

(2016) 12 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition Nos. 1074, 1075 of 2015

Ramesh Narayan Patil

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

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

Citation : (2017) 2 BCR 681 : (2017) 1 MhLJ 761

Hon'ble Judges : Shantanu Kemkar and Prakash Naik, JJ.

Bench : Division Bench

Advocate : Mr. Ram Apte, Senior Advocate a/w. Mr. Ajay Khaire and Mr. Roop Basin, Advocates, for the Respondent Nos. 4 and 5; Ms. Nisha Mehra, AGP, for the Respondent Nos. 1 to 3; Mr. Milind Sathe, Senior Advocate a/w. Mr. Amit Karkhanis, Mr. Bhushan Deshmukh and Ms

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.(Oral) - With the consent of the parties, the matter is finally heard and disposed of.

2. This judgment will dispose of both the Writ Petitions. For the sake of convenience, facts are taken from Writ Petition No. 1074 of 2015.

3. Through this Petition filed under Article 226 of the Constitution of India, the Petitioners who are claiming to be the legal heirs of late Narayan Aditwar Patil who was the owner of the land bearing Gat No. 91/1 admeasuring about 3.25 Acres equivalent to 14670 sq. mtrs. situated at Talavali village, Taluka and District Thane within the municipal limits of Navi Mumbai Municipal Corporation are seeking declaration to the effect that the acquisition proceedings in respect of the said land, resulting in the award dated 31st August, 1984 deemed to have lapsed in view of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act of

2013").

4. In the Writ Petition through the Petitioners have raised a ground that the physical possession of the said land is still with them and on that ground in view of Section 24(2) of the Act of 2013, the acquisition proceeding deemed to have lapsed but during the course of arguments, learned Senior Counsel for the Petitioners has submitted that the Petitioners are not pressing this ground. In the circumstances, we are not dealing with the said ground.

5. The other ground of the Petitioners which has been pressed is that the Special Land Acquisition Officer /Respondent No. 3 had passed the award on 31st August, 1984 but the compensation amount determined in the award has not been paid either to the original owner or to them till date. In the circumstances the acquisition proceeding deserves to be declared to have deemed to be lapsed under Section 24(2) of the Act of 2013.

6. In support of his contention, that since the compensation amount as per the award has not been paid, the acquisition proceeding are deemed to have been lapsed, the learned Senior Counsel for the Petitioners has placed reliance on Section 24 of the Act of 2013 as also on the judgment passed by the Hon'ble Supreme Court in the case of Pune Municipal Corporation and Another v. Harakchand Misirimal Solanki and Others, (2014) 3 Supreme Court Cases 183.

7. The Respondents-State as also the Respondent-Municipal Corporation (for short "the Corporation") have filed their respective reply.

8. A preliminary objection has been raised by the learned Senior Counsel for the Corporation that the Petitioners are not legal heirs of the original owner and therefore the Petition at their instance is not maintainable. Replying this learned Senior Counsel for the Petitioners argued that in the affidavit filed by the Petitioners, they have made a categorical statement that they are legal heirs of the original land owner late Narayan Aditwar Patil. The Petitioners have also filed copy of the ration card showing their names with the original land lord Narayan Aditwar Patil and a certificate issued by the Talavali Village Gramastha Mandal stating that the Petitioners are the legal heirs of Narayan Aditwar Patil. Having considered the affidavit and the documents, we are of the view that preliminary objection raised at the instance of the Corporation is not tenable. Hence rejected.

9. Coming to the merits of the matter, we find that in the reply filed by the Corporation, the following statement has been made in regard to payment of compensation amount :

I submit that the Collector's office/SLAO office was always willing and ready to pay compensation to Narayan Aditwar Patil. However, Shri Narayan Patil refused to accept the compensation which was offered to him and decided to challenge the said acquisition proceedings. Thus the compensation amount with respect to the present land was deposited in the Government Revenue Account, which was maintained solely for this purpose, on 29th September, 1986. Hereto annexed

and marked as Annexure 2 is a copy of the receipt dated 29th September, 1986 which clearly shows that the said compensation was deposited in the Govt. account.

10. The Respondents-State in para 3 of its affidavit in reply made the following statement in regard to payment of compensation amount:

3. At the outset, it is submitted that the Petitioner has come to this Court with unclean hands. It is not true that the physical possession of the suit premises was never taken. That there is panchanama dated 6th June, 1986 which was drawn up and physical possession of the acquired land has been handed over to authorities of CIDCO on the same date. That interns of possession been taken over by CIDCO the structure standing thereon have become unauthorized, illegal and encroachment and therefore CIDCO has rightly issued notice under Section 53 of MRTP Act. The same notices were challenged by the Petitioner in Civil Court at Thane in Civil Suit No. 666 of 2012. That the Petitioner are the trespasser or holder of unauthorized structure. Further it is not true that compensation was not offered to the Petitioner. That award under Section 11 of the Land Acquisition Act was declared on 31st May, 1986 and the Petitioner's father Narayan Aditwar Patil was served the notice under Section 12 of the said Act on 31st May, 1986 but the said notice was duly refused by him. Further the Petitioner on his own did not receive the compensation of Rs. 26,690.15/- and therefore the said amount was deposited in the Government Revenue Account on 29th September, 1986 as per the practise prevalent.

Similarly in para 7 of the affidavit in reply, a categorical statement has been made by Respondents-State which reads as under:

"Thus the compensation amount of Rs. 26,690.15/- with respect to the present land in question, was deposited in the Government Revenue Account, which was maintained solely for this purpose, on 29th September, 1986"

11. Learned Senior Counsel for the Respondents-Corporation has strenuously urged that in the reply the Corporation has taken a specific stand that though the Collector's office/SLAO was ready and willing to pay the compensation to the land owner but he himself refused the compensation which was offered to him and decided to challenge the said acquisition proceedings. In the circumstances, according to learned Senior Counsel for the Corporation, the land owner having refused to accept the amount of compensation, the benefit of Section 24 of the Act of 2013 will not be available to the Petitioners.

12. We have considered the rival contentions of the learned counsel for the parties and perused the record.

13. The only question which is required to be considered is as to whether the offer by the Special Land Acquisition Officer to pay compensation amount to the land owner and denial to receive the same by him and thereafter deposit of it by the SLAO in the Government Revenue Account can be treated to be

compensation "paid" within the meaning of Section 24(2) of the Act of 2013.

14. In order to decide the said question, it is necessary to look into the relevant provisions of Act of 2013 and the Land Acquisition Act, 1894 (for short "the Act of 1894").

15. Section 24 of the Act of 2013 reads thus:

24. Land acquisition process under Act No. 1 of 1984 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 proceeding 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 subsection (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 landholdings 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."

16. Section 31 of the Act of 1894 reads as under:

31. Payment of compensation or deposit of same in Court (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18

would be submitted."

17. The aforesaid provisions have been considered by the Supreme Court in the case of Pune Municipal Corporation (*supra*). The Supreme Court taking note of the aforesaid provisions in almost identical circumstances after recording stand of Pune Municipal Corporation in para 7, 17 to 20 of judgment had observed as under :

7. "Section 24(2) 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 namely (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 1894 Act an award has been made & compensation in respect of majority of land holdings has not been deposited in the account of beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act".

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" used in this subsection (subsection (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 the 1894 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 Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in

Part V (Sections 3134) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad v. King Emperor*, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes and Ors. v. State of Goa and Another*, relying upon the earlier decision in *Prem Nath Kapur v. National Fertilizers Corpn. of India Limited* has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.

18. Keeping in view the aforesaid judgment of the Supreme Court and Section 31(2) of the Act of 1894 which provides that if the amount is not consented to be received, the amount of compensation is required to be deposited in the Court to which a reference under Section 18 would be submitted, the contention of the learned Senior counsel for the Corporation that the deposit of the compensation amount in the Government Revenue Account on refusal of the owner to receive the amount would debar the Petitioners to get the benefit of Section 24(2) of the Act of 2013 cannot be accepted. If the amount of compensation was offered to the land owner and he did not give consent to receive, it was the duty of the SLAO to have deposited the amount of compensation in the Court to which the reference under Section 18 would be submitted. The SLAO having not done so, in our considered view the Petitioners are entitled to get the benefit of Section 24(2) of the Act of 2013.

19. As a result, we allow both the Petitions and hold that the subject land acquisition proceedings deemed to have lapsed under Section 24(2) of the Act of 2013. Consequently, the actual physical possession of the subject land is ordered to be restored to the Petitioners.

20. No orders as to the costs.

21. At this stage learned counsel appearing for Respondent Nos. 4 and 5 has prayed for stay of the operation of the order. Having considered the submissions, we find no ground to stay the operation of the order passed by this Court today. The said prayer is rejected.