

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**Date of Decision:** 10th November, 20201. **CWP-2899-2007(O&M)**

Prabhu and othersPetitioners

Versus

State of Haryana and othersRespondents

2. **CWP-2924-2007(O&M)**

Prabhu and othersPetitioners

Versus

State of Haryana and othersRespondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Sushil K. Sharma, Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.**CM-9157-2016 in CWP No. 2899 of 2007 and CM-9109-2016 in CWP
2924 of 2007**

1. These are applications seeking leave to place on record additional facts and praying for the main writ petitions, dismissed by the Court by the order dated 4th February, 2008, to be treated as being filed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act'), pursuant to liberty granted by the Supreme Court by its order dated 18th November, 2014 in SLP (C) Nos. 20234-20235 of 2011.

2. For the reasons stated therein, the applications are allowed. The writ petitions are hereby revived and taken up for hearing today itself.

CWP-2899-2007 and CWP-2924-2007

3. The prayer in these petitions is for quashing a notification dated 25th November, 2005 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'); a declaration dated 24th November, 2006 under Section 6 of the LAA; notice dated 8th February, 2007 issued under Section 9 of the LAA and other incidental reliefs, concerning the acquisition of the land of the Petitioners located in village Kasan, Tehsil and District Gurgaon.

4. The claim of the Petitioners is that they have raised constructions on the land in question prior to the issuance of the notification dated 25th November, 2005 under Section 4 LAA.

5. An order was passed by this Court on 4th February, 2008 dismissing these petitions on the basis of the order passed by the Court on 14th December, 2007 in CWP No.1793 of 2007.

6. Subsequently, a review application (RA No. 6 of 2008) was filed seeking recall of the order dated 14th December, 2007 in CWP No.1793 of 2007. As a result, review applications were filed in the present petition as well seeking recall of the order dated 4th February, 2008. These review applications were dismissed by the Court on 10th September, 2010. Thereafter, the orders dated 4th February, 2008 and 10th September, 2010 were challenged by way of Special Leave Petitions (SLPs) in the Supreme Court of India. On 18th November, 2014, the SLPs were disposed of by the following order:

“Permission to file Special Leave Petition(s) is granted.
Delay in filing and re-filing the Special Leave Petition(s) is condoned.

Application (s) for substitution are allowed.

Application (s) for impleadment is/are rejected.

Application(s) for deletion of name of petitioner(s) is/are allowed.
At the time of hearing of these Special Leave petitions, learned counsel appearing for the petitioner(s) would submit that the respondents herein have not taken the possession of the land though they were served with notice under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the Act”).

Learned counsel further submit that the respondent(s) have not paid any compensation to the petitioner(s) and thus, by applying the provisions of 24(2) of the Act to the present case, the entire proceeding stand vitiated and, therefore, requires to be quashed.

To our opinion, whether the possession continued to be with the petitioner(s) or not, or whether the compensation amount was paid or not are the questions of fact, which requires consideration and decision by the appropriate forum including the High Court.

Accordingly, while disposing of these Special Leave Petitions, we grant liberty to the petitioner(s), if they so desires, to make appropriate application(s), as provided under Section 24(2) of the Act, before appropriate forum, including the High Court within four weeks from today. While filing the application (s) / petition(s), the petitioner(s) are at liberty to produce the counter affidavit filed by the respondent(s) before this Court in SLP(C) No.20234-20235/2011.

We request the High Court that if such application(s) is/are filed, the same may be considered in accordance with law in light of the observations made by this Court in “Pune Municipal Corporation &Ors.” reported in 2014(3) SCC 183 and “Bharat Kumar vs. State of Haryana” reported in 2014(6) SCC 586.

Interim order, if any, granted by this Court is extended till the decision is taken by the High Court on the petition(s)/ application(s) that may be filed by the petitioner(s).

As a sequel to the above, all pending interlocutory applications are disposed of.

Ordered accordingly.”

7. Thereafter on 25th July, 2016, the Petitioners filed applications, being CM Nos. 9109 and 9157 of 2016 which have been allowed earlier in this order.

8. Annexed with the applications filed by the Petitioners are the counter affidavits filed by the Respondents in the Supreme Court. It is stated therein that the objections filed by the Petitioners under Section 5A LAA, subsequent to the issuance of the notification under Section 4 LAA were duly considered and disposed of. Thereafter, the Section 6 LAA declaration was issued and on 24th February, 2007 the award under Section 11 LAA came to be passed. It is stated that possession of the lands in question was taken on the date of the award itself. Mr. Ankur Mittal, Additional Advocate General, Haryana, has also placed before the Court copies of the *Rapat Roznamchas* by which possession of the Petitioners' land were taken. It is

seen that in the instance of the lands forming the subject matter in both petitions, possession was taken on 24th February, 2007 by Rapat No. 458 of the land involved in CWP No. 2924 of 2007 and by Rapat No. 459 of the land involved in CWP No. 2899 of 2007.

9. With the Respondents having placed on record details concerning possession having been taken way back on 24th February, 2007, it is legally untenable for the Petitioners to contend that they continued to remain in actual physical possession of land, given the following observations in para 245 of the decision of the Constitution Bench of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***:

“245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

10. As regards the condition under Section 24 (2) of the 2013 Act concerning non-payment of compensation, the Court is unable to see how such condition is fulfilled in the present cases, given the stand of the Respondents that compensation has been deposited with the LAC , coupled with the fact of the decisions referred to in the order dated 18th November, 2015 of the Supreme Court viz., ***Pune Municipal Corporation & others v. Harkechand Misrimal Solanki (2014) 3 SCC 183*** and ***Bharat Kumar v. State of Haryana (2014) 6 SCC 586*** no longer applying in view of the

decision in ***Manoharlal*** (*supra*). The observations of the Constitution Bench in this regard are as under:

“362. Resultantly, the decision rendered in *Pune Municipal Corporation & Anr.* (*supra*) is hereby overruled and all other decisions in which *Pune Municipal Corporation* (*supra*) has been followed, are also overruled. The decision in *Shree Balaji Nagar Residential Association* (*supra*) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In *Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors.*, (*supra*), the aspect with respect to the proviso to Section 24 (2) and whether ‘or’ has to be read as ‘nor’ or as ‘and’ was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

363 (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.

(9) Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

11. In that view of the matter, none of the conditions for grant of relief under Section 24 (2) of the 2013 Act are made out.

12. Accordingly, both writ petitions are dismissed. The interim order, if any, hereby stands vacated.

13. A copy of this order be placed in the file of the connected petition.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10th November, 2020
Davinder Kumar

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No