

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P. No. 8494 of 2020

Date of Decision : August 10, 2020

Gram Panchayat Nakrola

.... Petitioner

vs.

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Advocate
for respondent No.3.

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MEENAKSHI I. MEHTA, J. :

By way of the instant petition, the petitioner Gram Panchayat has approached this Court seeking issuance of a writ in the nature of mandamus directing the respondents to release its (petitioner's) land, as detailed in para No.2 and acquired under the Land Acquisition Act, 1894 (for short, "the Act of 1894"), in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the Act of 2013") and it has also challenged the Award dated 09.03.2006 passed qua the acquisition of the said land, while praying for issuance of further direction to the respondents not to acquire the land in question.

in the present petition, the petitioner Gram Panchayat is the owner in possession of the land measuring 12 Kanals 12 Marlas as comprised in Khasra No.31 Killa No.17 (8-0) and Killa No. 24/1(4-12) situated in Village Lakhnola (Nakrola). The respondent Department issued/published a notification on 17.09.2004 under Section 4 read with Section 17(2) of the Act of 1894 for acquiring the land measuring 956 Acres 05 Kanals and 18 Marlas situated in several villages including Village Nakrola, as detailed in para No.3, for the purpose of setting up Chaudhary Devi Lal Industrial Model Township, Phase V, Manesar with the view to plan and develop the same as an integrated complex for industrial, commercial, recreational and other public utilities. Thereafter, a declaration under Section 6 of the Act of 1894 was published/ notified on 27.10.2004 and the Award qua the acquired land was announced by the Land Acquisition Collector on 09.03.2006.

3. The petitioner has, further, averred that after the passing of the afore-said Award, some persons preferred a Reference under Section 30 of the Act of 1894 before the Land Acquisition Collector, who forwarded the same to the Civil Court. Learned Additional District Judge, Gurgaon dismissed the said Reference Petition vide Award dated 10.09.2012 while holding that the petitioners therein had failed to prove their possession and hence, they were not entitled to get compensation. The said Award has already been challenged before this Court vide **RFA No. 2073 of 2016** which is still pending. The petitioner is in physical possession over the land in question and the Award in respect of the acquired land had been passed

more than five years before the Act of 2013 came into force and the awarded amount of compensation has not been received by it (petitioner). Thus, the matter is covered under Section 24 of the Act of 2013 and the acquisition proceedings, as carried out under the Act of 1894, in respect of the land in question, are to be taken as deemed to have lapsed and it being so, the notification and the declaration as published under Sections 4 and 6 of the Act of 1894 respectively as well as the Award passed in respect of the acquired land are liable to be quashed/set aside.

4. We have heard learned counsel for both the parties at the preliminary stage in this petition and have also perused the file thoroughly.

5. Learned counsel for the petitioner-Gram Panchayat points out that the notification under Section 4 of the Act of 1894 (Annexure P/3) was published on 17.09.2004 for acquisition of the land including the land in question and the declaration under Section 6 of the said Act, i.e Annexure P/4, was notified on 27.10.2004 and the Award in respect of the acquired land had been passed on 09.03.2006 but the petitioner has not received the amount of compensation and the physical possession of the said land is still with the petitioner and thus, the present case is squarely covered under the provisions of Section 24(2) of the Act of 2013 which provide as under :-

“(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.”

He contends that in view of the above-mentioned provisions, the said acquisition proceedings stand lapsed.

6. However, learned counsel for respondent No.3 has argued that the amount of compensation had already been deposited in the account of the petitioner-Gram Panchayat and in view of the recent observations as made by the Hon'ble Apex Court in **Indore Development Authority vs. Manohar Lal and others** (2020 SCC Online SC 316), the acquisition proceedings cannot be taken to have lapsed by virtue of Section 24(2) of the Act of 2013.

7. Admittedly, the Act of 2013 came into force on 01.01.2014.

The acquisition proceedings qua the land, including the land in question ,

were carried out and the Award for the same was also passed under the

provisions of the Act of 1894. The Constitution Bench of Hon'ble Supreme Court has made the following observations in the concluding para, i.e. para No.363, of the judgment rendered in Indore Development Authority (*supra*) :-

“....

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 Act of 2013 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.”

8. From the afore-discussed observations, it becomes explicit that for the deemed lapse of the proceedings qua acquisition of the land under the Act of 1894, the provisions contained in Section 24(2) of the Act of 2013 have to be construed as requiring fulfilment of both the conditions, i.e. non-payment of the amount of compensation as well as the possession of the acquired land being with the owner, even after the expiry of five years or more, since the date of Award, at the time of the commencement of the Act of 2013.

9. It is entirely for the petitioner to substantiate the fulfilment of both the afore-discussed pre-requisites as envisaged under Section 24(2) of the Act of 2013. However, as regards the possession of the land in question, the petitioner relies upon Annexure P/6, i.e. the copy of the above-said Award as passed on 10.09.2012 in a Reference Petition preferred by Ram Sarup etc. under Section 30 of the Act of 1894 arraying the present petitioner as one of the respondents therein, for seeking apportionment of the amount of compensation wherein the claim of the said petitioners was rejected on the ground that they had not been able to prove that they were in possession over the land in question till the date of its acquisition.

10. However, the afore-mentioned Award is not of any avail to the petitioner because as mentioned in para No.6 of this petition, the said Award has been challenged in this Court vide **RFA No.2073 of 2016**, which is pending meaning thereby that it has not attained finality. Moreover, the petitioner has produced Annexure P/2, i.e. the copy of *Jamabandi* in respect of the land in question pertaining to the year 1968-69, on the file wherein though the petitioner has been recorded to be the owner of this land but Mangal etc. are shown to be in cultivating possession over the said land. Even if for the sake of arguments, the petitioner, on the basis of the said Award, is taken to be in possession over the said land at the time of its acquisition, even then the fact remains that the petitioner has not placed the relevant revenue record on the file to show that it remained in possession over this land till the Act of 2013 came into force, i.e. upto 01.01.2014.

11. So far as the second condition of non-payment of the amount of compensation is concerned, it is worthwhile to mention here that during the course of arguments, when learned counsel for respondent No.3 has categorically asserted that the said amount has already been deposited in the account of the petitioner, then learned counsel for the petitioner discloses that the petitioner has also filed a Civil Suit in the competent Court for seeking the withdrawal of this amount from its account. It is also pertinent to point it out here that the petitioner has averred in para No.7 of the petition that it has not received the amount of compensation and it has nowhere disclosed that the same has been deposited in its account nor has divulged the date of deposit of the said amount in its account. Thus, the petitioner has concealed that material fact from this Court which is one of the decisive factors for the adjudication of the petition in hand. In view of all the above-discussed facts and circumstances, the petitioner cannot be held to be entitled to the benefit of the provisions as contained in Section 24(2) of the Act of 2013.

12. As a sequel to the foregoing discussion, the present petition being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

August 10, 2020
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.