

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1917 OF 2022

Ramesh Annappa Kadam and others. ... Petitioners.

V/s.

State of Maharashtra and others. ... Respondents.

Mr.Sanjiv Kadam i/b. Mr.Prashant P. Raul for the Petitioner.

Ms.M.S.Bane, AGP for Respondent Nos.1 to 3.

Mr.Chetan Patil with Mr.Mandar Bagkar for Respondent Nos.5 to 7.

SANJAY
KASHINATH
NANOSKAR

CORAM : **NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATE: **4 October 2022.**

P.C. :

By this petition, the Petitioners are challenging Award No.290/96, dated 30 September 2002, issued by the Special Land Acquisition Officer. The Petitioners have sought a declaration that the award has lapsed and also sought consequential direction for deleting the entries made in the name of Respondent- State from the revenue records.

2. The subject matter of the Petition is the land Gat No.20-A admeasuring 1 Hecter 79 Ares at village- Galgale, taluka- Kagal, district- Kolhapur. . The land was in the name of Dada Bapu Desai, Respondent No.4. It was within the benefited zone of Chikatra

Project, and the notification was issued for Chikatra Project on 15 September 1990 whereby slab was provided as 3 H. and 23 R. Village- Galgale was included in the said notification. A notification under section 4 of the Land Acquisition Act, 1894, was issued on 6 September 2000. It was published in the Government Gazette on 21 September 2000, and the same was published in the newspaper on 17 September 2000. A public notice under the Act of 1894 was issued and published in the newspaper on 19 January 2002. A notice was put up in the Tahasildar Office on 25 February 2002. An award was published on 30 September 2002.

3. The Petitioners filed this petition on 16 September 2019. Replies have been filed by the Respondent- State authority as also Respondent Nos.5 to 7 to whom the land, after having acquired, has been allotted, they being project affected persons from Chikatra Project. The Petitioners have also filed a rejoinder.

4. We have heard Mr. Sanjiv Kadam, learned Counsel for the Petitioners, Mr. Chetan Patil, learned Counsel Respondent Nos.5 to 7 and Ms. M.S.Bane, AGP for Respondent Nos.1 to 3- State.

5. The learned counsel for the Petitioners contended that no notice had been given to the Petitioners of the acquisition proceedings even though the Petitioners are the occupiers and are cultivating the land as tenants of the subject land and a certificate under section 32M of the Bombay Tenancy and Agricultural Lands

Act, 1948 was issued to the Petitioners on 25 October 1996. It was contended that under section 9 of the Act of 1894, the person interested has to be given notice, and it is beyond doubt that the Petitioners are interested persons being statutory tenants cultivating the land. The Petitioners also contend that they are affected persons as defined under section 2(b) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. It was also contended that the notice under section 12(2) of the Act of 1894 has to be sent to the persons interested, and the State has accepted that it is sent to the earlier owner and not to the Petitioners. It is contended that the acquisition proceedings are bad in law for want of notice to the Petitioners. It is only recently, in 2018, when the revenue records were changed, the Petitioners came to know, and the petition has been filed. It is also contended that the holding/ slab prescribed under the notification of 15 September 2019 is 3 H. and 23 R. which was reduced to 1 H. and 61 R. on 4 March 1994 and on 9 September 2014, the same has been further altered to 3 H. and 23 R. According to the Petitioners, that when the allotment was sought to be made in favour of Respondent Nos.5 to 7, the subsequent slab ought to have been taken into consideration. It is contended that the Petitioners have all necessary documents to show that they have an interest in the property and, therefore, not giving notice to the Petitioners of the proceedings is a fatal flaw that would vitiate the acquisition.

6. The learned AGP and the learned counsel for Respondent

Nos.5 to 7 opposed the petition, primarily contending that the petition suffers from gross laches and the Petitioners were fully aware of the proceeding, yet they did not choose to challenge the same and the present petition is filed is on a different foundation than now orally argued. The learned counsel for Respondent Nos.5 to 7 also contended that the Petitioners' claim of being a tenant is dubious as the circumstances in which the 32M certificate is obtained are highly questionable.

7. The petition, as filed, is primarily on the ground that the acquisition has lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is stated that the possession has not been taken, the compensation has not been paid, and, thus, the proceedings are deemed to have lapsed. A contention is also raised in respect of the slab provided for acquisition. The Petitioners have founded relief on the decision of the Hon'ble Supreme Court in the case of *Pune Municipal Corporation v. Harakchand Solanki*¹. The rest of the contentions in the petition and grounds in the petition are on the basis that the Petitioners are in physical possession.

8. Therefore, it is now in the oral arguments the main contention advanced is the lack of any notice but which is not the foundation of the petition. Be that as it may, we have considered the same along with the Respondents' objection on delay and laches.

¹ Civil Appeal No.877/2014 decided on 24 January 2014

The petition, as stated earlier, proceeds primarily on the ground of lapsing of the award under section 24(2) of the Act of 2013. The learned counsel for Respondent Nos.5 to 7 has drawn our attention to an entry in the revenue record of 12 January 1999 where the name of the Government has been entered as regards the subject land in the revenue records about the subject property. Similar entry of 24 November 2004 in the records, the name of the government and factum of is also shown. In the petition, it has not been stated when the Petitioners came to know of the award published on 13 September 2002. Though it is sought to be argued by the Petitioners that the name of the owner is shown in the revenue records when the entries were made, the same is not relevant as what is relevant is the knowledge of the Petitioners of the acquisition proceedings. The Petitioners are claiming to be tenants of the property. It is nowhere stated that they have no access to the revenue records. Therefore, it is inconceivable that the Petitioners were unaware of these entries. There is no such case specifically pleaded in the petition. Therefore, the award of 2002, according to which entry has been made in the revenue records of 22 November 2002, is being challenged by the Petitioners 17 years after that. There is no explanation whatsoever for the delay.

9. Furthermore, neither section 4 nor section 6 of the Act of 1894 contemplates any personal notice. As regards notice under section 9 is concerned, the learned counsel for Respondent Nos.5 to 7 have relied upon the decision of the Supreme Court in the case of

*May George v. Special Tahsildar and others*². The Hon'ble Supreme Court, in this case, has held that section 9 provides for an opportunity for the person interested in filing a claim petition for determining the market value of the land and even if the person does not do so after receiving the notice, he still has right to make a reference under section 18 of the Act of 1894 and; therefore, no prejudice is caused in case notice under section 9(3) is not served upon the person interested and said provision is merely directory provision, and noncompliance of section 9 of the Act of 1894 does not vitiate the award. The Petitioners have not demonstrated that there was any requirement for personal notice. Apart from this position, the Petitioners clearly knew about the award from the year 2002 itself and have filed this petition after 17 years challenging the award with no explanation whatsoever for the delay.

10. As regards the contention of the Petitioners based on section 24(2) of the Act of 2013 is concerned, in the replies filed on this behalf by the State, the position has been made clear. Award No.290/96 was declared on 30 September 2002. The compensation amount of Rs.3,22,433/- was fixed. The amount of compensation was not collected by Respondent No.4, and the same is kept in the personal ledger account. The possession of the land was taken on 24 November 2004 by Panchanama by the representative of the Collector. A copy of the Panchanama is placed on record by the State. Pursuant to the taking over of possession, by mutation entry

2 (2010) 13 SCC 98

No.1117 of 24 November 2007, the name of the Government has been entered. The Constitution Bench in the case of *Indore Development Authority v. Manoharlal and others*³, has conclusively resolved the controversy and has observed that there would be no lapsing under section 24(2) of the Act of 2013 if either the compensation has been deposited in the ledger account or possession has been taken over. Regarding taking over possession, the Constitution Bench has laid down that taking possession under the Act of 1894, as contemplated under section 24(2), is by drawing an inquest report/ memorandum. In the present case, upon passing the award, depositing the compensation amount in the ledger account and drawing Panchanama in the year 2004, the land is vested in the State Government. In these circumstances, it is clear that there is no lapsing under section 24(2) of the Act of 2013. There is no merit in the challenge raised by the Petitioners.

11. The Respondents have also questioned the source of the Petitioners' claim as being a statutory tenant as per the certificate under section 32M of the Tenancy Act. The learned counsel for Respondent Nos.5 to 7 has pointed out that the authorities conducted no enquiry before the grant of the certificate under section 32M. However, an agreement was entered into by the Power of Attorney of the original owner with the Petitioners and executed on 21 September 1996, i.e. after the deemed date of the Chikatra Project, i.e. 15 September 1990. Once the project was notified in

3 (2020) 8 SCC 129

1990, no such agreement between the Power of attorney of the owner and the petitioners could have been executed. This is one more ground against the Petitioners.

12. Considering the totality of the circumstances, the Petitioners' challenge to the impugned award dated 30 September 2002 cannot succeed, both on merits and on the ground of gross delay and laches. The writ petition is, accordingly, rejected.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)