

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9440 OF 2017

Ramchandra Krishna Khamkar and Ors.

... Petitioners

Versus

State of Maharashtra and Ors.

... Respondents

.....

Mr. K. P. Shah, Advocate for Petitioners.

Mr. R. S. Pawar, AGP for Respondent-State.

CORAM : G. S. KULKARNI &

ARUN R. PEDNEKER, JJ.

DATED : 11 June, 2024

P.C. :

1. We have heard Mr. Shah, learned Counsel for the Petitioners and Mr. Parmar, learned AGP for the State.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are assailing the acquisition of their land were primarily asserting contentions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “**2013 Act**”) relying on the decision of the Hon’ble Supreme Court in the case of *Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.*¹ This is also clear from the

¹ AIR 2014 SC 982

prayer made in the Petition. Apart from a prayer on the lapsing of the acquisition under Section 24(2) of the 2013 Act, an additional prayer is made, namely, prayer clause a(B) for a relief that an order dated 05.12.2015 passed by the Additional Commissioner, Pune, on the Petitioners' application under Section 48 of the Land Acquisition Act, 1894 (for short "**the 1894 Act**") be set aside. By such application, the Petitioners prayed that the land in question of the ownership of the Petitioner as acquired, be withdrawn and/or deleted from acquisition.

3. In so far as the primary contention as urged by the Petitioner, relying on the decision of the Supreme Court in *Pune Municipal Corporation & Anr. Vs. Harakchand Misirimal Solanki*(supra) is concerned, Mr. Shah, has fairly stated that the challenge of the Petitioner stands covered by the decision of the Constitution Bench of the Supreme Court in the case of *Indore Development Authority V/s. Manoharlal & Ors.*². Earlier a co-ordinate Bench of this Court (Coram : K. K. Tated & B. P. Colabawalla, JJ.) on 04.06.2018 had passed an order on this Petition interalia observing that the proceeding would be required to be adjourned, as in the proceedings of *Indore Development Authority (supra)*, the Supreme Court was reconsidering the position in law as laid down in the case of *Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and Ors.*

2 (2020) 8 SCC 129

(supra). Considering the aforesaid position on record, we are of the clear opinion that in so far as Petitioners' case in regard to the lapsing of the acquisition under Section 24(2) of the 2013 Act is concerned, the same would stand clearly covered by the decision of the Supreme Court in *Indore Development Authority (supra)*. Thus, the relief in terms of prayer clause a(A) cannot be granted to the Petitioner. This prayer needs to be rejected.

4. Insofar as the second prayer of the petitioner assailing the order passed on their application under Section 48 of the 1894 Act is concerned, we find that in the present case, land was subjected to acquisition under the provisions of the 1894 Act for the purpose of rehabilitation of Tarali Project Affected Persons, in relation to which a notification under Section 4 of the 1894 Act came to be issued on 08.06.2000 which was published in the Government Gazette on 15.06.2000. Thereafter, a Notification under Section 6(1) of the 1894 Act was issued on 14.12.2000 published in the Government Gazette on 20.12.2001. The Petitioners have stated that the possession of the subject land was taken over under possession receipts dated 20.10.2001 issued to the petitioners. The possession receipts are annexed at **Exhibit-'B'** to the Petition. The State Government in this regard has filed an affidavit of Vaishali Indani-Untwal, Deputy Collector (Land Acquisition No.9), Satara whereby in paragraph No.6 the deponent has stated that the

possession of the land in dispute was taken over by the Government on 20.10.2001, and the possession receipts were issued on the same day, a copy of which is annexed at **Exhibit-R-2'** to the reply affidavit. We find that there is no substantive assertion of the petitioners on the issue of possession.

5. Having perused the impugned order, we are not inclined to accept the petitioners contention in assailing the orders passed by the Additional Collector, as we find that the basic jurisdictional requirement for Section 48 to be applicable itself is not satisfied. The jurisdictional requirement being that an application under Section 48 can be entertained only in the event possession of the land is not taken over, as clearly provided in sub-section (1) of Section 48 of the Act which read thus :

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

.....”

(emphasis supplied)

6. Thus, on a plain reading of the aforesaid provision it is clear that the State can withdraw from the acquisition only when possession of the land is not taken over. In the present case as stated above, the possession of the land was taken over under the possession receipts dated 20.10.2001. This is not only stated by the Petitioners but also by the Respondents in the reply affidavit. Admittedly, the petitioners application Section 48 is

subsequent to the possession of the land being taken over by the State Government, that is, of June, 2002. In this view of the matter, the Petitioners in assailing the Section 48 order passed by the Additional Collector cannot be accepted. No fault can be found with the Authority exercising its power to reject the Petitioners application.

7. For the aforesaid reasons, we see no reason to interfere in the Petition. Writ Petition is accordingly rejected. No costs.

(ARUN R. PEDNEKER, J.)

(G. S. KULKARNI, J.)

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