettlement of Project Affected Displaced Persons Act, 1976 (for short “the Act of 1976”).

4. The petitioners in contempt petition are project affected persons of the Chaskaman Project as the land belonging to the petitioners under the said project was acquired by the State of Maharashtra for the public project. It is the case of the petitioners that the petitioners had purchased 1/3rd part of the land from Gat No.74 of Village Darakwadi, Tal.Khed, Dist. Pune from Smt.Radhabai Sambhaji Gaikwad on 19th June 1971.

5. By and under the registered Agreement dated 19th June 1971, the petitioners have become the absolute owner of 1/3rd part of the land

from Gat No.74. It is the case of the petitioners that the petitioner no.2 had also purchased 1/3rd part of the land from Gat No.74 of Village Darakwadi, Tal.Khed, Dist.Pune from Mr.Suresh Laxman Gaikwad and Mr.Rama Badaji Gaikwad on 20th June 1972 and have become the absolute owners thereof. The said property bearing No.74 was acquired for the purpose of public project.

6. It is the case of the petitioners that the Collector of Pune has also given the certificate dated 18th February 2015 to the petitioners that their lands admeasuring 45 R out of the land bearing Gat No.74 are acquired for the public project i.e. Chaskaman project. The petitioners were informed by letter dated 24th March 2014 that an amount of Rs.5,299.25 is still lying with the District Resettlement Officer in the name of the petitioners. At the relevant time, the names of the petitioners were not mutated in the revenue record on the basis of the registered sale deed. The names of the petitioners were mutated into 7/12 extract and other revenue record on 2nd September 1987.

7. In pursuance of an order dated 2nd September 1987 passed by this Court, State Government constituted a committee to look into the grievances made by the project affected persons. The petitioners also made a representation on 19th December 2015. The petitioners filed a Writ Petition bearing No.4172 of 2016 for writ of mandamus against the respondents to forthwith allot the land admeasuring 1 Hectar 60 R to the petitioners at Village Darakwadi, Tal.Khed, Dist.Pune under the provisions of the Act of 1976.

8. On 16th December 2016, this Court directed the respondents

to dispose off the representation dated 19th October 2015 filed by the petitioners on its own merits within a period of three months from the date of the said order. It is the case of the petitioners that the respondents did not comply with the order dated 19th October 2015 though were called upon by the learned District Collector to comply with the order passed by this Court.

9. The petitioners filed Contempt Petition bearing No.38 of 2020 in this Court on 30th January 2019. On 17th June 2019, this Court directed the District Resettlement Officer to take decision in terms of paragraph 4 of the said order dated 19th December 2016.

10. On 2nd July 2019, the District Resettlement Officer issued a notice to the petitioners under Section 16(2) of the Maharashtra Project Affected Persons Act, 1999 (for short “the Act of 1999”). It is the case of the petitioners that in the said notice, the District Resettlement Officer clearly stated that the petitioners were eligible for alternate land as the petitioners are the project affected persons of the Chaskaman Project. The petitioners were called upon to deposit 65% of the occupancy price within 45 days of the receipt of the said notice. It is the case of the petitioners that the District Resettlement Officer did not hand over a copy of the challan though the petitioners had visited his office several times. The petitioners were thus not able to deposit 65% of the amount in the treasury of the State of Maharashtra.

11. The petitioners ultimately paid 65% of the amount when the District Resettlement Officer issued a challan on 14th November 2019 towards occupancy price of the land allotted to the petitioners. The

petitioners are entitled to 1 Hectar 20 R land, out of which the petitioners are handed over the challan with respect to land admeasuring 40 R. According to the petitioners, they are entitled to additional land admeasuring 80 R.

12. On 6th January 2020, this Court passed an order discharging the contempt notice issued by this Court on the assurance given to the Court by the District Resettlement Officer that within two weeks from the date of the order, compensatory land shall be allotted to the petitioners, upon the petitioners' complying with the codal formalities, possession of the compensatory land allotted shall be handed over within two weeks from the date of compliance with the codal formalities by the petitioners. The said contempt petition filed by the petitioners was accordingly disposed off by the said order dated 6th January 2020. The petitioners thereafter made various applications to the Additional Collector, Pune for allotment of the land to the petitioners.

13. The petitioners also brought on record a letter dated 21st September 2020 addressed to the Additional Collector that there was a remark which was made by the Divisional Commissioner to forthwith allot the land to the petitioners. The petitioners sent various reminders to the respondents from time to time. On 28th September 2021, the petitioners filed a Contempt Petition No.7 of 2022.

14. Mr.Sawant, learned counsel for the petitioners submits that out of three plots, the petitioners are entitled to, as project affected persons, two plots are already handed over to the petitioners.

15. This contempt petition appeared on board before this Court on 13th January 2022 recording the statement made by the petitioners that though the petitioners had agreed to deposit 65% amount as demanded, the respondent no.2 did not comply with the said order dated 6th January 2020 though assurance was given to this Court on that date. In paragraph 6 of the said order, this Court *prima facie* recorded a finding that the respondent no.2 has wilfully committed disobedience of the said order dated 6th January 2020 by not complying the said order. This Court accordingly issued a show cause notice against the respondent no.2 as to why appropriate action should not be taken against the respondent no.2. This Court directed the petitioners to deposit 65% amount in compliance with the letter dated 2nd July 2019 with the respondent no.2 within seven days of the respondent no.2 issuing the challan.

16. On 2nd March 2022, learned AGP tendered a copy of the letter dated 2nd March 2022 from the Deputy Collector, Pune stating that the petitioners would be allotted an alternative land and sought six weeks time to comply with the said order passed by this Court. The respondent no.2 was personally present in Court and made a statement before this Court.

17. The petitioners contended that the respondents have already earmarked a plot at Dingrajwadi, Tal. Shirur, Gat No.171 (New 118) admeasuring 0.40 R total admeasuring 1 H 39 R. It was submitted by the petitioners that the said plot of land was available and not allotted to any third party. The petitioners have already deposited the amount pursuant to the said plot earmarked for the petitioners as and by way of permanent alternate accommodation.

18. Learned AGP made a statement before this Court that the petitioners will be allotted the plot in one of the four villages mentioned in the said letter dated 2nd March 2022. This Court made it clear that if the land described at page 139 of the affidavit in rejoinder is available as on date, the same shall not be allotted to any third party but shall be allotted to the petitioners. The respondent no.3 was directed to inform about this factual position to the petitioners within three days from the date of the said order. This Court, however, made it clear that if the said plot was not available, the respondent no.3 should inform the petitioners as to when the said plot would be allotted to third parties within three days from the date of the said order and in any event shall allot one of the suitable plot of the village mentioned in the said letter dated 2nd March 2022 to the petitioners. This Court once again recorded prima facie finding that the respondent nos.2 and 3 had committed contempt of the orders passed by this Court. This Court directed the office to place the matter on board for reporting compliance on 29th March 2022.

19. On 29th March 2022, this Court had made an observation that the petitioner is placed in possession of 40 R land from Gat No.196/2 at village Dingrajwadi. The petitioner is further entitled to about 80 R land. This Court directed that the parties shall consider the availability of land from the lands of which choice is given by the petitioner and may allot and place the petitioner in possession of the suitable land if there is no charge or impediment.

20. On 5th April 2022, the petitioners made a statement before this Court that instead of 40 R land on which the petitioners were placed

in possession from Gat No.196/2 at village Dingrajwadi admeasures only 25.5 R. This Court accordingly directed the learned AGP to take instructions in the matter. This Court permitted the petitioners to carry out amendment in the writ petition pursuant to the order dated 21st April 2022.

21. On 28th April 2022, this contempt petition appeared on board. This Court directed the respondents that joint measurement be carried out on 5th May 2022 and directed the petitioners to remain present for the measurement on 5th May 2022 in respect of Gat No.196/2. Learned AGP made a statement that in so far as the land allotted to the petitioner from Gat Nos.121 and 123 are concerned, the possession would be handed over within 15 days. This Court recorded the said statement made by the learned AGP and directed that the possession handed over shall be free from all encumbrances.

22. On 20th June 2022, this Court recorded a statement made by the learned AGP that the order passed by this Court is fully complied with. The petitioner disputed this statement made by the learned AGP. This Court accordingly directed the respondent no.2 to remain present before this Court and to make a statement whether the order in contempt petition has already been complied with or not and if not complied with, when the same would be complied with. This Court granted permission to the petitioner in Writ Petition No.9423 of 2018 to reconstruct the papers and proceedings in the said writ petition if original papers are not traceable.

23. Mr.Sawant, learned counsel for the petitioners invited our

attention to various exhibits annexed to the contempt petition and also interim orders passed by this Court from time to time. He submits that two plots out of three plots are already handed over by the respondents to the petitioners in compliance with the orders passed by this Court.

24. Learned counsel for the petitioners in contempt petition states that the respondents are not handing over possession of third land in view of the rival claim made by the petitioners in Writ Petition No.9423 of 2018 claiming rights illegally.

25. Mr.Thorat, learned AGP for the State submits that old land/plot/area bearing Gat No.1049 and new land/plot/area bearing Gat No.196/2 came to be allotted to the petitioner as per his choice. Pursuant to the order dated 25th March 2022, allotment of area 0.40 R of Gat No.196/2 completed in favour of the petitioner was after taking into account the choice of the petitioner. Possession of the said plot has also been handed over to the petitioner. Names of the petitioners have been included in 7/12 extract.

Submission of the petitioner in Writ Petition No.9423 of 2018.

. Mr. Nargolkar, learned counsel for the petitioner in Writ Petition No.9423 of 2018, on the other hand, submits that his client is the owner of land bearing Gat No.198 (old 1051 of village Koregaonbhima) admeasuring 00 Hectare 40 R situated at Mauje, Dingrajwadi, Tal.Shirur, Dist. Pune which has been acquired. He submits that this petition is filed by his client in respect of 0 H 40 R area which is not allotted to PAP. He submits that the acquisition proceedings were carried out in the

name of Sitaram Shivram Nabage, who is the brother of the petitioner. Learned counsel for the petitioner submits that his client had filed Regular Civil Suit No.99 of 1978 inter alia praying for partition of ancestral properties. In the said suit, a compromise decree was passed on 6th July 1987. According to the said compromise decree, as per para no.1b of the compromise purshis, Gat No.1051 is allotted exclusively to the share of the petitioner.

27. It is submitted that though the petitioner was the owner of the land bearing Gat No.1051 (new 198), the acquisition proceedings under Section 4 of the Land Acquisition Act were issued and published in Government Gazette on 5th October 1989. The said acquisition proceedings were carried out in the name of the brother of the petitioner who was not owner of the said land. According to the petitioner, he is exclusive owner of the said land since 6th July 1987 and two years prior to issuance of the notice under Section 4 of the Land Acquisition Act. No compensation has been paid to his client. His client is in actual and physical possession of the said land.

28. It is submitted by the learned counsel that pursuant to the said compromise decree dated 6th July 1987, his client became entitled to a total holding of 2 Hectares 72 R i.e. 0 Hectare 75 R of land bearing Gat No.983(old) and 130 (new), 0 Hectare 34 R of the land bearing Gat No.752 (old) and 71 (new) and 0 Hectare 56 R of the land bearing Gat No.1051 (old) and 198 (new).

29. It is submitted by the learned counsel that out of the said total holding of 2 Hectares 72 R, the State Government has passed an

Award in respect of 40 R and 16 R from Gat No.198 (old Gat No.1051) which are the subject matter of this petition. The State Government also acquired the land admeasuring 24 R from Gat No.755 (old Gat No.74/2). Out of the said land admeasuring 80 R, land admeasuring 40 R (Gat No.198/1) is reserved with the Collector, Pune. Area admeasuring 16 R (Gat No.198/2) has been allotted to a PAP namely Mr.Dharma Tukaram Gilbile. He submits that an area admeasuring 24 R (Gat No.74/2) has been allotted to a PAP namely Mr.Sakharam Mali. His client is thus left with only an area out of the total holding, admeasuring 1 Hectare 29 R.

30. In para 4.2 of the petition, it is contended that though the petitioner came in possession on 6th July 1981 when the consent decree was passed, the possession of the petitioner would relate back to the date of filing of the suit i.e. 20th November 1978. His client thus shall be deemed to be in possession of land admeasuring 2 Hectare 72 R since 20th November 1978.

31. It is submitted by the learned counsel that the Maharashtra Resettlement of Project Affected Displaced Persons Act, 1976 came into effect vide its Notification issued under Section 11 of the said Act of 1976 on 20th September 1979. Learned counsel for the petitioner placed reliance on Schedule A, Part II of the Act of 1976 and would submit that since total area of the petitioner did not exceed 3 Hectares 24 R, the said land of the petitioner could not have been acquired at all for resettlement purposes in view of express bar contained in the said Schedule A Part II read with the provisions of the Act of 1976.

32. It is submitted by the learned counsel that his client is in

actual and physical possession of the said land and has been utilising it for residential and agricultural purposes. The petitioner has standing residential structure and crops on the said land for the last several years.

33. It is submitted by the learned counsel that since the possession of the land in question continues with the petitioner and the compensation has not been paid to the petitioner, the acquisition proceedings, if any, stood lapsed in view of Section 24(2) of the Act of 2013. He invited our attention to various provisions of the Act of 1976 including Schedule A Part II and submits that though his client has not raised any objection to the Notification, if any, issued under Section 11 of the Act of 1976 or to the Notification issued under Sections 4 and 6 of the Land Acquisition Act and since the land of the petitioner could not have been acquired at all for the purpose of the resettlement of project affected displaced persons the entire acquisition proceedings were *void ab initio*.

34. Learned counsel submits that the Civil Court had already passed a consent decree in favour of the petitioner prior to the date of the Notification under Section 4 of the Land Acquisition Act which was issued on 8th September 1988 and the Notification under Section 6 on 23rd February 1989. He submits that the land acquisition award was made on 28th February 1991. He invited our attention to some of the averments made in the affidavit-in-rejoinder dated 9th July 2022 filed by his client.

35. It is submitted that by letter dated 29th April 1984, his client has already informed the Deputy Director of Resettlement Department, Pune about compromise decree and that the petitioner had acquired title

and rights over the subject land. The petitioner had also informed the Office of the Tahsildar about the said consent decree. He relied upon the communication dated 15th January 1986 and submits that the office of the Tahsildar, Shirur, Pune has also acknowledged these facts. The respondents authorities were thus fully aware of the title of the land vested in the petitioner and took symbolic possession from the brother of the petitioner who had nothing to do with the said plot. The so called payment of compensation is also alleged to have been made to a third party i.e. his brother who was not concerned with the said plot at all. He submits that panchanama prepared by the respondents also cannot be relied upon by the respondents on the similar ground.

36. It is submitted that the sale deed executed by the son of the petitioner for part of the said land by purchasing that part is of no significance as the same is purchased during the pendency of this petition. He submits that Section 21(1) (a) of the Act of 2013 will apply to the facts of this case. Since there is no valid possession in favour of the respondents, the acquisition proceedings have lapsed. The respondents have not denied the factum of the possession of the petitioner in the affidavit-in-reply.

37. It is submitted by the learned counsel that the judgment of the Supreme Court in case of **Indore Development Authority Vs. Manoharlal & Ors. etc.** in S.L.P. (C) Nos.9036-9038 of 2016 delivered on 6th March 2020 will not apply to the facts of this case. The so called panchanama was prepared by the respondents without giving any notice to the petitioner and by giving notice to the strangers.

38. Upon raising a query, the petitioner admitted that he did not challenge the land acquisition award earlier and has also not applied for apportionment of compensation awarded by the Special Land Acquisition Officer.

39. Mr.Thorat, learned AGP for the State submits that the correspondence relied upon by the petitioners in the affidavit-in-reply also does not describe as 'Owner'. No objection under Section 5A of the Land Acquisition Act was raised by the petitioners at any point of time. The petitioner's name was not even mentioned as beneficiary in the land acquisition award. The petitioner had never applied for recording his name in the mutation entry. The petitioner did not challenge the award at any point of time. He invited our attention to the possession receipt dated 16th March 1991 and would submit that the respondents authorities had already taken possession of the land and had already paid compensation to Sitaram Shivram Nabage.

40. Mr.Sawant, learned counsel for the petitioners in Contempt Petition No.7 of 2022 heavily placed reliance on the judgment of the Supreme Court in case of ***Indore Development Authority (supra)***. He submits that the acquisition is now challenged for the first time by carrying out amendment after more than 27 years. No relief thus can be granted in favour of the petitioner by this Court. Similar objection raised by the petitioners, at this stage, about the validity of the acquisition has already been rejected by the Supreme Court in the said judgment in case of ***Indore Development Authority (supra)***.

REASONS AND CONCLUSIONS :-

41. We have carefully considered the submissions of the learned counsel on both the sides.

42. Undisputed facts are that the Petitioner had filed RCS No.99 of 1978 for partition and the land Gat No.198 (Old Gat No.1051) came to the share of the Petitioner. It is also not in dispute that as per compromise decree, land Gat No.198 (old Gat No.1051) was allotted to the share of the Petitioner. Land Gat No.198 to the extent of 56 Ares came to be acquired for Chaskaman project and compensation has been paid to Sitaram Shivram Nabage, the brother of the Petitioner.

43. Notification under Section 4 of the Land Acquisition came to be issued on 8th September, 1988. Notification under Section 6 of the Land Acquisition Act was issued on 23rd February, 1989, and Award was passed on 28th February 1991. Till the passing of the Award, the Petitioner remained silent. It is difficult to believe that the Petitioner was not aware of the notification under Section 4 and 6 of the Land Acquisition Act. Undisputedly, revenue record of the land Gat No.198 was not in the name of the Petitioner, therefore, there was no reason for the revenue authorities to know about the passing of the consent decree. The contention of the Petitioner that he had intimated the revenue authorities about the passing of the consent decree has gone unsubstantiated.

44. Mr.Nargolkar, learned counsel for the Petitioner placed heavy reliance on the letter dated 20th May, 1984 to contend that by this letter the Petitioner had intimated the revenue authorities about the passing of the consent decree. According to him, Petitioner has

discharged his obligation and it was for the revenue authorities to effect the mutation. At first blush, this submission appears to be attractive but a second glance exposes its fallacy. The communication appears to have been sent on 20th May, 1984. Tahasildar Shirur, by the communication dated 15th January, 1986 informed the Petitioner that since Maharashtra Resettlement of Project Displaced Persons Act, 1976 has been applied to that region, transfer by any mode is impermissible. In short, Tahasildar refused to take entry of consent decree. It is, thus, axiomatic that the Petitioner was aware in the year 1986 itself that the Revenue Authorities refused to act upon the consent decree. Still he remained silent and allowed the acquisition proceedings to continue.

45. The petitioner in writ petition did not raise any objection under Section 5A of the Land Acquisition Act nor did he raise any objection on publication of notification under Sections 4 and 6 of the Land Acquisition Act, 1894. He did not even apply for the apportionment of compensation. Therefore, it does not lie in his mouth to say that the Revenue Authorities did not carry out the mutation entry on the basis of consent decree. This conduct of prolonged silence on the part of the Petitioner dis-entitles him to claim any relief.

46. So far as lapsing of acquisition proceedings is concerned, it is dealt with by Section 49 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 contemplates lapsing of the acquisition proceedings and reads thus :

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases-

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 where an award has been made and compensation in respect of a majority of land holdings 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.”

47. In ***Indore Development Authority vs. Manoharlal & Ors.***, it has been held that the acquisition proceedings will lapse if it is shown that the Award has been passed five years or more prior to the commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, but the physical possession of the land has not been taken or compensation has not been paid. In the case of ***Indore Development Authority vs. Manoharlal & others***, SLP (C) Nos.9036-9038 of 2016 the Hon’ble Supreme Court has held that drawing Panchanama of taking possession is the mode of taking possession in land acquisition cases, thereupon, land vests in the State and any re-entry or retaining the possession thereafter is unlawful and does not inure for conferring benefits under Section 24(2) of the Act of 2013.

48. These observations of the Hon’ble Supreme Court make it abundantly clear that drawing of Panchanama of taking possession is the mode of taking possession in land acquisition cases. Respondent State has produced the possession receipt indicating that the possession has been taken of the land Gat No.198 (Old Gat No.1951). Therefore, as held in the matter ***Indore Development Authority***(*supra*) the land vests in the Government and any reentry is unlawful.

49. Submission of the learned counsel Mr.Nargolkar that ***Indore Development Authority*** case does not apply as it relates to possession

taken from the owner of the acquired land and in the case at hand possession is not taken from the owner, but from the person who is not the owner has no merit. In the case at hand, the Petitioner was aware of the fact that Tahasildar had refused to enter his name on the basis of compromise decree. Therefore, there was nothing before the SLAO to show that the compromise decree was passed by the Court. Tahasildar refused to act upon the compromise decree as Maharashtra Resettlement of Project Affected Displaced Persons Act was applicable. It was for him to show that compromise decree was passed before the application of the Act. Therefore, there was no record before the SLAO to show that Petitioner had become the owner of the acquired land.

50. The learned counsel Mr.Nargolkar placed reliance on the judgment of the Supreme Court in case of ***Pune Municipal Corporation vs. Harakchand Misriwal Solanki & Ors. (AIR 2014 SC 982)*** and in case of ***Mahesh Kantilal Bhayani vs. State of Maharashtra (WP No.6175 of 2012)*** of this Court for the proposition that payment of compensation in the R.D. Account of Collector does not amount to payment. It will be considered as 'paid' if compensation amount is deposited in the Court to which reference could have been made. This submission does not have any substance as it has been held in the case of ***Indore Development Authority(supra)*** the word 'paid' includes deposit of amount with the Collector.

51. The long and short of the above discussion is that the Petitioner was aware that the Revenue Authorities had refused to act upon the consent decree and that his name has not been recorded in the revenue

record and the land remained in the name of the brother of the Petitioner. It was, therefore, obligatory for him to take objection before the SLAO which he did not. The Petitioner, therefore, cannot be heard to say that he had no notice of acquisition of his land.

52. Mr.Nargolkar further submitted that in terms of Schedule A of Maharashtra Resettlement of Project Displaced Persons Act, if land holding of a person is less than 3.24 Hectar, i.e. 8 Acres, no land should be acquired. He submitted that the total holding of the Petitioner was 2H 72 Are which means it was much less than 3H 24 Are. He submitted that for this reason also, the land was not capable of being acquired. For the afore-discussed reasons, submissions cannot be accepted, The land was acquired in the year 1991 and the Petitioner is raising the objection in the year 2018. His burden of song is that he being the owner of the land Gat No.1051, notice ought to have been issued to him. As indicated earlier, Revenue Authorities refused to effect mutation on the basis of the consent decree as the Maharashtra Resettlement of Project Displaced Persons Act, 1976 was applied. In terms of Section 16 of this Act, any transfer, even by a decree of Civil Court cannot be effected without the permission of the Competent Authority. From the communication of the Tahasildar, it is apparent that the Tahasildar had refused to effect mutation as the Maharashtra Resettlement of Project Displaced Persons Act, 1976 was applied and no transfer was by a decree of a Civil Court is permissible.

53. The story of the petitioner in Writ Petition No.9423 of 2018 about his possession is inconsistent with the writ petition filed by him. The fact remains that once the land is vested in the Government upon making an award and the compensation already having been paid to a

person whose name was reflected in the award as claimant and the petitioner not having applied for apportionment, re-entry of the petitioner in the land acquired would not create any right of any nature whatsoever in favour of the petitioner.

54. We are not inclined to accept the submission of Mr.Nargolkar, learned counsel for the petitioner that the possession of the petitioner would relate back to the date of filing of the suit i.e. 20th November 1978 and that his client shall be deemed to be in possession of the land admeasuring 2 Hectares 72 R since 20th November 1978. We are inclined to accept the submission of Mr.Thorat, learned AGP that the respondent authority had already taken possession of the land as reflected in the possession receipt dated 16th March 1991 and had already paid compensation to Sitaram Shivram Nabage. The petitioner has admittedly challenged the acquisition proceedings after more than 27 years. On this ground also, the petitioner is not entitled to seek any relief in the writ petition filed by him.

55. In so far as the petitioners in contempt petition are concerned, admittedly the petitioners are project affected persons of the Chaskaman Project as the land belonging to the petitioners under the said project was acquired by the State of Maharashtra for the public project. The Collector of Pune has also given the certificate dated 18th February 2015 to the petitioners that their lands admeasuring 45 R out of the land bearing Gat No.74 are acquired for the public project i.e. Chaskaman project.

56. Pursuant to the order passed by this Court on 16th December

2016 directing the respondents to dispose off the representation dated 19th October 2015 filed by the petitioners on its own merits and by the order dated 17th June 2019 passed by this Court in Contempt Petition bearing No.38 of 2020, the District Resettlement Officer took a view that the petitioners were eligible for alternative land as the petitioners are project affected persons of the Chaskaman Project and were called upon to deposit 65% of the occupancy price. The petitioners in contempt petition admittedly have paid the said 65% of the amount on 14th November 2019 upon issuance of challan by the authority.

57. We have perused a letter dated 21st September 2020 addressed to the Additional Collector showing a remark made by the Divisional Commissioner to forthwith allot the land to the petitioners.

58. Learned AGP had tendered a copy of the letter dated 2nd March 2022 from the Deputy Collector, Pune before this Court stating that the petitioners would be allotted an alternative land and sought six weeks' time to comply with the said order passed by this Court. The respondents have already earmarked the plot at Dingrajwadi, Tal. Shirur, Gat No.171 (New 118) admeasuring 0.40 R total admeasuring 1 H 39 R. This Court accordingly directed the respondent no.3 to make it clear that if the said plot described at page 139 of the affidavit-in-rejoinder is available on the date, the same shall not be allotted to any third party but shall be allotted to the petitioners only. This Court accordingly directed that the parties shall consider the availability of the land from the lands of which choice is given by the petitioner and may allot and place the petitioner in possession of the suitable land if there is no charge or impediment on such land.

59. We also note the statement made by the learned AGP that old land/plot/area bearing Gat No.1049 and new land/plot/area bearing Gat No.196/2 came to be allocated to the petitioner as per his choice and names of the petitioners have already been included in the 7/12 extract. In our view, though the land claimed to be in possession by the petitioner in Writ Petition No.9423 of 2018 is earmarked and allotted to the petitioners in lieu of the land acquired by the State Government and the petitioners being the project affected persons of the Chaskaman Project, the respondents did not hand over possession of the permanent alternative land to the petitioners.

60. We however, do not propose to take any action against the contemnors at this stage in view of the contemnors having complied with the part of the order passed by this Court including the allotment of the plot which is claimed to be in possession of the petitioner in Writ Petition No.9423 of 2018. In our view, the petitioner in Writ Petition No.9423 of 2018 cannot claim any right, title and interest of any nature whatsoever of the plot which is allotted to the petitioners as project affected persons.

61. We accordingly pass the following order :-

(i) The petitioner in Writ Petition No.9423 of 2018 is directed to hand over vacant possession of the writ land to the District Collector within two weeks from today failing which the District Collector to take forcible possession of the said land from the petitioners and if necessary, with the assistance of the police.

(ii) The District Collector shall hand over vacant and peaceful possession

thereof to the petitioners in Contempt Petition No.7 of 2022 within 48 hours from the date of taking possession from the petitioner in Writ Petition No.9423 of 2018.

(iii) Writ Petition No.9423 of 2018 is dismissed.

(iv) Contempt Petition No.7 of 2022 is disposed off in aforesaid terms.
No order as to costs.

(v) Parties to act on the authenticated copy of this order.

M.G. SEWLIKAR, J.

R.D. DHANUKA, J.