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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 19496 OF 2022
WITH
INTERIM APPLICATION NO. 19080 OF 2022
WITH
INTERIM APPLICATION NO. 210 OF 2023
IN
WRIT PETITION NO. 12919 OF 2017

Ranojirao Jaysingrao Ghorpade and Ors. ...Applicants

In the matter between

Ranojirao Jaysingrao Ghorpade and Ors. ...Petitioners

Versus

The Collector, Kolhapur and Ors. ...Respondents

WITH
WRIT PETITION NO. 12919 OF 2017

Ranojirao Jaysingrao Ghorpade and Ors. ...Petitioners

Versus

The Collector, Kolhapur and Ors. ...Respondents

Mr R B Huded, a/w Mr Madhav Chavn, for the Applicants/
Petitioners.

Mr A I Patel, Addl. GP a/w Ms M S Bane, AGP, for the
Respondent-State.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 14 February 2025

Oral Judgment (per M S Sonak):-

1. Heard learned counsel for the parties.
2. Instead of taking up the Interim Applications to vary the order dated 13 October 2022 by which the Coordinate Bench of this Court vacated the interim relief the Petitioners had obtained, we have heard the learned counsel for the parties in the Main Petition, which, though instituted in 2017, has yet to be admitted.
3. Today, Mr. Huded, the learned counsel for the Petitioners, submitted that in this case, the acquisition stands lapsed given the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**said Act**”). He pointed out that the acquisition commenced under the Land Acquisition Act, 1894 but continued post the coming into force of the said Act on 01 January 2014. He submitted that though the award was made on 01 June 2001, the Petitioners continued in physical possession of the allegedly acquired portion. As a result, in terms of Section 24(2), the acquisition proceedings lapsed.
4. Mr Huded submitted that in this case neither was the compensation amount deposited before any alleged possession was taken nor were any proper notices issued to the Petitioners about taking over of possession and payment of compensation. He referred to certain notices annexed along with the Rejoinder and pointed out that on the date when the Petitioners were called upon to receive the compensation and hand over possession, neither was any compensation paid nor possession taken over. Based on all this, Mr. Huded submitted

that this is a case of lapsing of the acquisition under Section 24(2) of the said Act.

5. Mr Huded referred to paragraph 263 of **Indore Development Authority Vs. Manoharlal and others**¹. In this paragraph, the Hon'ble Supreme Court has referred to the decision in **Banda Development Authority, Banda Vs. Moti Lal Agarwal and others**² which discusses the mode of taking over possession of the property on which the crop is standing. Mr Huded submitted that this was a property with standing crops and therefore, unless the procedure in Band Development Authorities is followed, the State could not claim that possession was taken over in accordance with law.

6. Mr Huded also referred to paragraph 274 of Indore Development Authorities (supra) and submitted that it was not even the government's case that the Petitioners had re-entered into the property. For all these reasons, Mr Huded submitted that this was a clear case where the acquisition proceedings had lapsed.

7. Without prejudice to the above contentions, Mr. Huded submitted that the acquired land, till date, remains unutilised for the alleged public purpose for which it was acquired. Accordingly, he referred to Section 101 of the said Act and submitted that the government was duty-bound to revert the said land to the Petitioners.

8. Mr Patel referred to the affidavit in reply of Avinash Hudgal, Deputy Collector (Land Acquisition) No.12, Kolhapur,

¹ (2020) 8 SCC 129

² (2011) 5 SCC 394

filed in this Petition on 10 July 2018. He submitted that categorical statements were made about taking over the possession of the acquired land. He pointed out that even the compensation was offered to the Petitioners by issuing notice under Section 12(2) of the Land Acquisition Act, 1894, but it is the Petitioners, who failed to come forward and receive this compensation. He referred to the decision in the Indore Development Authority (*supra*) including paragraphs 246 to 252 and submitted that there was no case of lapsing made out.

9. Mr Patel submitted that there was documentary evidence of taking over possession and in any event, such a disputed question of fact may not be gone into by this Court in exercising its extraordinary jurisdiction.

10. Regarding the issue of unutilised acquired property, Mr Patel submitted that provisions of Section 101 were not attracted in the facts of this case. He submitted that in any event, there was never any demand made by the Petitioner in this regard and Writ of Mandamus without prior demand or refusal may not be considered by this Court.

11. The rival contentions now fall for our determination.

12. From the perusal of the Petition and material accompanying the Petition, it is evident that this Petition was filed before the Constitution Bench decided on the interpretation of Section 24(2) of the said Act in the case of the *Indore Development Authority (supra)*. After the Constitution Bench decision in *Indore Development Authority (supra)*, it is apparent that the fundamental premise or the

basis for the Petition was lost or severely dented. Still, Mr Huded, has made a valiant effort to keep the Petition alive and see if the interim reliefs obtained continue as long as possible. In this, we must say, that he has succeeded admirably.

13. However, the coordinate Division Bench, by order dated 13 October 2022, noted that the law and the facts did not support the continuance of the interim relief any further. Therefore, on 13 October 2022, the coordinate Division Bench made the following order: -

“This writ petition is filed in the year 2017. Pursuant to the order dated 13 September 2022, this writ petition is listed today under the caption ‘for dismissal’.

2. The Petition is premised on the assertions that possession of the Petitioners’ land is not taken and compensation has not been paid and, therefore, as per Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, acquisition proceedings have been lapsed.

3. Reply affidavits are filed on behalf of the State. First, on 10 July 2018, thereafter, on 24 July 2018, wherein it is clearly asserted that possession is taken by drawing panchanama and Kabja Pawati on 13 April 2018, and compensation is deposited in ‘Personal Ledger Account’ (PLA), since even after notice given to the Petitioners they did not approach to collect the compensation.

4. Learned Counsel for the Petitioners have orally sought to controvert both the assertions contending that the acquisition was not for the entire property and it is unclear that the possession of which part is taken and the State has not followed the proper procedure by executing panchanama.

5. The legal issue has now been conclusively concluded by the Constitution Bench in the case of Indore Development Authority Vs. Manoharlal and Others

[(2020) 8 SCC 129] where mode of taking possession of property is by way of drawing inquest report/memorandum to permissible. Further if there is deposit in Personal Ledger Account, there can be no lapsing of acquisition. More importantly if either of factors are present, there would be no lapsing. We find no particulars in the petition. The case is advanced before us only through an oral argument.

6. Learned Counsel for the Petitioners now seeks to amend the petition and to file Rejoinder. Reply was filed four years after. We note that by order dated 07 February 2019, parties were directed to maintain status quo. The Respondents have placed on record that part of the properties is allotted to Respondent No.5-A to 5-C, after the order of status quo is passed. In such circumstances, though by way of indulgence, we accede to the request of the Petitioners to file rejoinder and application for amendment, we are not inclined to continue the status quo, and same stands vacated. Further steps will be subject to the outcome of the petition.

7. Stand over to 5 December 2022.”

14. Upon considering Mr Huded’s submission and perusing material on record, we find that the case pleaded on behalf of the government in Mr Avinash Hudgal’s affidavit dated 10 July 2018 cannot be disbelieved. Paragraph 4 of this affidavit reads as follows: -

“4. I say that the final Award vide No. LQN-12/SR/294/96 including the said land is declared on 01/06/2001. In respect of payment of compensation, total amount of Rs.2,45,993/- was fixed. I state that inspite of issuance of notice u/s 12(2) of Land Acquisition Act, 1894 on 01/08/2001 to the Petitioner, he did not come forward to collect the compensation. Hereto annexed & marked **EXHIBIT- “1”** is the copy of notice U/s 12(2) of Land Acquisition Act, 1894. Therefore, the amount of compensation due to the Petitioner, was deposited in the “Personal Ledger Account” (PLA). I further say that the possession of the said land was taken by Kabjepatti-Panchnama on 10/08/2001 (Sr.no.23). Hereto annexed & marked **EXHIBIT- “2”** is the copy of the said Kabjepatti-Panchnama.”

15. Similarly, Shri Sunil Nagnath Sherkhane, Tahasildar (Rehabilitation), Kolhapur, has also filed an affidavit of 24 July 2018 and paragraphs 3 & 4 of this affidavit are relevant in the context of taking over possession of the acquired land. They read as follows: -

“3. I say that, the petitioner has originally filled the present petition challenging the Award dated 01.06.2001 passed in respect of Gat No.511 situated at Village Kapsi, Taluka Kagal, District Kolhapur. I say that, in the said matter Affidavit in reply filed by Deputy Collector (Land Acquisition) No. 12, Kolhapur on behalf of Respondent No.1 & 2 stating that the Acquisition and proceedings are completed as per the law and the Award was declared on 01.06.2001. Notices under section 12/2 of Land Acquisition of 1894 was issued to the petitioner, he didn't come forward to collect the possession amount and the same was deposited in his Personal Ledger Account (PLA). The possession of the land was taken by the Kabbjepatti - Panchanama on 10.08.2001 and mutation entry incorporating name of Collector, Deputy Director, Project Rehabilitation Officer (Land) in year 2001. I crave leave the land to file Affidavit by the Deputy Collector (Land), and as when produced.

4. I say that, the pending Affidavit dated 10.07.2018 in Writ Petition the part of the land of the petitioner, Additional Collector (Rehabilitation Branch), Kolhapur, passed and order allotting the part of the land to the Respondents No. 5a and 5c by order dated 31.03.2018. The said order is enclosed by the Petitioner as **Exhibit 'A'** to the present petition. I say that, thereafter, on 13.04.2018 Kabbjepatti - Panchanama was carried out at the possession of the land was allotted was given to the Respondents No. 5b on 13.04.2018 and accordingly their names was also in the 7/12 extract. The copy of the said kabbjepatti - Panchanama, mutation entry no 3152 and 7/12 off gat no 511 is enclosed herewith as colly, **Exhibit 'B'** to the present petition.”

16. Apart from the categorical statements made in the two affidavits, documents have been produced which support the pleadings. In the exercise of our extraordinary jurisdiction, we

cannot accept or instead adjudicate upon the Petitioners' assertion that notwithstanding statements made by the government officials on oath and further, notwithstanding the documents which support such statements, we should still believe that the Petitioners' version about the possession not being taken following law or possession not being offered to the Petitioners. The record shows that after the Petitioners failed to accept the compensation amount, the same was deposited in the Personal Ledger Account (PLA) account.

17. Given the authoritative pronouncement of the Constitution Bench in the *Indore Development Authority (supra)* and based on the facts as they emerge from the record, we find it difficult to accept the Petitioners' case about the lapsing of the acquisition. Again, we are convinced that this Petition was filed based on the legal position reflected in some of the decisions of the Hon'ble Supreme Court including the decision in the case of **Pune Municipal Corporation & Anr vs Harakchand Misirimal Solanki & Ors**³. The Constitution Bench has, however, overruled this decision and with such overruling the fundamental basis of this Petition was severely dented.

18. Based on the pleading or the material on record, it is difficult for us to hold that the possession of the acquired land was not taken following law or that no compensation was offered to the Petitioners. Therefore, no case of lapsing under Section 24(2) of the said Act is made out. In any event, there are seriously disputed questions, based upon which it would not be safe to hold or infer any lapsing. No good reasons have

³ 2014 3 SCC 183

been shown to us why we should not accept the affidavits filed by government officials. Moreover, documents back these statements in the affidavits, and there is not even any allegation of fabrication of such documents which have been prepared in the ordinary course of governmental function.

19. For all the above reasons, we see no merit in the Petitioners' claim that the acquisition proceedings have lapsed. Accordingly, no relief is due to them on the premise that the acquisition proceedings have lapsed.

20. Regarding Mr Huded's contention about acquired land remaining unutilised and for return of the unutilised land as contemplated by Section 101 of the said Act, we note that the Petitioners made no such demand before instituting this Petition. Typically, no Writ of Mandamus is issued unless a prior demand is met by refusal.

21. Whilst we do not wish to be technical in such matters, however, we think that the interest of justice would be met if the Petitioners are granted liberty to file a detailed representation invoking the provisions of Section 101 of the said Act and the rules that have been framed in 2015 in this regard.

22. Learned counsel for the Petitioners states that such representation will be made within 4 weeks from today. If such representation is made, we direct the concerned respondent [including, in particular, the second Respondent-] to decide on such representation within 3 months of its receipt on its own merits and following the law. The second Respondent or any other Competent Authority must hear the

Petitioners consider the provisions of Section 101 of the said Act and the rules made thereunder and Respondents 5A to 5C and pass a reasoned order.

23. Mr Huded states that the State Government issues certain notifications and that he would annexe such notifications to the representation. Such notifications or government resolutions must also be considered by the second Respondent or other competent official empowered to decide such an issue.

24. Accordingly, this Petition insofar as it alleges the lapsing of the acquisition or so far as it challenges the very acquisition fails and is dismissed. However, liberty is granted to the Petitioners in the above terms to pursue relief under Section 101 of the said Act. All contentions of all parties in this regard are left open because we have not examined the issue of return of alleged unutilised land on merits.

25. Pending interim applications do not survive given the disposal of this Petition. Therefore, even the interim applications are disposed of.

26. All concerned must act an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)