
(2016) 02 BOM CK 0261

In the Bombay High Court

Case No : Writ Petition No. 11616 and 11259 of 2014.

Shri. Bapuso Narayan Kulkarni (deceased) through Lrs and
Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013 — Section 24

Citation : (2016) 165 AIC 521 : (2016) 3 AIRBomR 243 : (2016) 4 ALLMR 906 :
(2016) 6 BCR 144 : (2016) 3 MhLJ 384

Hon'ble Judges : A.S. Oka;C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : Sanjeev P. Kadam, Advocate, for the Appellant; M.P. Thakur, A.G.P,
for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Oka, J.(Oral) - Heard the learned counsel appearing for the Petitioners and the learned AGP for the Respondents. On the last date, the parties were put to notice that the Petitions will be taken up for final disposal at admission stage. In Writ Petition No. 11616 of 2014, the challenge is to the Award dated 30th September, 2002 under Section 11 of the Land Acquisition Act, 1894 (for short "the said Act of 1894"). The main contention raised in the Petition is that in view 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"), acquisition proceedings shall be deemed to have been lapsed. This contention is mainly based on the assertion that the compensation amount has not been paid.

2. In Writ Petition No. 11259 of 2014, the challenge is to the Award made on 21st January, 2004 under Section 11 of the said Act of 1894. The main challenge is on the same ground as in the other Writ Petition. In both the Writ Petitions,

there is an affidavit in reply filed by the State Government by Dr. Swati K. Deshmukh-Patil, the Deputy Collector (Land Acquisition No. 12) Kolhapur. The stand taken in both the affidavits in reply is that though notices were served to the owner/persons interested in the acquired lands, they did not come forward to collect the compensation. Therefore, the compensation amount has been deposited in the Government PLA (Personal Ledger Account).

3. On this aspect, the law is no more res-integra. These two cases will be governed by the decision of the Apex Court in the case of Pune Municipal Corporation and Another v. Harakchand Misrimal Solanki, (2014) 3 SCC 183. The Apex Court interpreted Sub-Section (2) of Section 24 while dealing with the issue whether the offer of the compensation to the owner/persons interested will be covered by the word "paid" used in Sub-Section (2) of Section 24. Paragraphs 15 to 17 of the said decision read thus :-

"15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

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 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 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.

(underline added)

4. Ultimately, in paragraphs 20 the Apex Court held thus :-

"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."

(underline added)

5. Hence, in the present case, the deposit of the compensation amount in PLA Account is hardly of any significance. The PLA Account is an account in the Government Treasury. Therefore, as held in paragraph 20 of the aforesaid decision, 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 land owner/persons interested.

6. Hence, the Petitions must succeed as Sub-Section (2) of Section 24 will be applicable.

7. Accordingly, Rule is made absolute in terms of prayer clause (b) of both the Petitions.

8. We, however, clarify that the impugned Award of acquisition stands set aside only in relation to the lands claimed by the Petitioners which are described in paragraph 1 of both the Petitions. The Acquisition in respect of other lands covered by the impugned Awards shall continue to be valid.

9. We also clarify that it will be open for the State Government to initiate fresh proceedings for acquisition of the lands subject matter of these Petitions in accordance with law. There will be no order as to costs.