
(2015) 07 BOM CK 0364

In the Bombay High Court

Case No : Writ Petition No. 6695 of 2014

Kaulram Maruti Dange

APPELLANT

Vs

The Special Land Acquisition and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12(2), 31, 31(2), 32
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(1), 24(2)

Citation : (2015) 07 BOM CK 0364

Hon'ble Judges : Abhay Shreeniwas Oka and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : P.B. Shah i/b Kayal P. Shah, Advocate, for the Appellant; V.S. Gokhale, AGP, for the Respondent

Final Decision : Allowed

Judgement

Abhay Shreeniwas Oka, J.—On earlier date the submissions of the learned counsel appearing for the parties were heard.

2. The issue involved in this petition is as regards applicability of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (for short "the said Act of 2013).

3. The land subject matter of this petition has been described in paragraph 2(a) of this petition. The acquisition commenced on the basis of a notification under 4 of the Land Acquisition Act, 1894 (for short "the said Act of 1894), which was issued on 12th September, 1972 and an Award under 11 of the said Act of 1894 was made on 12th September, 1986.

4. We must note here that Writ Petition No. 10507 of 2012 was filed by the present petitioner. In the said petition, the challenge was to the notice dated 11/12th October, 2012 issued by the 4th respondent - the Pimpri Chinchwad

Navnagar Vikas Pradhikaran. The said notice was issued calling upon the petitioner to stop the work of construction carried on land bearing Survey No. 20, Hissa No. 1, which is the subject matter of this petition. There is one more petition filed earlier to the present petition which is Writ Petition No. 3918 of 1990, wherein the challenge is to the award dated 23rd September, 1986 on the ground that the same is ante dated.

5. As far as Writ Petition No. 10507 of 2012 is concerned, the same is still pending in this court. As far as earlier Writ Petition No. 3918 of 1990 is concerned, the same was rejected by a Division Bench of this Court. As of today, the said order has become final.

6. The contention raised by the learned counsel appearing for the petitioner in this petition is that on the basis of the award dated 23rd September, 1986 the possession of the acquired land was not taken over under the said Act of 1894 and even compensation has not been paid to the petitioner till 31st December 2013. The contention is that by operation of sub-section (2) of Section 24 of the said Act of 2013, the acquisition has lapsed on coming into force of the said Act of 2013 with effect from 1st January 2014.

7. There is a reply filed by Shri Suresh Jadhav, the Chief Executive Officer of the 4th respondent, relying upon various documents obtained by the 4th respondent under the Right to Information Act 2005, which are annexed to the reply. A contention has been raised that compensation was offered to the petitioner and in fact possession of the acquired land was taken over long before coming into force of the said Act of 2013.

8. As far as the State of Maharashtra is concerned, the stand taken is that the compensation amount payable under the said Award was credited to the Personal Ledger Account of the Special Land Acquisition Officer, which is an account specifically created for deposit of compensation amounts received from the acquiring bodies.

9. The learned counsel appearing for the petitioner has relied upon several decisions of the Apex Court by which Sub-section (2) of Section 24 of the said Act of 2013 has been interpreted. He has invited attention of the court to the affidavit-in-reply filed by Dr. Yogesh Mhase, the then Chief Executive Officer of the 4th respondent filed by way of reply to Writ Petition No. 10507 of 2012. His submission is that the averments made in the said affidavit clearly record an admitted position that no attempt was made by the authorities of the State to take possession of the acquired land bearing Survey No. 20 Part, admeasuring 4 Hectare. It is pointed out in the said affidavit is that though the Pimpri Chinchwad Municipal Corporation had no authority to grant development permission, the petitioner has obtained development permission. He also invited our attention to the annexures to the said affidavit which show that even on 10th June, 2012 the 4th respondent by addressing a letter to the Divisional Commissioner sought possession of the acquired land. He urged that though Sub-

section (2) of Section 24 has been amended by incorporating a proviso by Ordinances No. 9 of 2014 which was promulgated on 31st December, 2014, the same will not apply to the present case as the petition was filed prior to 31st December, 2014. He also invited our attention to subsequent Ordinances issued on 3rd April, 2015 (Ordinance No. 4/2015 and Ordinance No. 5/2015). He urged in any case, Personal Ledger Account of the Land Acquisition Officer cannot be said to be a designated account maintained for the purposes of deposit of compensation on account of acquisition.

10. The learned Senior Counsel representing the 4th respondent by relying upon the affidavit of Shri Suresh Jadhav contended that when the affidavit was filed in earlier petition by Dr. Yogesh Mhase, the documents which are annexed to the present affidavit were not available and the same were obtained by the 4th respondent under the Right to Information Act, 2005 very recently. He has taken us through the said documents. He invited our attention to the fact that by specifically issuing a notice, compensation was offered to the petitioner. He pointed out that after completing the procedure, in fact the possession of the acquired land was taken over, as seen from the panchnama and other documents annexed to the affidavit-in-reply. He submitted that affidavit of Shri Jadhav explains the stand taken earlier in the earlier affidavit wherein it was stated that the possession of the acquired land was not taken over by the State Government. He urged that the possession of the acquired land, as seen from the documents annexed with the affidavit, was taken over in the year 1989 and in any case the compensation was specifically offered to the petitioner by a notice issued under Section 12(2) of the said Act of 1894. He urged that in any case, the compensation is deposited in the designated account and, therefore, sub-section (2) of Section 24 will not be applicable. Lastly he invited our attention to what is stated in paragraph 10 of the affidavit of the Chief Executive Officer by pointing out notwithstanding that the order of status quo passed in Writ Petition No. 10507 of 2012, the status quo was altered by the petitioner by constructing a building consisting of seven floors and by selling flats in the said building. He placed reliance on a decision of Division Bench of this Court in the case of Archana and Others Vs. State of Maharashtra and Others .

11. The question which arises for the consideration in this case is whether sub-section (2) of Section 24 of the said Act of 2013 is attracted to the facts of the case. Section 24 reads thus;

"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, 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 holding 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."

12. The Apex Court in the case of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, , had an occasion to consider the scheme of sub-section (2) of Section 24 . It will be necessary to consider what is held by the Apex Court in paragraph 11 which reads thus:

"11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1) . Section 24(2) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz (i) physical possession of the land has not been taken or (ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act 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 the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act."

(emphasis added)

13. A submission was tried to be made by the respondents that both the contingencies mentioned in sub-section (2) of Section 24 must exist to attract the sub-section (2) of Section 24 . However, this contention is already answered by the Apex Court against the Respondents in paragraph 11 by holding that for the applicability of sub-section (2) of Section 24 , either of the two contingencies namely; (i) physical possession of the land has not been taken or (ii) the

compensation has not been paid, has to exist. It will be also necessary to consider what is held by the Apex Court in paragraphs 20 and 21 of the said decision which are the concluding paragraphs. What is held is that the legal fiction under sub-section (2) of Section 24 comes into operation as soon as the conditions therein are satisfied. Thus, it follows that the consequence of lapse of acquisition provided under sub-section (2) of section 24 comes into existence automatically, irrespective of the fact that the party concerned does not seek a declaration to that effect by approaching competent Court of Law.

14. At this stage, it will be also necessary to consider the effect of the amendments made to the said Act of 2013 by three successive Ordinances. The first one is dated 31st December, 2014 (Ordinance No. 9 of 2014), the second Ordinance is dated 3rd April, 2015 (Ordinance No. 4 of 2015) and the third Ordinance is of 30th May, 2015 (Ordinance No. 5 of 2015). The Ordinances have some relevance, in the light of what is held by the Apex Court in the case of Pune Municipal Corporation, in paragraph 17 which reads thus:

"17. While enacting Section 24(2) , Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" use in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2) , the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of 1984 Act. In other words the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Section 32 and 33 ."

(emphasis added)

15. What is held by the Apex Court is that compensation can be said to have been paid as per unamended sub-section (2) of Section 24 , when Collector has discharged his obligation by offering the amount of compensation to the persons interested and by depositing the same into Court for making available to the persons interested. The Apex Court held that compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18

can be made on happening of any of the contingencies contemplated under sub-section (2) of Section 31 of the said Act of 1894. By Ordinance No. 9 of 2014, a proviso was incorporated in sub-section (2) of Section 24 which reads thus:

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any account maintained for this purpose shall be excluded."

In Ordinance No. 4 of 2015, the proviso was substituted by the following proviso;

"Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded."

(emphasis added)

16. In Ordinance No. 5 of 2015, the aforesaid proviso incorporated by Ordinance No. 4 of 2015 has been maintained. We must note here that the present petition has been filed even before the Ordinance No. 9 of 2014 was brought into force and, therefore, the petition will have to be decided on the basis of the unamended sub-section (2) of Section 24 as it existed prior to coming into force of the said Ordinance. Nevertheless as submissions have been made on the basis of the amended provisions, we are considering the same.

17. The first issue is whether the possession of the acquired land was taken over within the time specified in sub-section (2) of Section 24 . In normal course, there would have been no difficulty in recording a finding on the aspect considering the stand on oath taken by the 4th respondent in the affidavit filed by its Chief Executive Officer on 6th March, 2013 in Writ Petition No. 10507 of 2012. In paragraph 3 of the affidavit, the then Chief Executive Officer Dr. Yogesh Mhase has stated thus:

"3. I say that even before the setting up of Respondent No. 1 Authority acquisition proceeding had been initiated in ten villages around Pimpri Chinchwad for the public purpose of use of land for residential, commercial and industrial purposes. I say that subject land in the Petition i.e. Survey No. 20, Village Thergaon, Taluka Mulshi was also under acquisition. I say that the total area of the land was 10.89 H. I say that Section 4 Notification was issued on 9.3.1970 for acquiring 7.89 H. I say that Section 6 Notification was issued on 12.9.1972 and by very Notification acquisition of 51 acres from Survey No. 20 (Part) was abandoned. I say that the Commissioner, Pune Division, Pune passed an order under Section 48 on 13.12.1984 and an area of 3.38 H from Survey No. 20

(Part) was withdrawn from acquisition. I crave leave to refer to and rely upon the said order when produced. I say that the Award was passed on 23.9.1986 in respect of 4H. of land Survey No. 20(Part). I say that the Petitioner's challenge to the acquisition and Award has been turned down by this Hon"ble High Court by rejecting Writ Petition No. 3198 of 1990 on 20.9.2007. I say that in spite of rejection of Writ Petition on 20.9.2007, the Land Acquisition Officer did not take any step to take over possession of the said land and hand over the same to the Respondent No. 1 though repeated requests were made by the Respondent No. 1 Authority."

(Emphasis added)

18. In fact, in paragraph 4, Dr. Mhase has reiterated his statement by stating that the 4th respondent made an application on 1st June, 2012 to the Divisional Commissioner to look into the matter and to ensure that the possession of said land is handed over to the 4th respondent. A copy of the letter dated 1st June, 2012 addressed by the 4th respondent to the Divisional Commissioner has been annexed in which a grievance is specifically made regarding non-delivery of possession and, therefore, in paragraph 5, a request is made to direct the Deputy Collector to take over possession of the said acquired land and handover to the 4th respondent.

19. The issue of possession is required to be resolved in the light of the affidavit dated 26th June, 2015 filed by Shri Suresh Jadhav, the present Chief Executive Officer of the 4th respondent in which on the basis of documents obtained under Right to Information Act, 2005, a stand has been taken that the possession of the acquired land was taken over on 31st May, 1989. We have perused the documents annexed to the said affidavit. Firstly reliance is placed on a notice dated 12th May, 1989 issued to the petitioner to remain present on 31st May, 1989 to handover possession of the acquired land. At no stage, the State Government has taken a stand that any such notice was served to the petitioner. The acknowledgement signed by the petitioner of receipt of the notice is not produced. What is important to note is the letter addressed by the village Talathi/Village Officer to the Special Land Acquisition Officer. The letter specifically records that as the occupants did not handover the possession of the acquired land, a panchnama was drawn for taking over the possession on which the panch witnesses refused to sign. Careful perusal of the said letter shows that he has not specifically stated that possession of the acquired land was taken over. He has simply stated as the holders did not give possession, a possession panchnama was drawn. It will be necessary to look at the copy of the so-called possession receipt annexed to the said affidavit. The possession receipt itself records an endorsement that panch witnesses have refused to sign on the possession receipt. In the possession receipt it is recorded that possession of the acquired land has been taken in presence of panch witnesses. The panch witnesses have admittedly declined to sign the possession receipt as well as the panchnama. This becomes very significant as the said documents do not bear the

signatures of the Petitioner. Thus, the possession receipt is of no worth at all as even the panch witnesses called by the Government Officers refused to sign the possession receipt/panchnama. As stated earlier, in the letter addressed to the Special Land Acquisition Officer, Village Talathi/Officer has not even stated that the possession was taken over. Thus, taking the documents annexed to the affidavit Shri Jadhav as correct, it is impossible to record a finding on the basis of the said documents that the possession of the said land was taken over on 31st May, 1989 in accordance with the provisions of the said Act of 1894. Before filing the affidavit, the Chief Executive Officer ought to have considered the worth of said documents when admittedly panch witnesses had declined to sign the panchnama and the possession receipt. There is no authentic document on record to show that the possession of the acquired land was taken over by the State Government. We are constrained to observe that after taking a stand on oath in earlier writ petition that the Land Acquisition Officer did not take any steps to take the possession of the said land and to hand over the same the 4th respondent and after addressing a letter in which a grievance was made by the 4th respondent to the Divisional Commissioner about non delivery of possession of the acquired land, such a stand has been now taken by the 4th respondent, which is a statutory authority, on the basis of the incomplete documents. We may also add that the possession receipts relied upon by the 4th respondent are not signed by any of the land owners apart from the refusal of the panch witnesses to sign the said possession receipts as well as panchanama. Even taking the documents annexed to the affidavit of the 4th Respondent filed in this Petition as correct, it cannot be said that even a paper possession was taken over on 31st of May, 1989. Therefore, one of the two contingencies specified by sub-section (2) of Section 24 exists in this case. Hence, in view of the law laid down by the Apex Court, the consequences provided in sub-section (2) of Section 24 must follow.

20. Now coming to the issue regarding payment of compensation, the submission of the learned Senior Counsel appearing for the 4th respondent was that the notice dated 27th October 1986 issued by the Land Acquisition Officer to the petitioner itself records that compensation was being offered to the petitioner. We have carefully perused the said notice. Perhaps what is ignored by the 4th respondent is the endorsement on the said notice which clearly records that as a dispute regarding the shares was to be resolved, the compensation amount has been transferred to revenue deposit. In view of the said hand written remark, by no stretch of imagination it can be said that the Special Land Acquisition Officer by the said notice (page 351 of the affidavit-in-reply of the 4th respondent) offered to pay compensation to the petitioner. In fact the remark shows that an inquiry regarding the shares was pending and, therefore, instead of offering the compensation to the petitioner, the same was deposited in revenue deposit. It is not the case of any of the respondents that the amount was deposited with the Court. Therefore, what is held by the Apex Court in paragraph 17 in the case of Pune Municipal Corporation, will apply and it will have to be held that even the

second contingency provided in sub-section (2) of Section 24 was existing.

21. However, submissions have been made on the basis of proviso added by Ordinance Nos. 4 of 2014 and 5 of 2015. The learned AGP has tendered across the bar a letter dated 7th July, 2015 which records that the compensation amount was transferred to the Personal Ledger Account of the concerned Land Acquisition Officer. A Government Resolution (G.R.) dated 1st March, 1996 has been produced along with the said letter which shows that the Personal Ledger Accounts are to be utilized by the Land Acquisition Officers for deposit of the compensation amounts in land acquisition cases. Therefore, it can be certainly said that a Personal Ledger account maintained in the treasury in the name of the Special Land Acquisition Officer is a designated account maintained for the purposes of deposit of compensation amounts as provided in proviso to sub-section (2) of Section 24 added by the aforesaid two Ordinances. However, this finding will not help the respondents in view of the finding which we have recorded above.

22. In this case, both the contingencies in sub-section (2) of Section 24 exists in terms of the law laid down in the case of Pune Municipal Corporation. The last two Ordinances will not apply as the present Petition has been filed prior to the date on which the Ordinances came into force. However, in those cases where last two Ordinances will apply, the deposit of the compensation amount in the Personal Ledger Account of the concerned Special Land Acquisition Officer will have to be treated as sufficient compliance. In any event, in the present case, the possession has not been taken over on or before 31st December, 2013. Hence, sub-section (2) of Section 24 of the said Act of 2013 will certainly apply.

23. Then comes the last submission made by the learned counsel appearing for the 4th respondent by contending that in breach of order of status quo passed in Writ Petition No. 10507 of 2012, the petitioner has indulged in construction activity by constructing a building consisting of seven floors and has sold the flats and premises in the building.

24. Firstly, the breach committed is of the orders passed in another petition and not in this petition. Secondly, what is necessary to be considered is the legal effect of sub-section (2) of Section 24 . What is held by the Apex Court in paragraph 21 in the case of the Pune Municipal Corporation is that the legal fiction in sub-section (2) of Section 24 comes into operation as soon as the conditions stated therein are satisfied. Sub-section (2) of Section 24 , which we have quoted above specifically provides that when one of the two conditions are satisfied, the proceedings of acquisition under the said Act of 2013 shall be deemed to have been lapsed. Thus, whether the aggrieved party seeks a declaration by approaching Court of Law or not, by a legal fiction, the lapsing of acquisition proceedings under the said Act of 1894 is automatic. In fact Sub-section (2) of Section 24 itself provides that in such contingency, a fresh acquisition proceedings has to be initiated. Therefore, even assuming that the present writ petition is not entertained in the light of the conduct of the

petitioner, the lapse of acquisition which is provided on the statute book by virtue of a legal fiction will come into operation. Now coming to the decision in the case of Archana w/o Dhananjay Mulay & Ors., the attention of the Division Bench was not invited to the automatic lapsing by virtue of the legal provision. Moreover in the facts of the case before the Division Bench, it was found that the petitioner transferred the property, subject matter of the writ petition without obtaining a leave of the Court which was contrary to the interim orders. So this was a case when the petition was placed for hearing, the contention of lapsing of acquisition was raised by persons who had no right, title and interest in view of the execution of the sale deeds. It is in the peculiar facts of the case that the Division Bench declined to interfere in writ jurisdiction. Therefore, on the basis of what is stated in paragraph 10 of the affidavit-in-reply filed on behalf of the 4th respondent, relief cannot be denied to the petitioner. However, we hasten to add that, if what is stated in paragraph 10 thereof is correct, the effect thereof will have to be considered while dealing with the Writ Petition No. 10507 of 2012.

25. It is obvious that the award under section 11 of the said Act will be affected only in relation to the property subject matter of this petition.

26. Hence, the petition succeeds and, we pass the following order:

"Rule is made absolute in terms of prayer clause (a)."

We make it clear that notwithstanding this judgment and order, it will be open for the respondents to initiate a fresh acquisition proceedings in accordance with law.