

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3214 OF 2019

- | | | |
|-----|---|----------------|
| 1. | Geeta Vijay Deshapnde |] |
| | Age : Adult, Occu. : Agriculture |] |
| | Died on 18.06.2024 through |] |
| | Her Legal heirs. |] |
| 1A. | Kapil Vijay Deshpande |] |
| | Age: Adult, Occu. : Agriculture |] |
| 1B. | Kashyap Vijay Deshpande |] |
| | Age : Adult, Occu. : Agriculture |] |
| 1C. | Karuna Ravindra Yellapurkar (Bhat) |] |
| | Age : Adult, Occu. : Agriculture |] |
| 1D. | Kavita Nitin Muzumdar |] |
| | Age : Adult, Occu. : Agriculture |] |
| | Petitioner No. 1A to 1D are |] |
| | R/o – Munguswadi, Taluka – Aajara, |] |
| | District- Kolhapur |] |
| 2. | Sunil Madhav Deshpande |] |
| | Age : Adult, Occu. : Agriculture |] |
| | Both R/o. Munguswadi, Tal. Ajara, |] |
| | Dist. Kolhapur |] |
| | | ...Petitioners |

VERSUS

- | | | |
|----|---|---|
| 1. | The State of Maharashtra, |] |
| | Through Additional Chief Secretary, |] |
| | Revenue & Forest Department, |] |
| | Mantralaya, Mumbai – 400 032. |] |
| 2. | The District Collector, Kolhapur |] |
| | Having office at Swarajya Bhavan, |] |

- | | | |
|----|---|----------------|
| | Assembly Road, Nagala Park, Kolhapur |] |
| 3. | The Deputy Collector |] |
| | (Land Acquisition) |] |
| | No.12 @ Special Land Acquisition |] |
| | Officer No. 12, Having office at |] |
| | Swarajya Bhavan, Assembly Road |] |
| | Nagala Park, Kolhapur |] |
| 4. | The Deputy Collector @ Deputy |] |
| | Director, |] |
| | Rehabilitation (Land), Having office at |] |
| | Having office at Swarajya Bhavan, |] |
| | Assembly Road, Nagala Park, |] |
| | Kolhapur. |] |
| 5. | Vishnu Appa Manjrekar |] |
| | Age : Adult, Occu : Agriculturist |] |
| 6. | Suryakant Appa Manjrekar |] |
| | Age- Adult, Occu.- Agriculture |] |
| 7. | Datta Appa Manjrekar |] |
| | Age- Adult, Occu.- Agriculture |] |
| 8. | Shivaji Mahadev Supal |] |
| | Age- Adult, Occu.- Agriculture |] |
| 9. | Somana Mahadev Supal |] |
| | Age- Adult, Occu.- Agriculture |] |
| | Respondent No. 5 to 9 |] |
| | Al R/o – Chalewade, Tal. Ajara, |] |
| | Dist. Kolhapur |] |
| | | ...Respondents |

WITH
WRIT PETITION NO. 3215 OF 2019

- | | | |
|-----|------------------------------------|---|
| 1. | Vijay Shankar Deshpande |] |
| | Since deceased through legal heirs |] |
| 1A. | Geeta Vijay Deshpande |] |
| | Age: Adult, Occu. : Agriculture |] |

- 1B. **Kapil Vijay Deshpande**]
Age : Adult, Occu. : Agriculture]
- 1C. **Kashyap Vijay Deshpande**]
Age : Adult, Occu. : Agriculture]
- 1D. **Karuna Ravindra Yellapurkar (Bhat)**]
Age : Adult, Occu. : Agriculture]
- 1E. **Kavita Nitin Muzumdar**]
Age : Adult, Occu.: Agriculture]
- All R/o – Munguswadi,]
Taluka – Aajara, District- Kolhapur]...Petitioners

VERSUS

1. **The State of Maharashtra,**]
Through Additional Chief Secretary,]
Revenue & Forest Department,]
Mantralaya, Mumbai – 400 032.]
2. **The District Collector, Kolhapur**]
Having office at Swarajya Bhavan,]
Assembly Road, Nagala Park, Kolhapur]
3. **The Deputy Collector**]
(Land Acquisition)]
No.12 @ Special Land Acquisition]
Officer No. 12, Having office at]
Swarajya Bhavan, Assembly Road]
Nagala Park, Kolhapur.]
4. **The Deputy Collector @ Deputy**]
Director,]
Rehabilitation (Land), Having office at,]
Having office at Swarajya Bhavan,]
Assembly Road, Nagala Park,]
Kolhapur.]...Respondents
-

APPEARANCES-**Mr Umesh Pawar**, a/w Mr Sagar Sonawane, for the Petitioners**Mr A P Shinde, 'B' Panel Counsel**, a/w Ms S R Crasto, AGP for the Respondent-State.CORAM : **M.S.Sonak &
Jitendra Jain, JJ.**RESERVED ON : **09 January 2025**PRONOUNCED ON : **10 January 2025****JUDGMENT (Per MS Sonak J):-**

1. Heard learned counsel for the parties.
2. Rule in each of these Petitions. The rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The learned counsel for the parties agree that substantially common issues of law and fact arise in these Petitions. Therefore, these petitions could be disposed of by a common order.
4. Initially, these Petitions were filed to obtain a declaration that the proceedings for the acquisition of the Petitioners' lands have lapsed, given the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the said Act"). However, after the decision of the Hon'ble Supreme Court in the case of **Indore Development Authority Vs. Manoharlal and others, etc.**¹, the Petitions were amended, and the Petitioners have sought a direction in terms of Section 24(2) of the said Act for determination and payment of compensation under the said Act, instead of compensation under the Land Acquisition Act, 1984,

¹ AIR 2020 SC 1496

under which the acquisition proceedings had commenced. Mr. Pawar, the learned counsel for the Petitioners, therefore, pressed only for relief in terms of the amended prayer clause (b-1).

5. The prayer clause (b-1) in both the Petitions is the same, except for the description of the Petitioners' respective lands. Therefore, prayer clause (b-1) in Writ Petition No.3214 of 2019 is transcribed below for the convenience of reference: -

“(b-1) By a suitable Writ, Order or direction, this Hon'ble Court be pleased to direct the Respondents to determine the compensation and pass Award under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the aforesaid land admeasuring 3 Hectares 34 Ares (i.e. H-0.92 Ares + H-2.42 Ares) out of the Gat No.110 situated at Munguswadi, Taluka Ajara, District: Kolhapur.”

6. The Petitioners' lands were notified under Section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1989, for resettlement of persons affected by the Chitri Project vide a Notification dated 22 June 1992. A further Notification dated 16 March 1996, issued under Section 4 of the Land Acquisition Act, 1894, notified them of acquisition for the aforesaid purpose. A Section 6 Notification was issued on 02 July 1997, and ultimately, the land acquisition officer made an Award on 16 April 1999 for acquiring the Petitioners' lands.

7. The Petitioners initially alleged that neither physical possession of their lands was taken nor compensation for their acquired lands was paid. Accordingly, relying on **Pune Municipal Corporation & Anr vs. Harakchand Misrimal Solanki & ors.**², the

² AIR 2014 SC 982

petitioners urged that the acquisition proceedings stand lapsed, given the provisions of Section 24(1) of the said Act.

8. However, the third Respondent filed Affidavits in these Petitions on 11 July 2023 stating that though compensation was never paid to the Petitioners despite the Award dated 16 April 1999, still, the possession of the Petitioners' lands was taken, and such lands were allotted to the project affected persons vide Sub-Divisional Officer's order dated 17 February 2018. Accordingly, relying on the *Indore Development Authority* (supra) decision, the Respondents submitted that there was no lapsing of the acquisition.

9. The Petitioners have not filed an Affidavit in Rejoinder disputing the fact that the Respondents took over possession of the acquired lands. Instead, by accepting this position, the Petitioners amended the Petitions and sought relief in terms of the prayer clause (b-1) referred to above.

10. Section 24 of the said Act reads as follows: -

“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 (1 of 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.”

11. In *Pune Municipal Corporation* (Supra), a three-judge bench of the Hon’ble Supreme Court had construed the word “or” in Section 24(2) of the said Act as disjunctive. Therefore, as long as a land owner whose land had been acquired under the Land Acquisition Act 1894 could establish that the Award in respect of the acquisition of the land had been made five years or more prior to the commencement of the said Act but the physical possession of the land had not been taken or the compensation had not been paid, the said proceedings would be deemed to have been lapsed and the appropriate Government, if so chooses, could initiate proceedings of such land acquisition afresh in accordance with the provisions of the said Act.

12. Thus, since the word “or” was construed as disjunctive, the landowner had only to establish that in respect of an Award made five years or more prior to the commencement of the said Act, either the physical possession of the land had not been taken or the compensation had not been paid to the landowner. Upon such establishment, the landowner could get a declaration that the land acquisition proceedings were deemed to have lapsed.

13. In *Indore Development Authority* (supra), a reference was made to a five-judge bench of the Hon'ble Supreme Court to decide the correct interpretation of Section 24 of the said Act. One of the main issues was whether *Pune Municipal Corporation* (supra) was correctly decided and whether the word "or" in Section 24(2) of the said Act should be read as conjunctive or disjunctive.

14. Amongst the other questions raised and answered, the five-judge bench of the Hon'ble Supreme Court in the case of *Indore Development Authority* (supra) held that the word "or" in Section 24(2) of the said Act should be read as "nor" or as "and". This means that the five-judge bench held that the word "or" in Section 24(2) of the said Act should be construed as conjunctive, not disjunctive.

15. The above conclusion is recorded in paragraph 363(3) of *Indore Development Authority* (supra) and reads as follows:-

"363. In view of the aforesaid discussion, we answer the questions as under :-

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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 Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of the 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.

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16. Thus, based on *Indore Development Authority* (supra), the Petitioners’ case about the lapsing of the acquisition proceedings cannot be accepted. Therefore, the prayers regarding the lapsing of the acquisition cannot be granted and were correctly not pressed.

17. Mr Pawar, relying upon *Indore Development Authority* (supra), pointed out that the proviso to Section 24(2) of the said Act is to be treated as part of Section 24(2) and not part of Section 24(1)(b). Accordingly, he submitted that since, in this case, an Award had been made on 16 April 1999 and compensation in respect of the majority of land holdings had not been deposited in the account of the beneficiaries, all the beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act, 1894, shall be entitled to compensation in accordance with the provisions of the said Act.

18. Mr Pawar pointed out that the acquisition and award in this case concerned areas measuring 5 Hectares and 20 areas. Out of this, the petitioners in the two petitions owned 4 Hectares and 87 Ares. Thus, this constitutes *a majority of land holdings* as contemplated by the proviso to section 24(2) of the said Act. Admittedly, no compensation was paid or offered to the petitioners. In *Indore Development Authority* (supra), it is held that the area of land is a relevant factor.

19. Mr. Pawar submitted that the Petitioners' case was covered by this proviso to Section 24(2) of the said Act, and based on this, they were entitled to compensation in accordance with its provisions. He relied on the decision of the Coordinate Bench of

this Court in the case of **Shital Anna Walawade and ors vs. The State of Maharashtra and Ors.**³ in support of this contention.

20. The Affidavit in Reply filed on behalf of the Respondents on 11 July 2023 shows that no compensation was paid to the Petitioners because the acquiring body had not deposited such compensation with the State Government.

21. A reference in the above regard must be made to paragraph 4 of the State Government's Affidavit dated 11 July 2023 which reads as follows:-

"4. I say that after declaration of final Award, the notice u/s 12(2) & Section 16 of Land Acquisition Act, 1894 was not issued to the Petitioner as the amount of compensation was not received from the Acquiring Body. I further say that the compensation amount has been demanded from Acquiring Body vide this office letter क्र.भूसं-12/आरआर/618/2022, दि.06/12/2022. I further say & submit that the compensation will be paid to the Petitioner in respect of their Acquired land as and when the amount receives from the Acquiring Body."

22. Accordingly, Mr. A P Shinde, the learned "B" Panel Counsel, along with Ms. S R Crasto, the learned AGP for the Respondents—State, did not dispute the Petitioners' entitlement to compensation under the provisions of the said Act in terms of the proviso to Section 24(2) of the said Act.

23. The provisions of Section 24 of the said Act are quite clear. If at all there was any ambiguity, the same stands resolved by the decision of the five-judge bench of the Hon'ble Supreme Court in the case of *Indore Development Authority* (supra). In paragraph 363(6), the conclusion is recorded to the fact that the proviso to Section 24(2) of the said Act is to be treated as part of Section 24(2) and not part of Section 24(1)(b) of the said Act.

³ Writ Petition No.6048 of 2021 decided on 12 January 2023.

24. In the facts and circumstances similar to those appearing in the present matters, the Coordinate Bench in the case of *Shital Walawade* (supra) considered the question of whether the Respondents (State) not having deposited the compensation payable to the Petitioners in the Court or not having paid the Petitioners the compensation prior to 01 April 2014, such Petitioners would be entitled to seek compensation under the proviso to Section 24(2) of the said Act not.

25. The Coordinate Bench in *Shital Walawade* (supra) noted that though the award was made, the compensation was not deposited or paid to the beneficiaries, i.e. the Petitioners, before 01 April 2014. Accordingly, the Coordinate Bench held that the Petitioners would be entitled to the compensation under the said Act given the proviso to Section 24(2) of the said Act. The Court directed the Respondent-State to compute the amount payable under the said Act within eight weeks and release the said amount along with all other benefits permissible under the said Act within eight weeks thereafter.

26. Thus, given the position and law on the subject and applying the same to the facts in the present case, we allow both these Petitions regarding the prayer clause (b-1). As noted earlier, Mr. A P Shinde, the learned “B” Panel Counsel for the Respondents-State, fairly accepted that the Petitioners would be entitled to the compensation under the proviso to Section 24(2) of the said Act. Accordingly, we make the Rule absolute in terms of the prayer clause (b-1) in both the Petitions.

27. We direct the concerned Respondents to make an award computing compensation payable to the Petitioners within three months from today and further to pay the Petitioners

compensation in terms of the said Act within two months of making such award along with all the consequential benefits that may be available under the said Act. The concerned Respondents must file a compliance report in this Court by 09 June 2025 after serving an advance copy on the learned counsel for the Petitioners.

28. The direction for filing a compliance report is issued because, according to the Respondents, possession of the Petitioners' land was taken in 2018, and no compensation has been paid to the Petitioners to date. The acquisition proceedings commenced in 1992. Though we have granted the Respondents sufficient time, we do not want a situation where no compensation is paid to the Petitioners within the indicated timeline. The Petitioners cannot be made to wait indefinitely for compensation for their acquired lands.

29. Both Petitions are disposed of in the above terms without a costs order considering the fair approach of Mr. A P Shinde, the learned "B" Panel Counsel for the Respondents-State, and also because of the Affidavit filed by the Deputy Collector (Land Acquisition) No.12, Kolhapur, dated 11 July 2023, which stated the true and correct facts instead of indulging in pointless denials.

30. All concerned to act upon an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)

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