

(2015) 04 BOM CK 0203

In the Bombay High Court

Case No : Writ Petition Nos. 1869 of 1998 and 789 of 2001

Archana and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-04-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 31, 4, 4(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2016) 1 BomCR 257 : (2015) 4 MhLj 438

Hon'ble Judges : S.B. Shukre, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : S.C. Mehadia and R.A. Haque, for the Appellant; M. Pathan, A.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Members of Muley family have approached this Court in these two petitions with contention that acquisition proceedings initiated by respondent No. 3-Municipal Council, Akola (now, Municipal Corporation) and undertaken by respondent No. 2-Special Land Acquisition Officer in relation to plot No. 33/1, Sheet No. 40A situated at Ward No. 27, Akola have lapsed. The State Government is respondent No. 1 while Special Land Acquisition Officer is respondent No. 2 in both the matters. Chief Officer of Municipal Council is respondent No. 3 in Writ Petition No. 1869 of 1998 while Municipal Council is respondent No. 3 in Writ Petition No. 789 of 2001. One of the tenants in the property sought to be acquired namely Sharad Vinayak Dixit has been permitted to intervene on 13/8/2002 in Writ Petition No. 789 of 2001. Civil Application No. 3938 of 2000 moved by very same person in Writ Petition No. 1869 of 1998 is still pending and is to be considered at the stage of final hearing. In Writ Petition No. 1869 of 1998, after coming into force of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, "the Act of 2013"), the petitioners have moved civil

application No. 1072 of 2014 seeking final disposal of the petitions urging that in the light of provisions of Section 24(2) of the Act, 2013, the proceedings have lapsed. The proposed intervenor has filed reply thereto and with that reply has also placed on record a photo copy of certified copy of the sale deed executed by all the petitioners before this Court in favour of one Manoj Mohanlal Bilala on 07/6/2012. The Municipal Corporation has filed reply opposing C.A. No. 1072 of 2014 on 24/7/2014. Thereafter, the petitioners have filed civil application 240 of 2015 on 10/02/2015 seeking leave to amend the petition basically to bring on record lapsing of reservation in the light of Section 24(2) of the Act of 2013.

2. In Writ Petition No. 1869 of 1998 on 21/02/2001 this Court has allowed civil application No. 910 of 2001 and as the writ petition was admitted for final hearing, the possession of the petitioners over the subject property has been protected. Similar interim order has also been granted while admitting Writ Petition No. 789 of 2001 on 13/3/2001.

3. In this background, we have heard Advocate Shri Mehadia and Advocate Shri Haque for the respective petitioners, learned A.G.P. for respondents No. 1 and 2, Advocate Shri S.V. Sohoni for Municipal Corporation, Akola and Advocate Shri Parchure for the tenant-Sharad.

4. At this stage it is necessary to note that Advocate Shri Mehadia in W.P. No. 1869 of 1998 has strongly opposed the prayer for intervention by said Sharad urging that being tenant, he cannot step into dispute of the present nature. He also points out that grant of prayer to intervene in W.P. No. 789 of 2001 by itself cannot be held to be decisive in this situation.

5. The effort of learned Counsel Shri Mehadia is to point out that date of making of award under Section 11 of the Land Acquisition Act being 11/4/1996 is beyond five years on 01/01/2014 i.e. the date on which the Act of 2013 came into force. Possession of subject property has not been taken by the respondents and it is admittedly protected by this Court. Similarly, the amount of compensation as awarded has not been "paid" to the petitioners. He points out that out of compensation awarded, an amount of Rs.11,60,103/-came to be deposited by the Municipal Corporation with respondent No. 2 on 12/8/1999 by way of adjustment. The said amount was deposited by the Municipal Corporation for acquisition of some other property and it has been diverted to present matter on that date. The balance amount, Rs.7,88,179/-was then deposited with respondent No. 2 on 19/8/2001. Thus, the amount was not paid to land owners and has not been deposited in the Court in terms of Section 31 of the Land Acquisition Act, 1894. He further submits that ingredients of Section 24(2) of the Act of 2013 have not been satisfied in the present matter and, therefore, the acquisition proceedings have lapsed. He has relied upon the following judgments of Hon"ble Apex Court in support of his submissions.

i. Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, AIR 2014 SC 982 : (2014) AIRSCW 787 : (2014) 3 JT 283 : (2014) 1

RCR(Civil) 880 : (2014) 1 SCALE 618 : (2014) 3 SCC 183 .

ii. Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu, (2014) 10 SCALE 388 .

iii. Sita Ram Vs. State of Haryana, (2015) 1 RCR(Civil) 255 : (2015) 1 SCJ 379 .

iv. Rajiv Chowdhrie Huf Vs. Union of India (UOI), (2015) 1 RCR(Civil) 368 : (2014) 10 SCJ 620 .

By way of abundant precaution, he has also drawn our attention to the judgments of Hon"ble Apex Court in I.A. No. 8 of 2014 in Civil Appeal No. 7424 of 2013 and other connected matters to submit that ordinance introduced on 31/12/2014 to further amend the provisions of Section 24 of the Act of 2013 is held to be prospective in nature and cannot unsettle the rights accrued in favour of the petitioners. Other judgment of Hon"ble Apex Court taking similar view in I.A. No. 3 of 2014 in Civil Appeal No. 4283 of 2011 is also pressed into service for this purpose.

6. Shri Mehadia points out that in the present matter, well before 31/12/2013 the right conferred upon the petitioners by Section 24(2) of the Act, 2013 was exercised and Civil Application No. 1072 of 2014 seeking declaration of lapsing of reservation came to be filed on 13/3/2014. Thus, as the right has been exercised long before 31/12/2014, the ordinance is not available and position as prevailing on 13/3/2014 needs to be looked into. He has fairly invited attention of the Court to a sale deed placed on record along with the reply to application for disposal of the petition filed by Sharad. He submits that such sale deed, which is after Section 4 notification, is not legally valid and binding. He points out that in the present matter notification under Section 4 was published on 25/01/1983 and declaration under Section 6 has been made on 11/10/1984. The award under Section 11 was made thereafter on 11/4/1996. To show how Hon"ble Apex Court has appreciated such sale deeds, he has invited our attention to judgments reported in Star Wire (India) Ltd. Vs. State of Haryana and Others, (1996) 8 AD 172 : (1996) 9 JT 429 : (1996) 7 SCALE 632 : (1996) 11 SCC 698 : (1996) 7 SCR 6 Supp and U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, AIR 1996 SC 1170 : (1996) 2 CTC 60 : (1996) 1 JT 354 : (1996) 1 SCALE 389 : (1996) 3 SCC 124 : (1996) 1 SCR 683 : (1996) 1 UJ 549 . Latter judgments of Hon"ble Apex Court reported at Meera Sahni Vs. Lt. Governor of Delhi and Others, (2008) 106 CLT 909 : (2008) 8 JT 284 : (2008) 9 SCC 177 , Tika Ram and Others Vs. State of U.P. and Others etc. etc., (2009) 12 JT 1 : (2009) 12 SCALE 349 : (2009) 10 SCC 689 : (2009) 15 SCR 905 and V. Chandrasekaran and Another Vs. The Administrative Officer and Others, (2012) 9 JT 260 : (2012) 4 RCR(Civil) 588 : (2012) 9 SCALE 142 : (2012) 12 SCC 133 , where those two judgments of Hon"ble Apex Court have been followed, are also relied upon by him.

7. According to him, as petitioners continue in possession and have not been paid compensation as also the award is dated 11/4/1996, Section 24(2) of the

Act of 2013 must be given full effect and petition must be allowed by granting declaration that land acquisition proceedings of subject property have lapsed.

8. Advocate Shri Haque appearing for the petitioners in W.P. No. 789 of 2001 begs to adopt the arguments advanced by Advocate Shri Mehadia.

9. Advocate Shri Sohoni appearing for the Municipal Corporation, Akola and learned A. G. P appearing for respondents No. 1 and 2 are strongly opposing the contentions. They submit that proviso to Section 24(2) of the Act of 2013 is relevant in the present matter and even in worst case the proceedings cannot lapse. However, they urged that this Court while exercising an extraordinary jurisdiction must also look into the conduct of the petitioners and relief can be denied to such persons in equity. Submission is, even if this Court find them to be entitled in law and grant such relief, in equity, said conduct dis-entitles the petitioners to any relief. They relied upon the sale deed produced before us by Sharad. They submitted that the petitioners have already sold out the subject property to one Manoj Bilala and said Manoj Bilala is not party before this Court. The petitioners have recovered amount of Rs.6,24,43,000/-from him and hence have no interest now in the subject matter. They submit that this sale deed is dated 07/6/2012 and it has been executed in the face of interim orders dated 21/02/2001 and 13/3/2001. No leave of this Court was obtained and sale deed was never pointed out to this Court, though after execution of sale deed, some affidavits have been filed by the petitioners. It is contended that judgments of Hon''ble Apex Court on which petitioners have placed reliance do not consider lapsing at the instance of persons who have lost title to the subject property. They further pray for dismissal of the petitions.

10. Advocate Shri Parchure on behalf of intervenor Sharad in W.P. No. 789 of 2001 has contended that petitioners in both the petitions are parties to very same sale deed. They have sold the property and recovered huge consideration and concealing it, are trying to obtain declaration that acquisition has lapsed. He points out that the tenanted property formed subject matter of acquisition proceedings and entire property has been sold to one Manoj Bilala with right to recover rent and recover possession from the tenants. The submission is, in this situation when petitioners are not in possessions, recourse to Section 24(2) by them is not valid and permissible.

11. He has also attempted to distinguish the judgments of Hon''ble Apex Court mentioned supra by urging that in the present matter, this Court has granted stay and protected possession of the petitioners. Thus, the acquiring authorities were restrained from taking possession. In this situation, when the authorities were legally not in a position to take any action as otherwise they would have been guilty of contempt, the stay orders cannot be ignored. Period from the date of grant of said interim orders till today, therefore, must be excluded for all practical purposes and hence it cannot be said that the period of five years has expired. According to him, the land-owners (the petitioners) have not filed any proceedings under Section 18 of the Land Acquisition Act and, therefore, no

proceedings for enhancement of compensation were pending with the Reference Court or before any Court. As such proceedings were not pending, the Municipal Corporation or Land Acquisition Officer could not have deposited the amount in the Court in terms of Section 31 of the Land Acquisition Act. Therefore, deposit of amount by respondent No. 3 with respondent No. 2-Special Land Acquisition Officer must be treated as valid tender for all purposes. He contends that Hon''ble Apex Court has not looked into even this facet and hence it's judgments have no bearing on present matter.

12. Learned A.G.P. Shri Pathan, in addition to the arguments noted supra, has invited our attention to the dates on which the petitioners in W.P. No. 1869 of 1998 have filed affidavits after 07/6/2012 before this Court. He contends that in those affidavits, execution of sale deed could have been pointed out. According to him, as that was not done, the petitioners have not approached this Court with clean hands and as they are not making clean breast of matter, no relief can be given to them. Upon instructions, he also makes a statement that the entire amount of compensation deposited by respondent No. 3-Municipal Corporation has now been deposited with the Reference Court on 24/02/2015.

13. Advocate Shri Sohoni as also learned A.G.P. relied upon the judgments reported in Dalip Singh Vs. State of U.P. and Others, (2009) 15 JT 201 : (2009) 14 SCALE 473 : (2010) 2 SCC 114 : (2009) 16 SCR 111 : (2010) AIRSCW 50 : (2009) 8 Supreme 485 and A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, AIR 2007 SC 1546 : (2007) 4 JT 186 : (2007) 2 RCR(Civil) 431 : (2007) 4 SCALE 88 : (2007) 4 SCC 221 : (2007) 3 SCR 603 : (2007) AIRSCW 2212 : (2007) 2 Supreme 837 to contend that not pointing the execution of sale deed by the petitioners to this Court is a fraud on this Court and an attempt to mislead it. According to them such fraud or misleading vitiates the entire challenge and the petitioners cannot be given any relief.

14. Shri Mehadia, in reply, submits that he has no instructions on deposit of amount in Civil Court on 24/02/2015. However, even if such deposit is presumed, as it is long after the expiry of period of five years envisaged in Section 24(2) of the Act of 2013, it is not relevant for adjudication of present controversy. He also submits that a civil suit is going on between the petitioners on one hand and purchaser Shri Manoj Bilala on the other hand.

15. After hearing respective Counsel for the parties, it is seen that we have to only find out the impact of the provisions of Section 24(2) of the Act of 2013 in the present matter. The submission of petitioners that ordinance promulgated on 31/12/2014 is not relevant, is not in dispute.

16. At least four judgments of Hon''ble Apex Court which looked into the provisions of Section 24(2) are pointed out to us by the petitioners. We find that almost all the judgments refer to the earlier views and the first judgment in the case of Pune Municipal Corporation and another (supra), delivered by Larger Bench, interprets the expression -"compensation has not been paid" in Section

24(2) of the Act of 2013. Hon''ble Apex Court has held that compensation can be regarded as "paid" if it is actually tendered to land owners or offered to them and on their refusal to accept the same, it is deposited in the Court. The Hon''ble Apex Court has in paragraph-11 noted three ingredients of Section 24(2) of the Act of 2013. The first one is; Award should have been made within five years or more prior to 01/01/2014 and other two conditions are; not taking physical possession of land or not paying compensation amount. In the case of Sree Balaji Nagar Residential Association (supra), the Hon''ble Apex Court has considered this judgment in case of Pune Municipal Corporation and another. In paragraph 8, the Hon''ble Apex Court has taken a note of the fact that even before making of award, writ petitions were filed and interim orders were operating against the State of Tamil Nadu, the State of Tamil Nadu, therefore, could not take possession of concerned lands. In this background, in paragraphs 9 and 10, scheme of Section 24(2) and express language implied there has been looked into and Hon''ble Apex Court has found that Legislature in its wisdom made the period of five years stipulated under Section 24(2) of the Act of 2013 absolute and unaffected by any delay in the proceedings on account of any order of stay by the Court. It is, in this backdrop, in paragraph-11, the law has been applied and the proceedings are declared to have been lapsed. Hon''ble Apex Court in the case of Sita Ram (supra) and thereafter in Rajiv Chowdhrie HUF (supra) taken the similar view. In the latter judgment the contention based upon grant of status quo has also been evaluated.

17. The unreported judgment dated 22/01/2015 in the case of Karnail Kaur and others Vs. State of Punjab and others (I.A. NO. 8 OF 2014 IN Civil Appeal No. 7424 of 2013) reiterates this view.

18. Thus, the position emerging from the above judgments supports the argument of lapsing. The argument of Advocate Shri Parchure that peculiar facts i.e. grant of stay order protecting possession of the petitioner by this Court way back in 2001 or its continuing in operation till today or then about non-availability of a Court to deposit the amount of compensation cannot constitute a distinguishing feature at all. The statement made by learned A.G.P. shows that on 24/02/2015 the amount of compensation has been deposited in the Court. It follows that therefore the said amount could have been deposited even earlier.

19. The proceedings in W.P. No. 1869 of 1998 were initiated by one Dhananjay Laxman Muley. His legal heirs have been brought on record on 12/10/2012. Application for intervention came to be filed by Sharad Dixit on 26/6/2000 and it was pending at that juncture. On 13/3/2014 the present petitioners (heirs of Dhananjay Muley) have taken out application for final disposal of petition by placing reliance upon the provisions of Section 24(2) of the Act of 2013. Sharad Dixit has filed his reply thereto on 20/6/2014. In that reply, apart from deposit of compensation amount with the Special Land Acquisition Officer, in paragraph 3 he has alleged suppression of facts by the petitioners. He has pointed out execution of a sale deed by petitioners in favour of Manoj Bilala on 07/6/2012.

Its copy is produced as Annexure-R on record. The said tenant has pointed out orders of this Court dated 21/02/2001 with contention that the petitioners wanted to part with the possession of land, which could have been only with permission of this Court and not otherwise. It is urged that, therefore, provisions of Section 24(2) are not available to the petitioners. Respondent No. 3-Municipal Corporation has also opposed the prayer by filing reply. They pointed out the land acquisition proceedings initiated in the year 1982-83 and were questioned before this Court in Writ Petition No. 2720 of 1984 and 2794 of 1984. The petitions were dismissed in the year 1994 and after remanding Special Leave Petition by Hon''ble Apex Court, the writ petitions were again dismissed. After that dismissal, the Hon''ble Apex Court did not admit the S.L.P. and award came to be made on 11/4/1996. They have pointed out that compensation amount has been in deposit with Land Acquisition Officer for over 14 years. In paragraph 7 they have pointed out sale deed dated 07/6/2012 in favour of Manoj Bilala alleging that the petitioners have lost their interest.

20. On 10/02/2015 petitioners have filed civil application No. 340 of 2015 seeking leave to amend. Leave to amend is only on account of the above mentioned provision of Section 24(2) of the Act of 2013.

21. Thus, the fact of execution of sale deed by the petitioners in favour of Manoj Bilala on 07/6/2012 is not in dispute. Though, during final arguments, it has been urged that civil suit between the vendors and purchaser is going on, said civil suit or its exact nature has not been disclosed. Perusal of sale deed reveals that the subject property consists of certain blocks, which are in possession of seven tenants. Against name of the tenants, extent of area of open land in possession of the tenants is also mentioned with remark that rent is not being paid. It is further mentioned that some tenants have without permission of landlords raised temporary tin-sheds while some tenants have inducted sub-tenants. Purchaser Manoj Bilala has been given right to proceed against those tenants and to take possession from them by approaching competent Court. It is also mentioned that on some open land, other people have encroached and taken unauthorised possession, that land has also been sold on "as is where is" basis to Manoj Bilala. The petitioners before this Court along with other family members have received amount of Rs.6,24,43,000/-as consideration in this sale deed.

22. Perusal of the decision of the Apex Court in the case of Star Wire(India) Ltd. (supra) reveals that encumbrance created by owner after publication of notification under Section 4(1) of the Land Acquisition Act is not binding on the State Government and subsequent purchaser have no right to challenge the legality of acquisition proceedings. This law is reiterated in other judgments to which Advocate Shri Mehadia has made reference. It is apparent that the land acquisition proceedings are initiated in public interest by the State Government and hence such sale is held not to affect the rights of the State Government to proceed further in the matter and to complete the acquisition proceedings. The

said proposition/provision is not meant and enacted to protect the owners like the petitioners who have executed the sale deed after the date of Section 4 notification.

23. The facts noted by us show that the petitioners have after receipt of valuable consideration parted not only the title but possession over the subject property and handed it over to Manoj Bilala. As already noted by us supra, said Manoj Bilala is not party before this Court. Manoj Bilala has been placed in possession apparently on 07/6/2012. Thus, on 01/01/2014 when the Act of 2013 came into force, the petitioners were and are not in possession. As the petitioners are not in possession on that date, it is apparent that they cannot invoke the provision of Section 24(2) of the Act of 2013 and claim that acquisition proceedings have lapsed. They cannot be allowed to take advantage of their own wrong.

24. In view of this position, we do not find it necessary to consider the contentions of learned A.G.P. and Advocate Shri Sohoni that the petitioners have played fraud on this Court or they attempted to mislead this Court. The petitioners have never denied the execution of sale deed and in the face of that sale, have tried to obtain relief in the present matter. As such, we cannot conclude that the petitioners have suppressed any fact from this Court.

25. In this situation, we find no merit in the challenge at the instance of present petitioners. The writ petition is accordingly dismissed.

Rule is discharged. No costs.