

Writ Petition No. 5162 of 2014

Yuvraj Laxman Jadhav v. State of Maharashtra

2017 SCC OnLine Bom 4007

In the High Court of Bombay
Civil Appellate Jurisdiction

(BEFORE MANJULA CHELLUR, C.J. AND G.S. KULKARNI, J.)

Shri. Yuvraj Laxman Jadhav & Ors. Petitioners

v.

State of Maharashtra & Ors. Respondents

Writ Petition No. 5162 of 2014

Decided on February 28, 2017

Mr. Dormaan Dalal i/b Mr. Sugandh B. Deshmukh for Petitioners.

Mrs. M.P. Thakur, AGP for State.

P.C.

G.S. KULKARNI, J.:— The petitioners have approached this Court seeking the following principal reliefs:—

"[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order hereby declaring that the pending proceedings initiated by the Respondent Nos. 1 to 3 for acquisition of the said land of the Petitioners have lapsed and come to an end, and thereafter declare that the Notification dated 25th March 1998 under Section 6 of the Land Acquisition Act 1894, the notification dated 25th March 1998 under Section 17(1) of the Land Acquisition Act and the Notification dated 13th March 1996 under Section 13(1) of the Maharashtra Project Affected Persons Rehabilitation Act 1986 and the Award that has been passed on 28th May 2000 passed by Respondent No. 3 be declared invalid and not binding on the Petitioners.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order directing the Respondent Nos. 1 to 3 not to take possession of the Petitioners'suit property."

2. The above prayers that the acquisition of the land has lapsed, are being pressed relying on the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, '2013 Act') and relying on the decision of the Supreme Court in the case of *Pune Municipal Corporation v. Harakchand Misirimal Solanki*¹.

3. In nutshell, the facts are:—

The land in question having Gat Nos. 168, 138, 998, 773, 962, 135, 948, 955, 921, 323 and 973 comprised in the benefited zone of Urmodi Medium Irrigation Project (for short, 'Urmodi Project').

4. A notification dated 02/07/1981 under Section 11(1) of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short, '1976 Act') was published making the provisions of the said Act applicable to the Urmodi Project. The 1976 Act was amended and the new Act namely Maharashtra Project Affected Persons Rehabilitation Act, 1986 ('for short, '1986 act') was brought into force. On 31/10/1985, mutation entry no. 1702 was effected in consequence of the notification issued under Section 12 under the 1976 Act by which restrictions were imposed on

transfer, alienation and subdivision of the said land without obtaining necessary permission. Mutation entry no. 1702 was made pertaining to all the lands in the benefited zone which included the petitioners' land as well. On 20/02/1987, a final notification under Section 15(1) of the 1976 Act was published. On 01/01/1990, the 1986 Act was brought into force by notifying the appointed date. The 1986 Act was thereafter repealed, *inter alia*, saving the actions not inconsistent with the 1986 Act and the Maharashtra Project Affected Persons Rehabilitation Act, 1999. On 13/03/1996, the State of Maharashtra published a final notification under Section 13 (1) of the 1986 Act, *inter alia*, declaring the benefited zone under the Urmodi Project and the slabs mentioned in Part II of the Schedule of the 1986 Act for the purpose of acquisition of the land in the benefited zone, under the project. As regards the petitioners' land, slabs were accordingly declared.

5. On the above background, on 03/07/1997, a notification under Section 4 of the Land Acquisition act, 1894 (for short, '1894 Act') was published for the purpose of acquiring the land as falling under the benefited zone. After hearing objections as per the requirement under Section 5A of the 1894 Act, a declaration under Section 6 came to be made on 06/04/1998 along with the declaration invoking urgency under Section 17 of the 1894 Act. The petitioners had approached this Court in Writ Petition No. 2354 of 1998 challenging Section 6 read with Section 17 notification dated 25/03/1998 as also the notification dated 13/03/1996 issued under Section 13(1) of the 1986 Act. During the pendency of the said petition, on 28/05/2000, an award came to be passed, acquiring the petitioners' land. The petitioners have also made a reference to Contempt Petition No. 195 of 1999 filed before this Court. The learned Single Judge had passed an order dated 02/02/2000 recording the statement of the Special Land Acquisition Officer that the land of the petitioners be returned to the petitioners on or before 29/02/2000, pursuant to which, the land was given back to the petitioners on 29/02/2000 vide mutation entry no. 3332. Writ Petition No. 2354 of 1998 was heard finally by a Division Bench of this Court (Coram: A.S. Oka and S.C. Gupte, JJ) and by a Judgment and Order dated 28/11/2013, the same was dismissed. The interim relief which was granted in the petition, was, however, continued for a period of 12 weeks.

6. The case of the petitioners is that on 01/01/2014, the 2013 Act was brought into force. The petitioner contends that on this day, the possession of the said land was with the petitioner and the same was not taken over by the respondents. In para 11A of the petition, the petitioners have stated that the possession of the land has not been taken over by the respondents. Petitioners also rely on 7/12 extract pertaining to the said land. Accordingly, they state that they have continued to be in physical possession despite the award. It is also stated that ever-since passing of the award and till the filing of this petition, the amount of compensation has not been paid to the petitioner. It is the petitioners' case that the provisions of Section 24(2) of the 2013 Act are thus squarely applicable on account of the possession of the land not being taken over by the respondents and the compensation amount not being paid for acquisition of the petitioners' land and hence by operation of law, the acquisition proceedings have lapsed.

7. The respondent - State has filed a reply affidavit dated 18/01/2017 of one Dhanaji Kisanrao Patil, Deputy Collector, Land Acquisition No. 4, Satara. In para 9 of the said affidavit, the deponent has admitted that the possession of the land which was taken over, was returned to the petitioners in pursuance of the order dated 02/02/2000 passed in Contempt Petition No. 195 of 1999. It is stated that the possession was accordingly returned to the petitioners on 29/02/2000 vide mutation entry no. 3332. The respondents have also not disputed that by virtue of continuation of the interim order in Writ Petition No. 2354 of 1998, in the final orders passed by the Division Bench, the petitioners continue to be in physical possession of the land. In

para 16 of the affidavit, the deponent stated that the petitioners have not accepted the compensation amount and filed Contempt Petition No. 195 of 1999. The deponent, however, does not say that the amount of compensation was deposited in the Court as per the requirement of Section 31 of the 1894 Act. In para 19 of the reply affidavit, it is contended that the land of these petitioners is falling under the benefited zone of Urmodi and that appropriate slabs have been applied and thus, the lands stand acquired under the 1894 Act. There is an additional affidavit filed on behalf of the respondents of Mr. Dhanaji Patil dated 17/02/2017, *inter alia*, raising a contention that the petitioners had earlier approached this Court by filing Writ Petition No. 2354 of 1998 which came to be dismissed and that the petitioners cannot file another petition on the same cause of action. In para 5, the deponent has admitted that possession of the land could not be taken as the issue was pending in Writ Petition No. 2354 of 1998 which came to be decided on 28/11/2013. In para 5, the deponent has stated as under:—

"5. I say that it is true that this Respondent could not take the possession of the said property as the issue was pending in this Hon'ble Court. Subsequently, W.P. No. 2354 of 1998 was dismissed by this Hon'ble Court by an order dated 28.11.2013. By this dismissal, the challenge made in W.P. No. 2354 of 1998 was rejected and the proceedings initiated by the Land Acquisition Officer, were declared as valid. However, in view of oral application made by the Petitioner, interim relief granted earlier, the stay was continued for a further period of 12 weeks. Therefore, this Respondent could not take possession of land from the Petitioners, till today, and no amount of compensation is paid to the Petitioner."

(Emphasis supplied)

8. Learned Counsel for petitioner contends that the provisions of Section 24(2) of the 2013 Act have accordingly become applicable to the facts in hand qua the petitioners' land, inasmuch as, though the petitioners had earlier approached this Court in Writ Petition No. 2354 of 1998 which came to be dismissed, however, by operation of law namely Section 24(2) of the 2013 Act, which came into force on 01/01/2014, the acquisition has lapsed by virtue of possession of the land being not taken over by the respondents as also the amount of compensation being not received by the petitioners. It is submitted that in para 5 of the additional affidavit, the respondents have clearly admitted that possession of the land in question is with the petitioners as also the amount of compensation was not paid to the petitioners. Learned Counsel for petitioners, therefore, urged that the petition be allowed.

9. On the other hand, learned AGP has supported the case of the respondents relying on the affidavits-in-reply and has made submissions in terms of the averments as made in the reply.

10. On hearing the learned Counsel for parties and on perusing the documents as placed on record, we are of the opinion that there is much substance in the contention as urged on behalf of the petitioners. There is no dispute that the lands of the petitioners were the subject-matter of acquisition as they were falling under the benefited zone of Urmodi Project. There is also no dispute that after a lawful procedure was followed by issuance of Section 4 notification and thereafter Section 6 notification dated 25/03/1998 along with urgency clause under Section 17(1) of the 1894 Act, as also a notification under Section 13(1) of the 1986 Act having being issued, an award came to be passed on 20/05/2000. The petitioners had approached this Court challenging the notification issued under Section 6 of the 1894 Act and the notification issued under Section 13(1) of the 1986 Act. The petition was heard finally by a Division Bench of this Court and was dismissed by a Judgment and Order dated 28/11/2013.

11. Be that as it may, the fact remains that though the possession of the land was

taken over by the respondents in pursuance of the interim order and the order dated 02/02/2000 passed by the learned Single Judge in Contempt Petition No. 195 of 1999, possession of the land came to be returned to the petitioners on 29/02/2000. From the affidavit on behalf of the respondents, there is no dispute that the petitioners are in possession of land and therefore one of the requirements of possession of the land being not taken over, relevant for the purpose of Section 24(2) of the 2013 Act, according to the petitioners, stand satisfied.

12. In examining this contention, we may also refer to the order dated 02/02/2000 passed by the learned Single Judge of this Court (H.L. Gokhale, J., as His Lordship then was) in Contempt Petition No. 195 of 1999. The order reads thus:—

"Heard Mr. Anturkar for the petitioner. Mr. Shetye, A.G.P., appears for the respondent nos. 1 and 2. Mr. Shetye has filed an affidavit in reply of one Dattatraya R. Khomane, Special Land Acquisition Officer No. 4, Satara. It is stated that the land of the petitioner was taken over by mistake and he further states that it will be returned to him. Mr. Shetye also states that the lands of all other petitioners in Writ Petition No. 2354 of 1998 who are similarly situated to the present petitioner (and whose contempt petition arises out of the order in Writ Petition No. 2354 of 1998), will be returned to them on or before 29.2.2000. It will be for the officer concerned to give a notice to the concerned agriculturists and on that date they will remain present and take over the lands. The petition stands disposed of in terms of this order."

(Emphasis supplied)

13. Reading of the above order clearly indicate that the possession of the land was taken over by mistake. As also seen from the contents of the additional affidavit dated 17/02/2017 of Mr. Dhanaji Patil filed on behalf of the respondents, it is clear that possession of the land could not be taken over and has remained with the petitioners till date.

14. As regards the next contention, in regard to payment of compensation, the respondents have clearly admitted that the amount of compensation is not paid to the petitioners though the award came to be passed on 20/05/2000. It is also not the case of the respondents that the amount of compensation was deposited in the Civil Court as per the requirement of Section 31 of the 1894 Act. Thus, both the requirements namely possession of his land not being taken over under the award and the amount of compensation not being paid to the petitioners relevant for the purpose of Section 24(2) of the 2013 Act, stand satisfied to hold that the acquisition of the petitioners' land has lapsed.

15. Considering the above clear factual matrix, we are of the opinion that by operation of law, namely, sub-Section(2) of Section 24 of the 2013 Act, the acquisition proceedings qua the petitioners' lands have lapsed. The reliance of the petitioners on the decision of *Pune Municipal Corporation* (supra) is also apposite on the issue, namely, on the requirement of sub-Section (2) of Section 24 of the 2013 Act being satisfied. We accordingly pass the following order:—

ORDER

- i) The acquisition of the petitioners' land namely Gat Nos. 168, 138, 998, 773, 962, 135, 948, 955, 921, 323 and 973 at Village - Atit, District - Satara, as acquired under the award dated 20/05/2000, has lapsed in terms of sub-Section (2) of Section 24 of the 2013 Act.
- ii) It is, however, clarified that if the State Government requires the land for public purpose, then it would be permissible for the State Government to initiate acquisition proceedings, afresh, as per the provisions of the 2013 Act.
- iii) We make it clear that the acquisition would stand lapsed only in relation to the land/subject matter of this petition and no adjudication is made in regard to the

legality of the acquisition of other lands which may be subject matter of the larger acquisition, if any.

iv) Writ Petition is allowed in the above terms.

v) There shall be no order as to costs.

¹ (2014) 3 SCC 183

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