

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 16th OF AUGUST, 2022

WRIT APPEAL No. 817 of 2020

Between:-

- SMT. GODAVARI D/O LATE SHRI RANCHOD PATIDAR , AGED ABOUT 49 YEARS, OCCUPATION: HOUSE WIFE GRAM-NISARPUR TEH. KUKSHI (MADHYA PRADESH)**
- 1.

- SMT. LAXAMI D/O LATE SHRI RANCHOD PATIDAR D/O LATE SHRI RANCHOD PATIDAR ,AGED ABOUT 43 YEARS, OCCUPATION: HOUSEWIFE GRAM- NISARPUR (MADHYA PRADESH)**
- 2.

.....APPELLANTS

(BY SHRI ROHIT KUMAR MANGAL, ADVOCATE)

AND

- NARMADA VALLY DEVELOPOMENT AUTHORIOTY PRINCIPAL SECRETARY**
1. **VALLABH BHAWAN MANTRALAYA BHOPAL (MADHYA PRADESH)**

- EXECUTIVE ENGINEER NARMADA VALLEY DEVELOPMENT AUTHORITY (NVDA)**
2. **DIVISION. NO. 22, BARWANI (MADHYA PRADESH)**

- COLLECTOR / DISTRICT MAGISTRATE**
3. **DHAR (MADHYA PRADESH)**

- LAND ACQUISITION OFFICER TEH. KUKSHI,**
4. **DIST. DHAR (MADHYA PRADESH)**

- TEHSILDAR KUKSHI DIST. DHAR (MADHYA PRADESH)**
- 5.

.....RESPONDENTS

(BY SHRI VIVEK PATWA, ADVOCATE FOR THE RESPONDENT NO.1)

.....
Reserved on 24.06.2022
Delivered on 16.08.2022
.....

*This appeal coming on for judgement this day, **JUSTICE SUBODH ABHYANKAR** passed the following:*

J U D G E M E N T

Heard.

2. This writ appeal has been preferred under Section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nayaypeeth Ko Appeal) Adhiniyam, 2005, against the order dated 13.08.2020, passed by the writ Court in W.P. No.3921 of 2017, whereby the writ petition filed by the appellants seeking relief in the nature of lapse of land acquisition proceedings initiated against them earlier, by invoking Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'Right to Fair Compensation Act, 2013'), has been dismissed by holding that the compensation was tendered by notice issued under Section 12 of the Land Acquisition Act, 1894.

3. The contention of the appellants is that there is no evidence available on record that the said notice was ever served to the predecessor in title of the land in question from whom the appellants derive their title.

4. In brief, the facts of the case are that the father of the appellants late Shri Ranchod Patidar was the owner of an agricultural land situated at Survey No.86/1 ad-measuring 1.206 hectare at Gram Nisarpur, Tehsil Kukshi, District – Dhar. On 09.02.2002 the aforesaid land was acquired by the respondents for the purpose of rehabilitation of oustees of Sardar Sarovar Project and an award in case No.21/A-82/2000-01 was passed under Section 11 of the Land Acquisition Act,

1894. It is alleged that on 21.10.2002, a notice under Section 12 was issued to the father of the appellants, however, it was never served on him and subsequently Shri Ranchod Patidar, the predecessor in title executed a Will and bequeathed the land in question to the appellants on 29.11.2022, thus, the appellants have become the owners of the land. It is further the case of the appellants that On 01.01.2014, the Right to Fair Compensation Act, 2013 was enforced, and Section 24 of which provides for lapse of land acquisition proceedings under certain circumstances. As per sub-section (2) of s.24, the land acquisition proceedings shall lapse in the circumstances when neither possession was taken over nor compensation was paid in pursuance of the award passed under the Land Acquisition Act, 1894 and according to the appellants, despite acquisition of the land on 09.02.2002, within the period of five years therefrom, neither compensation was paid to the appellants nor the possession was taken over from them, hence, a right has accrued to them regarding lapse of acquisition proceedings and since the respondents were trying to take over the possession of the land forcefully, hence, W.P. No.3921 of 2017 was filed before this Court in which on 04.04.2019, a reply was also filed by the State and it was admitted that neither the possession has been taken over nor compensation has been paid. A rejoinder in the aforesaid writ petition was also filed by the appellants stating that a notice under Section 12 was never served to the father of the appellants and nor the compensation amount was ever tendered nor offered nor received by the father of the appellants, but the aforesaid writ petition came to be dismissed by the writ Court vide the impugned order dated 13.08.2020. Hence, this appeal.

5. Counsel for the appellants has submitted that there is no evidence available on record to show that the compensation amount was ever tendered or offered as per Section 31 (1) of The Land

Acquisition Act, 1894 and in its absence, it cannot be said that the compensation amount was tendered to the predecessor in title of the land in question. It is further submitted that the learned Judge of the writ Court has wrongly held that the notice dated 21.10.2002, which has been filed as Annexure R/3 was duly served to the father of the appellants, as to support this finding there is no evidence available on record in the form of any acknowledgment of the service of the notice on the father of the appellants or any other male members of the family nor any other documents evidencing the service of notice to the predecessor in title of the appellants. It is further submitted that in the rejoinder the appellants have specifically averred that no such notice was ever served to the father of the appellants, but the aforesaid averments have also not been rebutted by the respondents by filing any additional reply.

6. Counsel has also submitted that the learned writ Court has also misread the Will and has wrongly held that the only right to obtain compensation was granted by Late Shri Ranchod Patidar in favour of the appellants, despite the fact that in the Will dated 29.11.2011, it is provided that the appellants will be entitled to equal shares either in agricultural land or in compensation. It is further submitted that the finding recorded by the learned writ Court that after the death of Ranchod Patidar, the names of the appellants were not mutated is contrary to the facts on record as the learned writ court lost sight of the fact that the aforesaid land was already acquired by the State and the award was passed in the year 2002 and in the year 2009 the land was also mutated in the name of the respondents and as such there was no occasion for the appellants to get their names mutated in the land record. It is further submitted that the writ Court also erred in holding that father of the appellants was aware about the land acquisition proceedings, which cannot be taken as a circumstance to

bypass the requirement of Section 24(2) of The Right to Fair Compensation Act, 2013 as mere knowledge of the land acquisition proceedings is of no consequence under the aforesaid section. It is also submitted that the compensation was not tendered to Ranchod Patidar in accordance with s.31 of the Land Acquisition Act and in their rejoinder also the petitioners have specifically averred that notice Annexure-R/3, of compensation u/s.12 of the Act of 1894 was never served on Ranchod Patidar in any manner and even on the said notice, there is no endorsement of Ranchod Patidar or his family members to demonstrate that it was actually served on him, but despite such averments in the Rejoinder of the petitioners, the respondents have not filed any counter affidavit and documents denying the same. Thus, it is submitted that the impugned order be set aside and the appeal be allowed and reliefs so sought by the appellants in their writ petition be extended to them.

7. Counsel for the respondents/State, on the other hand, has opposed the prayer and it is submitted that no illegality or jurisdictional error has been committed by the learned Judge of the writ Court and the finding arrived at is on the basis of the documents on record only, hence, no case for interference is made out.

8. Heard counsel for the parties and perused the record.

9. So far as the order passed by the single judge is concerned, it reads as under:-

“11. According to the petitioners, Ranchhoddas executed a will in their favour in respect of the land bearing survey No.86/1 which is filed as Annexure P/1. In Para 2 of the will Ranchhoddas has himself mentioned that land bearing survey No.86/1 has already been acquired and in Para 5 he gave the equal share to the petitioners in the amount of compensation and other benefits under the rehabilitation policy, therefore, Ranchhoddas was aware about the acquisition of the land and payment of compensation of land bearing survey No.86/1 and he bequeathing that right to receive compensation in equal share to the petitioners. The N.V.D.A. Deposited the entire amount of

compensation in the office of Land Acquisition Officer, Kukshi and except petitioners 54 land owners have withdrawn the amount. The name of the respondent No.2 has already been mutated in the revenue record. After the death of Ranchhoddas on the basis of will petitioners never tried to get their name mutated in the revenue record.

12. So far the applicability of Section 24(2) in the present case is concerned, the Apex Court in the case of **Indore Development Authority V/s. Manoharlal & Others** (supra) has considered the provision of Section 24(2) in respect of payment/deposit of the compensation in Para 256 the Apex Court has held that if the amount has been deposited in the treasury under the Rules framed under Section 54 or under the standing order that carry the interest has envisaged under Section 34 but the acquisition would not lapse on such deposit being made in the treasury. In case the amount has been tendered and the land owner has refused to receive it, it cannot be said that liability arising from the non-payment of amount is that of lapse of acquisition. The interest would follow in a case also due to non-deposit of amount.

Para 256 is reproduced below :-

“Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the word “deposited”, which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being ‘prevented’ from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court.”

13. In Para 363 the Apex Court has finally answered all the questions and according to Sub Para 4 also non-deposit of compensation in Court does not result in lapse of land acquisition proceeding. In case of non-deposit with respect to majority of the holdings for 5 years or more the compensation under the Act of 2013 has to be paid to the land owner. In case person has been tendered the compensation as provided under Section 31(1) of the Act it is not open to him to claim that acquisition has lapsed under Section 24(2). The obligation of pay is complete by tendering the amount under Section 31(1) of

the Act.

14. Sub Paras 4 & 5 of Para 363 are reproduced below :-

“(4) The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

(5) In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.”

15. In the present case except the petitioners all the 54 land owners had already received the compensation. The total amount of compensation was deposited by the N.V.D.A. Before the Land Acquisition Officer. The father of the petitioner was served with the notice to receive the compensation but he choose not to receive the same at the relevant point of time. The name of the respondent No.2 has already been mutated by virtue of the award. The petitioners are only daughters of the original owner Ranchhoddas, who have been given right to receive compensation under the will, therefore, in view of the judgment passed by the Apex Court in the case of **Indore Development Authority V/s. Manoharlal & Others** (supra) the present persons are not entitled to seek declaration that the proceeding has been lapsed by virtue of Section 24(2). Accordingly, the petition is **dismissed**. Petitioners are directed to receive the compensation and handover the possession peacefully to the respondents without any obstruction or hindrance.”

10. In the backdrop of the aforesaid submissions and the order passed by the writ court, it is undisputed that the possession of the land was not taken by the respondents even after its acquisition in the year 2002, thus, the only question which remains to be answered is whether the respondents, after making of the award, has also tendered

the compensation in accordance with Section 31 of the Act of 1894.

Section 31 reads as under:-

“Section 31. Payment of compensation or deposit of same in Court.--

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 sub-section.

(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:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of ¹[appropriate Government], instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.”

11. So far as the pleadings of the respondents in their reply are concerned, the same read as under:-

“5. It is submitted that the respondent No.3 by virtue of award dated 9.2.2002 granted compensation to the 54 Agriculturist/revenue account holders for the land acquired for the purpose of rehabilitation of the oustees of the Sardar Sarovar Project, except petitioner all other agriculturist/revenue account holders received their amount of compensation.

6. It is submitted that the contentions raised by the petitioners in the petition are misconceived. The petitioners had not received the amount awarded to them

by virtue of award dated 9.2.2002. It is also submitted that after passing of award, the respondents in accordance with law received the information under Section 12 of the Land Acquisition Act 1994 with respect to declaration of aforesaid award dated 9.2.2002. The copy of the information is annexed and marked as Annexure R/3.”

12. A bare perusal of the aforesaid pleadings makes it clear that there is no reference of any date on which the notice dated 21.10.2002 u/s.12 of the Act of 1894 was served on Ranchod Patidar. S.12(2) of the Act of 1894, which is relevant, reads as under:-

“S.12 Award of Collector when to be final:-

(1). xxxxxxxxxxxx

(2). The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

13. The respondents have also not filed any counter affidavit to rebut the assertions made by the petitioners in their rejoinder regarding non-receipt of the notice u/s.12 of the Act of 1894. It is also found that the respondents have not stated as to when the amount of compensation was deposited in the concerned court as envisaged u/s.31 of the Act of 1894.

14. We are also of the opinion that merely because the deceased Ranchod Patidar has mentioned it in his Will that the appellants can get the land or the compensation of the acquisition proceedings, in the absence of any other material on record, it cannot be presumed that he also received the notice Annexure-R/3 u/s.12 of the Act of 1894. So far as the compensation received by the other 54 Agriculturists are concerned, it also does not give rise to a legal presumption that Ranchod had also received the notice of compensation u/s.12 of the Act of 1894. In the case of *Indore Development Authority (supra)*, it has been held by the Supreme Court as under:-

“366.3. The word “or” used in Section 24(2) between possession and compensation has to be read as “nor” or as “and”. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to

inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression “paid” in the main part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the “landowners” as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.”

(emphasis supplied)

15. In view of the aforesaid discussion, when the respondents have failed to prove that the compensation was paid to the petitioners (their predecessor in title Ranchod Patidar) as provided u/s.31 of the Act of 1894, and there is an admission in para 8 of their reply that they have still not taken the possession of the land in question, as according to them the petitioners are not handing over the physical possession of the land in question to the respondent, this court is unable to agree with the findings recorded by the learned single judge of the writ court.

16. Resultantly, the impugned order is set aside, **the appeal stands allowed** and the land acquisition proceedings with regard to the land acquisition case No.21-A/8/2000-1 are hereby quashed and respondents are directed not to interfere with the appellant's possession of the land bearing Survey No.86/1 ad-measuring 1.206 Hectare.

17. Appeal stands disposed of, accordingly.

(Subodh Abhyankar)
Judge

(Satyendra Kumar Singh)
Judge

Pankaj