

(2015) 11 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition Nos. 4355 and 4361 of 2014

Rashmi Hemant Bhawe and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 17, 4, 4(1)
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(5), 10(6)

Citation : (2015) 11 BOM CK 0038

Hon'ble Judges : B.R. Gavai and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : S.S. Joshi, Advocate, for the Appellant; D.P. Thakare, AGP, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—Rule returnable forthwith. Heard by consent.

2. The clever husband and wife, who are petitioners herein, have approached this Court seeking a declaration that the acquisition of their lands bearing plot Nos. 4, 5 and 6 situated in a layout developed in Survey No. 145/2, Patwari Halka No. 42, Mouza Khapri Railway, Tq. Nagpur Rural, District Nagpur has lapsed in view of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the New Act) (hereinafter referred to as "the Act of 2013").

3. Since the facts as well as the question of law involved in both the petitions are identical, both are heard and decided together by this common Judgment.

4. The facts, in brief, giving rise to the present petitions are as under:

A notification u/s. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Old Act") came to be published on 11.1.1999 by the State Government in

respect of various lands including the lands which are subject matter of the present petitions thereby disclosing intention of the State Government to acquire the said lands. The notification u/s. 6 of the old Act came to be issued on 21.1.2000. The composite Award came to be passed u/s. 12 of the old Act on 24.12.2004. It is the contention of the petitioners that plot Nos. 4 and 6 were owned by the petitioners namely Hemant Sadashiv Bhawe, who is the petitioner in Writ Petition No. 4361 of 2014; whereas plot No. 5 was owned by Smt. Rashmi Hemant Bhawe, who is the petitioner in Writ Petition No. 4355 of 2014. The compensation determined was Rs. 10,266/- in respect of each of the petitioners. Since, according to the petitioners, the compensation was inadequate, they made an application to the Collector on 27.12.2005 for making a reference to the Civil Court for enhancing the amount of compensation. Accordingly, a reference has been made by the Collector to the learned Civil Court, which is registered as Reference No. 92 of 2008. Same is pending before the learned Special Court established for the matters relating to acquisition of lands for MIHAN project.

5. The Act of 2013 came into effect from 1.1.2014. As per the provisions of Section 24(2) of the said Act, if the Award u/s. 11 of the old Act has been made five years or more prior to the commencement of the 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. After the said Act came into force, the petitioners have approached this Court for declaration that the reservation in respect of their lands stands lapsed.

6. Vide order dt. 13.8.2014, this Court had issued notice for final disposal. In response to the said notice, an affidavit-in-reply (dt. 11.12.2014 in Writ Petition No. 4355 of 2014) was filed by one Asha Afzalkhan Pathan, Deputy Collector of Land Acquisition, VIDC, Nagpur on behalf of respondent Nos. 2 and 3. Respondent No. 4 has filed an affidavit of Mr. Subhash s/o. Vitthalrao Chahande, (dt. 26.6.2015 in Writ Petition No. 4355 of 2014 and dt. 15.12.2014 in Writ Petition No. 4361 of 2014). In response thereto, the rejoinder was filed by the petitioners (on 4.10.2015 in Writ Petition No. 4355 of 2014 and dt. 17.2.2015 in Writ Petition No. 4361 of 2014). In response thereto, additional reply came to be filed on behalf of respondent No. 4 (on dt. 26.6.2014 in Writ Petition No. 4355 of 2014 and on 26.6.2015 in Writ Petition No. 4361 of 2014). Again, to meet the averments made in the said additional affidavit, the petitioners filed an affidavit-in-rejoinder, dt. 4.10.2015.

7. On the request of the learned Counsel for the petitioners, which is not objected to by the learned Counsel for the respondents, we are referring to the pleadings as are found in Writ Petition No. 4361 of 2014.

8. Heard Mr. S.S. Joshi, learned Counsel for the petitioners, Mr. D.P. Thakare, learned A.G.P. for respondent Nos. 1 to 3 and Mr. R.M. Bhangde, learned Counsel for respondent No. 4.

9. Mr. S.S. Joshi, learned Counsel for the petitioners submits that, in view of the

provisions of Section 24(2) of the Act of 2013, since possession of the petitioners' lands is not taken nor compensation is paid, acquisition of the petitioners' lands has lapsed by virtue of statutory provisions as incorporated in sub-section (2) of Section 24 of the Act of 2013. The learned Counsel, relying on the Judgments of the Apex Court in the case of Raghbir Singh Sehrawat Vs. State of Haryana and Others, and in the case of Velaxan Kumar Vs. Union of India (UOI), , submits that possession as contemplated under the provisions of the Act is not a paper possession but an actual possession. He submits that, unless the petitioners are given a notice or atleast unless panchanama in presence of independent panchas is executed while taking possession of the property in question, paper possession is not valid in the eyes of law. The learned Counsel further submits that, as a matter of fact, voluminous documents placed on record would show that the petitioners are in possession of the lands even as on today and are running their business from the said plot of lands. Learned Counsel further submits that the payment, as contemplated by the provisions of said Act, is payment atleast to be deposited in the Court and not an amount which is lying in the treasury of the Government.

10. Learned Counsel further relies on the Judgment in the case of Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others, . Learned Counsel, therefore, submits that the petitions deserve to be allowed and the declaration, as sought for, needs to be granted.

11. Mr. D.P. Thakare, learned A.G.P. for respondent Nos. 1 to 3 submits that, in fact, possession of the petitioners' lands has been taken way back in the year 2006. He submits that, as a matter of fact, the amount of compensation has also been deposited in the Court. In support of the submission, the respondent/State along with their affidavit have placed on record an application made before the learned Reference Court for depositing the amount so also a crossed cheque drawn in the name of learned 3rd Joint Civil Judge (Sr.Dn.), Nagpur. Learned A.G.P. further submits that possession taken by the Land Acquisition Officer has also been handed over to respondent No. 4.

12. Mr. R.M. Bhangde, learned Counsel for respondent No. 4 submits that the present petitions are full of suppressions of material facts. It is submitted that though possession is taken long ago as in the year 2006, the petitioners having kept silent for almost a period of eight years, after coming into force of the said Act, have invented a novel method of seeking declaration regarding lapsing of reservation of lands, possession of which is taken way back. Not only that, the petitioner have also received various substantial benefits on account of acquisition of said land. Learned A.G.P. so also the learned Counsel for respondent No. 4 submit that had the possession of the lands of the petitioners not being taken, there was no occasion for the petitioners to have filed the application before the Collector for making reference to the Civil Court for payment of enhanced compensation. It is further submitted that after the petitioners' lands were acquired, the petitioners along with owners of other

industries had approached respondent No. 4 for giving them alternate lands for establishing their industries. It is submitted that, with the intervention of respondent No. 4, the Maharashtra Industrial Development Corporation (hereinafter referred to as "the M.I.D.C") has allotted lands to the petitioners at Hingna at a reduced rate. It is submitted that this was done only with the intervention of MIHAN who used its good Offices to ensure that the industries which were established in the area under acquisition, are not put to sufferance and the alternate land is made available to them at a concessional rate, so that the Industries should continue to run. It is contended that the petitioners have already shifted their Industries to the lands allotted by the M.I.D.C. Learned Counsel further submits that, as a matter of fact, the facts in the present case are identical with the facts in the case of State of Assam Vs. Bhaskar Jyoti Sarma, , wherein the Court was considering a similar issue. It is further submitted that the petitions deserve no relief.

13. For appreciating the rival contentions, it will be relevant to refer to sub-section (2) of Section 24 of the Act of 2013, which is as under:

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases-

(1).....

(a).....

(b).....

(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."

14. It could thus be seen that the learned Counsel for the petitioners is right in contending that, in view of provisions of sub-section 2 of Section 24 of the Act of 2013, where an Award u/s. 11 of the old Act has been made five years or more prior to the commencement of the Act but where the physical possession of the land has not been taken or where the compensation has not been paid, the said proceedings shall be deemed to have been lapsed. No doubt that the appropriate Government is granted liberty if it chooses to initiate proceedings afresh in

accordance with the provisions of the said Act. Learned Counsel for the petitioners has also rightly relied on the Judgment of the Apex Court in the case of Raghbir Singh Sehrawat (cited supra), wherein Their Lordships of the Apex Court have laid down certain guiding principles for taking possession of the land when the land is acquired under the old Act. Learned Counsel is also right in contending that what is least required is taking possession by preparing appropriate documents in the presence of independent witnesses and getting their signatures on the said documents.

15. In the case of Raghbir Singh Sehrawat (supra) before the Hon''ble Apex Court, notification in question u/s. 4(1) of the Old Act was issued on 22.6.2006. A declaration as required u/s. 6(1) of the Old Act was notified on 20.6.2007. An Award came to be passed on 28.11.2008. Immediately after the Award was passed, the writ petitioner therein filed a Writ Petition challenging acquisition on several grounds. However, the petition was resisted by the State on the ground that possession was taken on 28.11.2008. The writ petitioner filed rejoinder stating therein that possession of lands was not taken and paper possession taken by the respondent was inconsequential. The High Court of Punjab and Haryana dismissed the petition in limine on the ground that once Award was passed and possession was taken, the acquired land will be deemed to have vested in the Government and the High Court cannot entertain the Writ Petition. Same was challenged before the Apex Court. In the light of this factual scenario, the Hon''ble Apex Court laid down guidelines as to what should be done by the State in taking possession. It could thus be seen that, in the said proceedings, the writ petitioner had approached the Court immediately after the Award was passed. The petition was sought to be objected on the ground that possession was already taken. In this factual background, the aforesaid observations have been made by Their Lordships.

16. In the present case, though Award is passed as early as in the year 2004 and though an application for reference has been made by the petitioners to the Collector for making reference to the Civil Court in the month of December, 2005, the petitioners are contending after a period of nine years that possession is not taken. We find that the said contention is being raised only after the new Act (the Act of 2013) has come into force so as to take advantage of the provisions of the said Act.

17. Insofar as the Judgment of the Apex Court in the case of Velaxan Kumar (cited supra) is concerned, in the said case also the petition was filed by the petitioners therein immediately after notification came to be issued u/s. 6 r/w. Section 17 of the Old Act. The Writ Petition was dismissed by the Delhi High Court. Challenge to which was pending before the Apex Court and during pendency of appeal before Their Lordships of the Apex Court, the new Act came into force. In the light of those factual facts, the Hon''ble Apex Court has considered the submissions therein. Thus, it could be seen that the facts in the said case are not identical with the facts in the present case. In the present

cases, after the Award is passed in the year 2006, the petitions are filed after a period of almost eight years. We find that the facts in the present cases would be more nearer to the facts in the case of State of Assam Vs. Bhaskar Jyoti Sarma, , to which we will be making reference in the latter part of the Judgment.

18. No doubt that there are several disputed questions of facts which arise in the present matters. Normally we would have relegated the petitioners to seek a remedy before the Civil Court and get this disputed question of fact decided. However, the insistence on the part of the petitioners and to some extent, their conduct compel us to decide the issues raised in the instant petitions.

19. Though it is contended by the petitioners that possession is not taken, with equal vehemence, it is urged on behalf of the respondents that possession is taken way back in the year 2006. The respondents are relying on various documents in support of this contention.

20. Equally, it is contended by the petitioners that the amount of compensation, as awarded, is not deposited in the reference Court. However, the respondent/State has placed on record an application filed before the learned reference Court way back on 15.10.2009 seeking permission to deposit the amount. It further appears from the application that the reference Court has permitted the amount to be deposited vide order dt. 15.10.2009. It is contended that accordingly an amount of Rs. 10,266/- is deposited in the trial Court. The petitioners have also placed on record a photocopy of the Cheque dt. 12.10.2009 for an amount of Rs. 10,266/-. We find no reason to disbelieve the contention raised by the respondent/State that the amount of compensation has been deposited in the Reference Court.

21. Be that as it may, the petitioners have themselves filed an application before the Collector to make a reference to the Civil Court for enhancement of compensation in the month of December, 2005.

22. In that view of the matter, we find that though reliance placed by the learned Counsel for the petitioners on the Judgment in the case of Pune Municipal Corporation and another (cited supra) is well placed, the said would not be applicable to the facts of the present case.

23. The Apex Court in the case of State of Assam (cited supra) had an occasion to consider the provisions of sub-section 5 of Section 10 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the ULC Act"). In the said case, according to the State, possession was taken on 7th December, 1991. The persons who had purchased the land from the original owners had approached the High Court challenging vesting of the land in the State Government. However, the attempt failed on account of dismissal of appeal by the Secretary of the Government of Assam, Department of Revenue and dismissal of Writ Petition No. 2568 of 1992 by the High Court vide order dt. 21.5.2002. The Writ appeal challenging the order of the Single Judge also came

to be dismissed by the Division Bench of the High Court of Assam. The SLP challenging the same was also dismissed. However, vide notification dated 12th December, 2003, the ULC was notified, which came into force w.e.f. 6.8.2003. According to the State of Assam, the land in question was allotted and handed over to Guwahati Metropolitan Development Authority (GMDA). The said action was also challenged at the instance of the respondents by way of Writ Petition No. 2519 of 2004. The Single Judge of the High Court of Assam dismissed the Writ Petition. Same was challenged before the Division Bench of the High Court by way of appeal. The Division Bench of Assam High Court while setting aside the order of Single Judge, directed restoration of possession of the disputed land to the respondents. Thus, appeal in question was filed before the Apex Court. The main contention raised before Their Lordships of the Apex Court was that it was necessary for the State to have proved that actual physical possession was taken by the State Government or the persons duly authorised by the State Government. It was also contended that, in the event of failure or refusal of the owner to surrender or deliver the same, possession of the surplus land could be taken forcibly also but only in accordance with the procedure prescribed.

24. It was contended that as the actual physical possession was alleged to have been taken without following the procedure prescribed under the said Act, the alleged taking over has been deemed to be non-est in the eyes of law atleast for the purposes of Section 3 of the Repeal Act. It will be relevant to refer to the following observations of Their Lordships of the Apex Court:

"11..... Assuming that to be the case all that it would mean is that on 7th December, 1991 when the erstwhile owner was dispossessed from the land in question, he could have made a grievance based on Section 10(5) and even sought restoration of possession to him no matter he would upon such restoration once again be liable to be evicted under Sections 10(5) and 10(6) of the Act upon his failure to deliver or surrender such possession.

12..... If actual physical possession was taken over from the erstwhile land owner on 7th December, 1991 as is alleged in the present case any grievance based on Section 10(5) ought to have been made within a reasonable time of such dispossession. If the owner did not do so, forcible taking over of possession would acquire legitimacy by sheer lapse of time. In any such situation the owner or the person in possession must be deemed to have waived his right under Section 10(5) of the Act. Any other view would, in our opinion, give a license to a litigant to make a grievance not because he has suffered any regal prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession being in violation of the prescribed procedure.

13..... In the case at hand if the appellant's version regarding dispossession of the erstwhile owner in December, 1991 is correct, the fact that such dispossession was without a notice under Section 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession for

the purposes of Section 3 of the Repeal Act."

(emphasis supplied).

25. It could thus be seen that, in the aforesaid case, the Apex Court has found that if the owner did not make any grievance with regard to illegal dispossession immediately, forcible taking over of possession would acquire legitimacy by sheer lapse of time. It is further observed that any such person or owner must be deemed to have waived his right u/s. 10(5) of the Act. It is further observed by Their Lordships of the Apex Court that, any other view would give a license to a litigant to make a grievance not because he has suffered any real prejudice that needs to be redressed but only because the fortuitous circumstance of a Repeal Act tempted him to raise the issue regarding his dispossession. It has further been held that if the State Government's version regarding dispossession of the erstwhile owner in December, 1991 is correct, the fact that such dispossession was without a notice under Section U/S. 10(5) will be of no consequence and would not vitiate or obliterate the act of taking possession.

26. We find that the facts in the present case are almost identical. The petitioners' lands having been acquired in the year 2004, and according to the respondents, possession was also taken in the year 2006 and not only that, but the petitioners have also made an application to the Collector in the year 2005 itself for making reference to the Civil Court. Only after the fortuitous circumstance of the "the Act of 2013" coming into effect, the petitioners are now raising a grievance regarding possession of lands having not been taken in accordance with law.

27. We further find from the contemporaneous documents placed on record by respondent No. 4 that since the petitioners' lands were acquired at the request of the petitioners and other persons running industries in the acquired land, respondent No. 4 had persuaded the Maharashtra Industrial Development Corporation to allot lands to the petitioners and other Industries at a concessional rate so that their industries are not shut down. It will be relevant to refer to certain documents placed on record by respondent No. 4. The meeting was held on 6th September, 2007 wherein the regional Manager, M.I.D.C., Nagpur, the Executive Engineer, MIDC, Nagpur, General Manager, District Industries Centre, Nagpur, President of M.I.D.C. Association, Nagpur, Vice President of Vidharbha Industries Association, Nagpur were present. The said minutes specifically refer to acquisition of lands of petitioners and one M/s. Mediplast Packaging Nagpur Pvt. Ltd. and proposal to convert 1.14 hectares as open land out of 7.24 hectares land reserved as amenities land and to utilise remaining 6.10 hectares land for industrial purpose. It refers to demand made by the petitioners and M/s. Mediplast Packaging Nagpur Pvt. Ltd. It is relevant to note that though the land acquired is 1075 sq. metres, the petitioners have demanded 3000 sq. meters land. Accordingly, the said Committee recommended conversion of 0.93 hectares of land for industrial purpose and sent the proposal to the Headquarters of the M.I.D.C. Another noting of the M.I.D.C. dt. 26th

September, 2007 refers to demand made by the petitioners and M/s. Mediplast Packaging Pvt. Ltd. It also refers to the exorbitant demand made by the petitioners and the recommendation that only that much of the land should be allotted to the petitioners which is commensurate with the land acquired for the MIHAN project.

28. It further appears that, in the meeting of the Board of Directors of the M.I.D.C. dt. 15.10.2007, it was decided to give lands to the petitioners as well as M/s. Mediplast Packaging Pvt. Ltd. at the commercial rate. However, it appears that the Government of Maharashtra through its Additional Chief Secretary, Urban Land Development and Secretary, General Administration Department (GAD) had requested to grant land to the petitioners and other industries at the rate of Rs. 700/- per square meters. It further appears from the record that, in the meeting dt. 21.1.2008 of the Board of Directors the M.I.D.C., it was decided to grant lands to the petitioners @ Rs. 1750/- per square meter and not at the concessional rate. It further appears from the communication dt. 7.5.2008 that the M.I.D.C. was of the view that the lands to be granted to the petitioners and other industries should be granted at the commercial rate and if respondent No. 4 wants the land to be granted at a lesser rate then balance amount should be paid by respondent No. 4. However, it further appears that, a request was again made by respondent No. 4 for grant of land at the reduced rate. The communication dt. 14.6.2008 further refers to the request made by respondent No. 4 for grant of lands to the petitioners and other industries at a concessional rate. It appears that accepting the request made by respondent No. 4, ultimately the M.I.D.C. agreed to grant lands to the petitioner and other industries @ Rs. 1150/- per sq. meter. The communication at page No. 116 of the record dt. 11.10.2011 would reveal that the land admeasuring 1075 sq. meter has been allotted to the petitioners @ Rs. 1150/- per sq. meter for total amount of Rs. 12,36,300/-. Possession receipt placed on record at page No. 115 would also reveal that the possession is handed over to the petitioners by the M.I.D.C. On 20.12.2008.

29. After almost a period of 5-6 years when the aforesaid events have taken place, now the petitioners want to contend that possession of the lands is not taken. In response to the specific averments made on behalf of respondent No. 4 pointing out its efforts for grant of land at a concessional rate to the petitioners, now the petitioners contend that said allotment has nothing to do with acquisition of lands. It is argued by Mr. S.S. Joshi, learned Counsel for the petitioners that after the petitioners' lands were acquired, the petitioners having left with no other alternative, had approached the M.I.D.C. for grant of lands so that they can shift the Industry there. A innocuous question is asked to us by Mr. Joshi, learned Counsel for the petitioner that if somebody's land is compulsorily acquired, can he be estopped to go to some other organisation and seek allotment of land. If the contention of the petitioners is to be accepted, all the contemporaneous record of communications between respondent No. 4 and the M.I.D.C. will have to be ignored.

30. We have come across a Writ Petition yesterday wherein this Court had an opportunity to examine the policy of the M.I.D.C. regarding allotment of land in the Industrial areas at Nagpur and Bubitori. That policy stipulates that land has to be allowed only by auction. The policy further requires that, in case of single bid, the land should not be allotted to the single bidder and it should be re-advertised. Since Mr. M.M. Agnihotri learned Standing Counsel for the M.I.D.C. is present in the Court today, we have asked him whether there is a policy of the M.I.D.C. of allotting land to some one who walks in the Office. Mr. Agnihotri, informed us that, so far as the prime M.I.D.C. areas like Nagpur, Hingna and Butibori are concerned, the lands are allotted only by inviting tenders.

31. To a specific averment made on affidavit by respondent No. 4 that it is only on account of their intervention that the lands were allotted to the petitioners by the M.I.D.C., except evasive denial, nothing is placed on record. We find that the petitioners have indulged into the act of approbate and reprobate. After the lands were being acquired by the State for respondent No. 4, the petitioners appear to have pleaded with the respondent No. 4 that it should use its good Offices to get the lands at M.I.D.C. Hingna at the concessional rate and after having been successful in getting the lands at concessional rate in the year 2008, after "the Act of 2013" came into effect in the year 2014, they have turned back contending that possession of the land is not taken and sought a declaration that the reservation has lapsed. We have no hesitation to say that the conduct of the petitioners to say the least is dishonest one.

32. Had possession of the petitioners' lands factually been not taken in the year 2006, what was occasion there for them to file reference. If it was not actually taken in the year 2006, what prevented them from taking appropriate steps and what made them to sit idle for eight years. We find that the conduct of the present petitioners is almost identical with the conduct of the party in the case of State of Assam (cited supra). The only difference is that, in the said case, the party wanted to take advantage of repeal of the ULC Act and in the present case, the petitioners are seeking to take advantage of coming into effect of the Act of 2013 (new Act).

33. In the totality of circumstances, we find that the petitions are devoid of merits. The petitioners have approached this Court with ill-intention of taking advantage of coming into effect of "the Act of 2013", after having derived the benefits on account of acquisition of lands, which had become final under the provisions of the old Act.

The petitions are, therefore, dismissed with costs which are quantified at Rs. 25,000/- in each of the petitions. Rule is discharged.

The amount of costs be deposited with the High Court Legal Services Sub-Committee, Nagpur within a period of six weeks from today.