

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.22350 of 2016.

Date of Decision: November 09, 2016

Brig. (Retd.) Sassi Inder Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.**

**HON'BLE MR.JUSTICE SUDIP AHLUWALIA.**

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Present: Mr.Sumeet Mahajan, Senior Advocate with  
Ms.Ramneeq Kaur, Advocate, for the petitioner.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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**Surya Kant, J.** (Oral)

The petitioner seeks quashing of the order dated 21.09.2012 (P18) passed by the State of Punjab vide which his claim for declaring to the effect that the acquisition of his land vide notifications dated 02.07.1976 (P2) and 28.06.1979 (P3) issued under Sections 36 & 42 of the Punjab Town Improvement Act, 1922 (for short,'the 1922 Act'), followed by Award dated 15.12.1981 and supplementary Award dated 18.01.1982, is deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act'), has been turned down. A consequential direction to declare the above-stated acquisition to have lapsed is also prayed for.

[2] The question that falls for consideration is whether the provisions of Section 24(2) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are applicable in respect of an acquisition made under the Punjab Town Improvement Act, 1922?

[3] Only a brief reference to the facts would be suffice to answer the question.

[4] The predecessor-in-interest of the petitioner was owner in possession of land measuring 41 kanal 1.75 marla situated within the revenue estate of village Jawaddi (Vikas Nagar), Tehsil and District Ludhiana, fully described in para No.2 of the writ petition.

[5] Ludhiana Improvement Trust floated a Development-cum-Housing Accommodation scheme on the right side of Pakhowal Road beyond Sidwan Canal at Ludhiana. A notification was issued in exercise of powers under Section 36 of the 1922 Act purposing to acquire the land measuring 475 acre approximately for the above-stated Scheme. After considering the objections etc., the Government of Punjab in exercise of its power under Section 41 of the 1922 Act, issued notification dated 28.06.1979 (P3) whereby the Development-cum-Housing Accommodation Scheme of Ludhiana Improvement Trust was approved and acquisition of the land was finally notified. The Award was announced on 15.12.1981 followed by a supplementary Award dated 18.01.1982.

[6] The above-stated acquisition included the land of the petitioner's predecessor-in-interest also.

[7] The petitioner's mother challenged the acquisition before this Court through CWP No.1913 of 1985 (Smt.Devinder Kaur vs. The State of Punjab) which was dismissed on 03.03.1989. She preferred Special Leave Petition but that was also declined by the Hon'ble Supreme Court. The

petitioner's mother then filed a Civil Suit for perpetual injunction on 20.04.1992 which was dismissed on 05.06.1990. The civil litigation was dragged for years till the first appeal was dismissed by the First Appellate Court on 29.09.2014.

[8] The petitioner thereafter filed Civil Writ Petition No.12472 of 2016 which was disposed of by a Coordinate Bench on 20.06.2016 directing the State of Punjab to pass an appropriate order in respect of the petitioner's claim that the subject acquisition is deemed to have lapsed under Section 24 (2) of 2013 Act, especially in view of the recommendation said to have been made to this effect by the Land Acquisition Collector.

[9] In deference to those directions, a self-speaking order dated 21.09.2016 rejecting the petitioner's claim has been passed by Additional Chief Secretary to Government of Punjab, Department of Local Government which is being under challenge in the instant writ petition.

[10] It is in this backdrop that the question formulated at the outset arises for consideration, namely, whether provisions of Section 24(2) of 2013 Act are attracted qua the acquisition in question?

[11] We may point-out at the outset that the above-formulated question is no longer *res-integra*. A Division Bench of this Court to which one of us (Surya Kant, J.) was a member, specifically dealt with this question in respect of an acquisition pertaining to Bhatinda Improvement Trust which was also carried out under the same provisions of 1922 Act. This Court specifically formulated the question regarding applicability of Section 24(2) of 2013 Act and answered the same against the land-owners, laying down as follows:-

....”The next question in the form of preliminary objection raised by Mr. J.R. Mittal, the learned Senior Advocate, is

that by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act'), the acquisition proceedings in all these cases have lapsed and, therefore, the declaration to that effect is required to be given by this Court.

We have heard the arguments of the learned counsel for rival parties at length on this point. Some decisions were also cited before us in that behalf. We have, however, an order made by the Apex Court on 04.07.2014 in the case of Gurcharan Singh and others vs. State of Punjab and others (SLP (Civil) Nos.8565-8567 of 2011), wherein the Apex Court has categorically held that Section 24 of the 2013 Act has no application at all and, consequently, the argument about lapsing of the acquisition proceedings has also no merit. We quote the entire order of the Apex Court, which reads thus:-

**“Mr. Raju Ramachandran, learned senior counsel for the petitioners, sought to invoke Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the 2013 Act') and submitted that acquisition proceedings have lapsed.**

**Mr. Salil Sagar, learned senior counsel for respondent No.2 submits that acquisition in the present case was initiated and concluded under the Punjab Town Improvement Act, 1922.**

**Section 24 of the 2013 Act reads as under :-**

**"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 (1 of 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 (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.

A close reading of Section 24 makes it clear that land acquisition proceedings under Land Acquisition Act, 1894 (for short, 'the 1894

Act') are deemed to have lapsed in certain cases which are indicated in the provision. Since the acquisition of the subject land has taken place under the 1922 Act and not under the 1894 Act, Section 24 has no application at all.

The argument concerning Section 24 of the 2013 Act and lapsing of the acquisition proceedings has no merit and is overruled. The grounds raised in the special leave petitions in challenging the impugned judgment will be considered at the time of final disposal.

List the special leave petitions for final disposal on a non-miscellaneous day within six months.”

Mr. J.R. Mittal, the learned Senior Advocate, vehemently contended with reference to above order of the Supreme Court that the said order is in the nature of an interim order and the Special Leave Petitions have still been fixed for final disposal and, therefore, the Apex Court has not laid down any ratio as such.

In our opinion, a close look at the aforesaid order shows that the Apex Court has categorically held that Section 24 of the 2013 Act has no application at all and has given the reason therefor also. Consequently, the Apex Court has over-ruled the plea about lapse of the acquisition proceedings being bereft of any merit. We think the aforesaid finding being conclusive in nature would certainly bind us. Apart from that, what we find is that a judgment of the Apex Court rendered by “Three Judges” in the case of **Nagpur Improvement Trust vs. Vasantrao and others, 2002(4) R.C.R. (Civil) 551**, in clear terms lays down the law that the Land Acquisition Act stands incorporated in the State Act and, therefore, the subsequent amendments to Land Acquisition Act have no effect upon the acquisition made under the State Act. In the very first paragraph of the

said judgment, the Apex Court observed that three State Acts, which fell for their consideration, were - The Punjab Town Improvement Act, 1922, The Nagpur Improvement Trust Act, 1936 and The Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. Their Lordships further observed that if it was held that the provisions of the Land Acquisition Act stand legislatively incorporated in the State Act, the subsequent amendment to the Land Acquisition Act will have no effect upon the acquisitions made under the State Act. The categorical answer given by the Apex Court to the above question is found in paras 48 (relevant portion) and 58 of the said judgment, relevant portion reads thus:-

**“48. .... We are, therefore, of the view that what has been held by this Court in *U.P. Avas Evam Vikas Parishad v. Jainul Islam and another* (supra) with regard to U.P. Act holds good for the Punjab Act as well as the Nagpur Act. Consequently we are unable to subscribe to the view taken in *Bhatinda Improvement Trust v. Balwant Singh and others* (supra) that the provisions of the Land Acquisition Act have not been incorporated into the Punjab Act and that they have merely been cited or referred to in the Punjab Act.”**

**“58. So far as the acquisition under the Nagpur Act and the U.P. Act are concerned they have been challenged on the ground that the Notification corresponding to the declaration under Section 6 of the Land Acquisition Act was made more than 3 years after the expiry of the date of the publication of the Notification corresponding to the Notification under Section 4 of the Land Acquisition Act. This was on the assumption that the provisions of the Land Acquisition Act were**

not incorporated in the State Acts but were merely referred to and the amendment of Section 6 of the Land Acquisition by insertion of proviso thereto by Act 13 of 1976, would apply to the acquisitions. We have already held that the provisions of the Land Acquisition Act as modified by the State Acts and the Schedule thereto stand incorporated in the State Acts and, therefore, the subsequent, amendments of Section 6 by the Land Acquisition (Amendment and Validation) Act, 1976 (Act No. 13 of 1976) or by Act 68 of 1984, will have no effect on the acquisition made under the State Acts. The High Court of Allahabad has taken this view while the High Court of Bombay, Nagpur Bench, Nagpur has taken the contrary view. The appeals, therefore, which are directed against the judgment of the High Court of Allahabad must be dismissed and those against the judgment of the High Court of Bombay, Nagpur Bench, Nagpur, must be allowed. Since we have held that the Land Acquisition Act stands incorporated in the State Acts, with the consequence that subsequent amendments to the Land Acquisition Act have no effect upon the acquisition made under the State Acts, it is not necessary to consider the submission of Mr. Rakesh Dwivedi, Senior Advocate, that in view of the judgment of this Court in T.M. Peter's case (supra), the absence of any time limit in the State Acts for issuance of Notification corresponding to the declaration under 6 of the Land Acquisition Act will not expose the State Acts to the charge of discrimination invoking the principles enshrined in Article 14 of the Constitution.”

In para-49 (relevant portion), it was held as under:-

**“49. .... In these circumstances with a view to save the law from the vice of arbitrary and hostile discrimination, the provisions must be construed to mean, in the absence of anything to the contrary, that the provisions of the Land Acquisition Act as amended by the 1984 Act relating to determination and payment of compensation would apply to acquisition of land for the purposes of the State Acts. It must, therefore, be held that while incorporating the provisions of the Land Acquisition Act in the State Acts, the intention of the legislature was that amendments in the Land Acquisition Act relating to determination and payment of compensation would be applicable to acquisition of lands for the purposes of the State Acts. Consequently the claimants are entitled to the benefits conferred by Section 23(1-A), if applicable, and Sections 23(2) and 28 of the Land Acquisition Act as amended by the 1984 Act for acquisition of land for the purposes of the State Acts under Section 59 of both the Nagpur and the Punjab Acts.”**

The Apex Court, however, held that the intention of the Legislature was that the amendments in the Land Acquisition Act relating to determination and payment of compensation will be applicable to the acquisition of land for the purposes of State Act. We, therefore, find that the submission about lapsing of acquisitions with reference to Section 24 of the 2013 Act cannot be accepted and is rejected....”

[12] Somewhat similar view has been taken by two other Coordinate Benches also in: (i) CWP No.9318 of 2003 (Jaswinder Kaur and another versus State of Punjab and others and other connected cases, decided on

Acquisition Collector, Jalandhar Improvement Trust and others, decided on 04.05.2016.

[13] Nevertheless, we have heard learned counsel for the petitioner at length, as according to him, the cited orders have not well appreciated the legislative intentment behind Section 24(2) of 2013 Act. He urges that the solitary object behind Section 24(2) of 2013 Act is to extend fair and just compensation to the expropriated land-owners and the legislative policy of the Act deserves to be appreciated in the light of the view taken by the Hon'ble Supreme Court in (i) Nagpur Improvement Trust versus Vasantrao and others, (2002) 7 SCC 657 and other connected matters, and (ii) Nagpur Improvement Trust and another versus Vithal Rao and others, (1973) 1 SCC 500. There should indeed be no difficulty in holding that the provisions of 2013 Act can be pressed into service to declare the acquisition made under the 1922 Act, to have lapsed.

[14] We have given our thoughtful consideration to the submissions but are unable to agree with the same.

[15] So far as the import and meaning of Section 24(2) of 2013 Act is concerned, it has been explained by the Hon'ble Supreme Court in a recent decision in Civil Appeal No.5811 of 2015 (Delhi Development Authority versus Sukhbir Singh and others), decided on 09.09.2016, 2016 AIR (SC) 4275, observing as follows:-

“....14. The picture that therefore emerges on a reading of Section 24(2) is that the State has no business to expropriate from a citizen his property if an award has been made and the necessary steps to complete acquisition have not been taken for a period of five years or more. There steps include the taking of physical possession of land and payment of compensation. What

the legislature is in effect telling the executive is that they ought to have put their house in order and completed the acquisition proceedings within a reasonable time after pronouncement of award. Not having done so even after a leeway of five years is given, would cross the limits of legislative tolerance, after which the whole proceeding would be deemed to have lapsed. It is important to notice that the Section gets attracted if the acquisition proceeding is not completed within five years after pronouncement of the award. This may happen either because physical possession of the land has not been taken or because compensation has not been paid, within the said period of five years. A faint submission to the effect that 'or' should be read as 'and' must be turned down for two reasons. The plain natural meaning of the sub-section does not lead to any absurdity for us to replace language advisedly used by the Legislature. Secondly, the object of the Act and Section 24 in particular, is that in case an award has been made for five years or more, possession ought to have been taken within this period, or else it is statutorily presumed that the balance between the citizen's right to retain his own property and the right of the State to expropriate it for a public purpose gets so disturbed as to make the acquisition proceedings lapse. Alternatively, if compensation has not been paid within this period, it is also statutorily presumed that the aforesaid balance gets disturbed so as to free such property from acquisition..."

(emphasis applied)

[16] It has to be kept in view that Section 24(2) of 2013 Act expressly provides that "in case the land acquisition proceedings initiated under the Land Acquisition Act, 1894....". The expression "initiated" means the commencement of an action. The action re: acquisition of a property

under 1894 Act would commence with the publication of notification under Section 4 of that Act whereby intention to acquire a property for a notified public purpose is expressed. After considering the objections against such proposal, a final declaration under Section 6 of 1894 Act is published. Thereafter, the Award is passed and the property vests into State free from all encumbrances.

[17] Contrary to that, the notification purposing to acquire the petitioner's land in the case in hand reads as follows:-

“... Notice is hereby given in accordance with the Resolution No.28 passed at a meeting of the Ludhiana Improvement Trust, Ludhiana held on 24<sup>th</sup> March, 1976, a Development cum Housing Accommodation Scheme on Right side of Pakhowal Road beyond Sidwan Canal at Ludhiana under Section 24 read with Sections 25 and 28(2) of the Punjab Town Improvement Act, 1922, has been framed for an area measuring 475 Acres (192 Hectares) approximately bounded as under and more particularly shown on the plan Drawing No.2/LIT/76, dated 9<sup>th</sup> March, 1976, in deposit at the office of the Improvement Trust, Ludhiana.....”

[18] Similarly, the final declaration of approval by the State Government notified on 28.06.1979 recites as follows:-

“... In exercise of the power conferred under sub-section(1) of Section 41 of the Punjab Town Improvement Act, 1922 and all other power enabling him in this behalf, the Governor of Punjab is pleased to sanction the development scheme named Development cum Housing Accommodation Scheme on Right side of Pakhowal Road beyond Sidhwan Canal at Ludhiana Improvement Trust, Ludhiana under Section 24 read with Sections 25 and 28(2) of the Punjab Town Improvement Act, 1922 for an area measuring 475

Acres situated within the Municipal limits of Ludhiana vide Resolution No.66 dated 7<sup>th</sup> May, 1979, and DTP's Ludhiana drawing No.DTP(L)24/79 dated the 24<sup>th</sup> April, 1979 (excluding the agricultural peripheral zone measuring 33.20 acres across the 300 wide Southern Outer Ring Road and set forth in the sub joined schedule....”

[19] It may thus be seen that neither Section 4 nor Section 6 of 1894 Act alone were invoked by the Authority for acquiring the subject property. The Award has also not been published under the 1894 Act. Suffice it to say at the cost of repetition that in the cited decision, Hon'ble Supreme Court has held that the provisions of Land Acquisition Act, 1894 have been incorporated in the Town Improvement Act, 1922 for the purpose of assessment and determination of compensation. These provisions are not incorporated to trace-out any power to acquire the property. Such a power independently vests in the Prescribed Authority under the 1922 Act. The instant acquisition has also been carried out in exercise of those powers only. Once the Scheme of the Statute is understood in this manner, nothing should detain us to reiterate the view expressed in Bhatinda Improvement Trust's case (supra), for the Hon'ble Supreme Court in **Gurcharan Singh and others versus State of Punjab and others** (which we have reproduced in *extenso* in Bhatinda Improvement Trust's case) has unequivocally held that:-

“.... A close reading of Section 24 makes it clear that land acquisition proceedings under Land Acquisition Act, 1894 (for short, 'the 1894 Act') are deemed to have lapsed in certain cases which are indicated in the provision. Since the acquisition of the subject land has taken place under the 1922 Act and not under the 1894 Act, Section 24 has no application at all.

The argument concerning Section 24 of the 2013 Act and lapsing of the acquisition proceedings has no merit and is overruled.....”

[20] The argument based upon the Schedule appended to 1922 Act is also inconsequential as it only suggests the procedure to be followed by the Tribunal under the 1922 Act for determination of compensation. The provisions contained in the Schedule are not substantive part of the Statute.

For the reasons afore-stated, we hold that the subject acquisition cannot be declared to have lapsed under Section 24 (2) of 2013 Act. Resultantly, there is no merit in this writ petition.

Dismissed.

[SURYA KANT]  
JUDGE

November 09, 2016  
*mohinder*

[SUDIP AHLUWALIA]  
JUDGE

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |

CWP No.22350 of 2016

[15]

CM Nos.14137 & 38 of 2016 in  
CWP No.22350 of 2016.

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Brig.(Retd.) Sassi Inder Singh vs. State of Punjab and others

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Present: Mr.Sumeet Mahajan, Senior Advocate with  
Ms.Ramneeq Kaur, Advocate, for the petitioner.

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CM No.14137 of 2016

The application is allowed, as prayed for.

CM No.14138 of 2016

The application is dismissed as infructuous.

**(SURYA KANT)**  
**JUDGE**

**November 09, 2016**  
*mohinder*

**(SUDIP AHLUWALIA)**  
**JUDGE**