

CWP No. 12720 of 2016
DATE OF DECISION :- June 29, 2016

Versus

State of Haryana and others **...Respondents**

HON'BLE MR. JUSTICE A.B. CHAUDHARI

Mr. Gagan Deep Singh Wasu, Additional Advocate General,
Haryana.

M.JEYAPPAUL, J.

1. The petitioner No. 1 is the owner in possession of land measuring 35 Kanals 2 Marlas, comprised in Rectangle No. 1, Khasra No. 16/1/1 (7-3), 16/1/2 (0-4), 25/2/1 (2-12), 17 (8-0), 24/1 (1-0), 24/2 (7-0), 23/3 (3-0), Rectangle No. 2, Khasra No. 19/2/1 (3-4), 19/2/2 (1-4), 22/2/1 (0-10), 23/1 (0-3), 3/2/1/1 (1-02). Similarly the petitioner no. 2 is the owner in possession of land measuring 13 Kanals 11 Marlas, comprised in Rectangle No. 2, Khasra No. 20 (7-7), 21/1 (6-4), situated in Gurgaon.

2. The aforesaid land became subject matter of land acquisition proceedings when a Notification under Section 4 of the Land Acquisition Act, 1894 was issued by the Respondent State on 29.01.2003 which culminated in an Award dated 14.03.2006 and Supplementary Award dated

27.02.2007.

3. The petitioners contend that they have been making representations to the concerned authorities with regard to the release of the said land throughout the proceedings and their land has been recommended to be released from the acquisition by the State of Haryana twice. The petitioner has also approached this Court twice, i.e., by CWP No. 9245 and 9246 of 2004 and more recently by CWP No. 2292 of 2015. This Hon'ble Court by its order dated 28.07.2005 in CWP No. 2292 of 2005 had directed that the petitioners be allowed to file its representation before the respondent's Zonal Committee within a period of two months and that the same be decided in four months thereafter. The petitioner filed its representation on 19.08.2015 and even though the four month period for deciding the same has expired, no action has been forthcoming. It is contended that the possession of the said land has remained with the petitioner and no compensation has ever been paid to it. Therefore it is contended that the acquisition proceedings with respect to the petitioner's land have lapsed in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 ("New Act").

4. Section 24 of the 2013 Act, being relevant is reproduced hereunder, for the kind convenience and ready reference of this Hon'ble Court :-

“Section 24 – Land acquisition process under Act No. 1 of

1894 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 -

(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 proceedings 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 sub section (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 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”.

5. The Hon'ble Supreme Court in the case of Pune Municipal Corporation and Anr. Vs. Harakchand Misirimal Solanki and others, reported as 2014(3) SCC 183, interpreted Section 24(2) of the New Act as under :

“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 land owners/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 land owners/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.

21.Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied.....”.

6. The aforesaid judgment has been reiterated by the Hon'ble Supreme Court in Bharat Kumar v. State of Haryana and Anr., reported as (2014) 6 SCC 586 and in Bimla Devi and Ors. Vs. State of Haryana and Ors., reported as (2014) 6 SCC 583 and more recently in its judgment dated 28.4.2016 in Civil Appeal No. 4544 of 2016 titled as D.D.A. v. Reena Suri and Ors.

only question that arises in this petition is whether either of the conditions under Section 24(2) of the New Act are satisfied in the Petitioner's case.

8. We had on the last date of hearing given time to the Addl. A.G. to take instructions on the matter. It is found that neither the possession of the land has been taken from the petitioners nor has the compensation ever been paid to them. The petitioners have also filed Jamabandis with respect to the said land issued on 16.01.2015 to demonstrate their possession. This is in spite of the Award having been passed as early as 2006 and the supplementary award in 2007. Given the same the case of the petitioner satisfies both the tests of Section 24(2) as laid down by the Hon'ble Supreme Court.

9. In that view of the matter, the Writ Petition is allowed in terms of prayers (ii), (iii), and (iv) and the acquisition proceedings with respect to the petitioner no. 1's land comprised in Rectangle No. 1, Khasra No. 16/1/1 (7-3), 16/1/2 (0-4), 25/2/1 (2-12), 17 (8-0), 24/1 (1-0), 24/2 (7-0), 23/3 (3-0), Rectangle No.2, Khasra No. 19/2/1 (3-4), 19/2/2 (1-4), 22/2/1 (0-10), 23/1 (0-3), 3/2/1/1 (1-02) and the petitioner no. 2's land comprised in Rectangle No. 2, Khasra No. 20 (7-7), 21/1 (6-4), situated in Gurgaon, is deemed to have lapsed in terms of Section 24(2) of the New Act.

(M. JEYAPPAUL)
JUDGE

(A.B. CHAUDHARI)
JUDGE

June 29, 2016
p.singh