



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6024 OF 2016

Madhukar Morba Nimje,
Aged about 51 years,
Occupation – Cultivation,
R/o Patansaongi, Tahsil Saoner,
District Nagpur.

.... PETITIONER

VERSUS

- 1) The State of Maharashtra,
through its Secretary, Revenue
and Forest Department, Mantralaya,
Mumbai – 400032.
- 2) The Collector, Nagpur
Collectorate, Civil Lines, Nagpur.
- 3) Sub-Divisional Officer and Land
Acquisition Officer, Saoner,
District Nagpur.
- 4) Chief Engineer, South East Central
Railway, Nagpur.

.... RESPONDENTS

Mr. S.P. Bhandarkar, Counsel for the petitioner,
Mr. A.M. Kadukar, AGP for respondent Nos. 1 to 3,
Ms. Neerja G. Chaubey, Counsel for respondent No.4.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.

DATE OF RESERVING THE JUDGMENT : 04.07.2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 05.09.2024

JUDGMENT : (Per : Abhay J. Mantri, J.)

The petitioner has invoked the writ jurisdiction to seek a declaration that the acquisition proceedings vide Land Acquisition Case No.4/A-65/2008-09 of Mouza—Patansaongi, Tahsil Saoner, District Nagpur, stands lapsed pursuant to the non-compliance of mandatory provisions of the Land Acquisition Act, 1894 (for short, “the Act of 1894”).

2. The petitioner claims that his father, Morba Vithoba Nimje, owned land measuring 0.14 Hectares, Survey No.94/1 of village Patansaongi, Tahsil Saoner, District Nagpur (for short, “*the land*”). Morba died, leaving behind four legal heirs, including the petitioner.

3. It is contended that the land was acquired by respondents Nos.3 and 4 for ‘paving pathways’ of the proposed bridge on Patansaongi Khapa Road under the broad-gauge Nagpur-Chhindwara Railway Line. Respondent No.3 had passed the award on 11-11-2011.

4. It is claimed that despite passing the Award, respondents Nos.3 and 4 have neither taken physical possession of the land nor paid compensation to him or his brother and sisters. Therefore, as per provisions of Section 31(2) of the Act of 1894 and 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 entire acquisition proceedings stand lapsed. Therefore, on 16-06-2016, the petitioner made a representation to respondent Nos.2 and 3 to release the land in his favour. However, respondents Nos.2 and 3 have neither bothered to reply to the said communication nor taken cognizance of the same. Hence, the petitioner has preferred this petition.

5. As against, respondents Nos.3 and 4 contended that vide letter dated 23-11-2009, notices under Section 4(1) of the Act of 1894 were published. So also, the amount was deposited in the P.L.A. Account No.947/84435083 of respondent No.3 to the tune of Rs.7,87,75,000/-. After that, respondent No.3 issued notices dated 23-12-2011 and 27-01-2012 to the landowners, calling upon them to collect the said amount. Despite receiving the said notices, the petitioner never appeared in the office of respondent No.3 to collect the said compensation nor initiate any proceedings under Section 18 of the Act of 1894. After passing the Award, possession of the land was taken vide possession letter dated 25-03-2013.

6. Respondents Nos.3 and 4 further categorically denied that they had taken possession of the land nor deposited the compensation

amount in the P.L.A. account. *Per contra*, it is averred that in the 7/12 extract, the name of the Central Railway Department has been recorded, and the land is shown as “*Railway Pad Land*” and, therefore, the petitioner is not entitled to claim the relief under Section 31(2) of the Act of 1894. Hence, they urged for the dismissal of the petition.

7. Mr. S.P. Bhandarkar, learned Counsel for the petitioner, has vehemently contended that despite passing of the award, respondents Nos.3 and 4 have neither taken possession of the land nor paid the compensation to the petitioner and, therefore, as per Section 31(2) of the Act of 1894 and Section 24 of the Act of 2013, the acquisition proceedings stand lapsed. Therefore, the petitioner is entitled to release the land in his favour. To substantiate his claim, the petitioner has produced on record a copy of the Award, documents, and photographs to show that the said land is in his possession. To buttress his submissions, he has relied on the judgment in the case of ***Pune Municipal Corporation and another V/s Harakchand Misirimal Solanki and others reported in (2014) 3 SCC 183***. He has also drawn our attention to Section 31(2) of the Act of 1894 and urged us to allow the petition.

8. As against Mr. A.M. Kadukar, the learned Assistant Government Pleader has strenuously argued that after the passing of

the Award, the possession of the land was taken by the authorities, so also compensation amount was deposited in the P.L.A. account, and notices were also issued to the petitioner to collect the said amount. Despite the said fact, the petitioner has neither collected the compensation amount nor initiated any proceedings under Section 18 of the Act of 1894. Therefore, the petitioner is not entitled to claim the relief as sought under Section 31(2) of the Act of 1894. Hence, he has prayed for the dismissal of the petition.

9. We have appreciated the rival submissions and perused the Award and record.

10. Having considered the same, the short question that arises for consideration is “*whether the petitioner is entitled to seek the relief of declaration under Section 31(2) of the Act of 1894*”.

11. At the outset, it appears that pursuant to a letter dated 23-11-2009 on 27-11-2009, 28-11-2009, and 03-12-2009, notifications under Section 4 of the Act of 1894 were issued. Then, as per Section 5(A) of the Act of 1894, individual intimation letters and public notices dated 05-02-2010 and 11-02-2010 were served to the respective landowners to call upon their objections. Thereafter, pursuant to a

letter dated 07-07-2010, notifications under Section 6 of the Act of 1894 were issued on 22-07-2010 and 24-07-2010. Then, as per Sections 9(1),(2) and 6(2) of the Act of 1894, individual intimation letters and public notices dated 23-11-2010 were served to the respective landowners to submit documentary evidence in support of their claim to compensation and call upon their objections till 14-12-2010. Finally, an Award under Sections 11 and 12 of the Act of 1894 was passed. Pursuant to the Award, respondent No.4 deposited the compensation amount with respondent No.3 in P.L.A. A/c No. 947/84435083.

12. On 11-11-2011 and 01-12-2011, notices under Section 12(2) of the Act of 1894 were issued to the respective landowners. *On 23-01-2012, Morba, father of the petitioner, acknowledged the notice U/s 12 (2) of the 1894 Act. By the said notice, he was called upon to collect the compensation amount from the office on 27-01-2012.* However, Morba did not turn to the office to collect the compensation or initiate any proceedings disputing the said amount. Similarly, notices U/s 12(2) of the 1894 Act were issued to other landowners; pursuant to said notice, they had acknowledged that they had received Compensation. The amount of compensation pertains to the share of the petitioner lying in the account of respondent No.3.

13. The petitioner, though, averred that no possession was taken by respondent Nos.3 and 4, but he still possesses the said land. However, he failed to demonstrate the said fact from the documents on record. The petitioner has failed to produce the cogent documentary evidence to support his claim. *Per contra*, respondent No.3 has categorically averred that it has taken physical possession of the land. From the record, he has pointed out that on 25-03-2013, the authorities took possession of the land. So also, the 7/12 extract for the years 1921-22 shows that the land is in possession of the authority and the cultivation column is shown as “***Railway Pad***”, i.e. in possession of respondent No.4. The said fact itself clearly indicates that the petitioner failed to demonstrate that he is in possession of the land in question.

14. It further reveals from the record that in the year 2013-14, the name of respondent No.4 had been recorded in the ownership column, and in the cultivation column, the land was shown as ‘*barren*’. Neither the petitioner’s father nor the petitioner has challenged the same. Respondent No.4 also produced the 7/12 extract for 2022-23, wherein, in the cultivation column, ‘*the land is shown as railway pad*’. The said entry/document itself denotes that the petitioner does not possess the land in question. Though the petitioner claimed that he was in possession of the land, he failed to demonstrate this by producing

the documents. *Per contra*, the documents on record depict that respondent No.4 is in possession of the land in question. However, the petitioner failed to challenge the said entry before the competent authority.

15. The learned Counsel for the petitioner has drawn support from the judgment in the case of *Pune Municipal Corporation and another V/s Harakchand Misirimal Solanki and others* and canvassed that based on the dictum laid down in the judgment above, the petitioner is entitled to the reliefs as claimed. However, the record depicts that the petitioner failed to prove his possession of the land. The Three Judge Bench of the Hon'ble Apex Court in the case of *Delhi Development Authority V Jagan Singh and Ors., 2023(3) Scale 117*, after considering the dictum laid down in the case of *Pune Municipal Corporation and another and other similar matters*, has summarised as under :

“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 and 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 the majority of landholdings, 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, 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). The landowners 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.*

366.6. *The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1) (b).*

366.7. *The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).*

366.8.

366.9. *Section 24(2) of the 2013 Act does not give rise to a new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act*

i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

16. A bare perusal of the mandate above shows that if the possession has been taken and compensation has not been paid, then there is no lapse. Similarly, non-deposit of compensation in court does not result in a lapse of the land acquisition proceedings. Likewise, once the award has been passed by taking possession under Section 16 of the Act of 1894, the land vests in the State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken, there is no lapse under Section 24(2). The landowners who refused to accept the compensation or sought reference for higher compensation cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013. Lastly, it is held that it does not revive Stale and time-barred claims and does not reopen concluded proceedings, not allow landowners to question the legality of the mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of the court to invalidate acquisition and declare that the acquisition with respect to the land in question is deemed to have lapsed is hereby quashed and set aside. In view of the law laid down by the Hon'ble Apex Court in the matter of *Delhi Development Authority*, in our view, the law laid down in *Pune*

Municipal Corporation is hardly of any use to the petitioner to substantiate his claim. *As against*, in view of the aforesaid dictum laid down by the Hon'ble Apex Court, the petitioner is not entitled to the relief as claimed. Hence, we do not find any substance in the contentions of the learned Counsel for the petitioner in that regard.

17. The second point raised by the learned Counsel for the petitioner was that no compensation was paid to the petitioner or his father regarding the acquired land. However, on perusal of the record, it emerges that the competent authority i.e. respondent No.4, had deposited the said compensation amount with respondent No.3. ***Likewise, respondent No.3 issued notices under Section 12(2) of the Act of 1894 to the father of the petitioner which he acknowledged on 23-01-2012. By the said notice, he was called upon to collect the compensation amount from the office on 27-01-2012.*** However, despite the service of notices, neither the petitioner nor his father approached the authority to collect the compensation amount. Also, neither the petitioner's father nor the petitioner has complied nor replied to the said notice under Section 12(2) of the Act of 1894. The act on the part of the petitioner or his father leads to drawing an adverse inference that they refused to accept compensation, have no grievance about the issuance of the said notice, or have impliedly admitted the receipt of the notice. Similarly, the petitioner's father or petitioner has not initiated any proceedings under Section 18 of the Act of 1894. Therefore, we disagree with the learned

Counsel's argument that no compensation was paid to the petitioner. So, the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

18. On the contrary, it seems that the petitioner's father and petitioner were at fault for not collecting the compensation amount from the concerned office; however, the record shows that other landowners have collected compensation. It further reveals that the original owner, Morba, during his lifetime, has not challenged the acquisition proceedings, but after his demise and after the cancellation of the project of construction under the bridge, the petitioner is trying to take a disadvantage by seeking the relief as claimed for which he is not entitled to it.

19. Apart from above, the learned Assistant Government Pleader has raised the question of delay and laches in filing the petition. According to him, the proceedings were initiated in 2010, the award was passed in 2011, notice under Section 12(2) of the Act of 1894 was served on the father of the petitioner on 23-01-2012 and possession was taken on 25-03-2013, however, the petitioner has failed to explain the delay and laches in filing the petition. He kept quiet till filing of the application/representation dated 16-06-2016. He has not given sufficient cause in that regard. On the contrary, it reveals that

only after the cancellation of the construction of the pathway under the bridge the petitioner has moved this petition.

20. Having considered the above discussion, it is evident that the petitioner failed to demonstrate that the competent authority did not acquire land, nor has compensation been paid to him. As against, it is apparent from the record that on 25-03-2013, possession of the land was taken, and the 7/12 extract for the year 2021-22 clearly depicts that the land is shown as a “*railway pad*”. It also appears that the competent authority, i.e. respondent No.4, has deposited the amount with respondent No.3. But the petitioner’s father failed to collect the said compensation despite service of notice. That means they were at fault for not collecting the amount.

In the background above, we do not find substance in the petitioner's claim that he is entitled to claim relief under Section 31(2) of the Act of 1894. In such circumstances, it would not be proper to cause interference in the extraordinary jurisdiction of this Court. Accordingly, the petition stands dismissed with no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)