

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-1099-2015

Date of decision : 01.12.2020

Shish Pal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present: Mr. Naresh Kaushik, Advocate for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE

1. The land in the present petition was acquired vide notifications dated 17.05.1990 and 16.05.1991 for the acquisition of the land for public purpose namely development and utilization of land as residential and commercial Sector – 12, Sonapat. The petitioner is praying for release of the land measuring 3 Kanals 15 Marlas under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 on the ground that the acquisition proceedings have lapsed as neither the possession of the land was taken nor the compensation was paid to the petitioner and also under the policies of the State of Haryana dated 26.10.2007 and 24.01.2011. Besides this, he is seeking writ of certiorari for

quashing the order dated 09.06.2014 whereby his claim for the release of land was rejected.

2. Since one of the prayers in the writ petition was lapsing of the acquisition under Section 24 (2) of the Act of 2013, therefore, the present petition was kept pending awaiting the decision of the Hon'ble Supreme Court of India as regards the interpretation of Section 24 (2) of the Act of 2013, which has since been decided by the Hon'ble Supreme Court of India in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 (SC) 1496*** and accordingly, the petition has been taken up for the final disposal. Before proceeding further, it would be imperative to refer to the concluding paragraph of the judgment wherein the principles as regards the interpretation of section 24(2) of the Act of 2013 are fulfilled:

'...1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

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.

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.*

6. *The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).*

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).*

8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

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’.

3. Shorn of unnecessary details, it is imperative to mention here that the petitioners had approached this Hon’ble Court earlier in CWP No. 3832 of 1993 thereby challenging the aforesaid acquisition proceedings which was disposed of vide order dated 11th July, 2013 with the leading case being C.W.P. No. 4498 of 1993. This Court while disposing of the writ petition had directed that the claim of the petitioners for release of their constructed properties from acquisition be considered in light of the government policy dated 26.10.2007 on the premise that the construction was raised prior to the issuance of notification under Section 4 of the Act of 1894. In case the constructions are not found to have obstructed any public utility, the same shall be released in accordance with the policy. It was further directed that wherever any constructed property is required to be demolished for completion of public utility, the affected land owners be allotted residential plots in accordance with the policy dated 09.11.2010.

4. In compliance of the said order, the respondents passed a detailed speaking order wherein it was found that the construction on the land has been raised after issuance of notification under Section 4 of the Land Acquisition Act, 1894 and thus, the same was not recommended for release as being not covered under the policy dated 26.10.2007 and 24.01.2011. We have perused the policy dated 26.10.2007 wherein it has been clearly mentioned in Clause 2 of the policy that only those requests for applications will be considered for the release under Section 48 Sub Section 1 wherein the construction existed prior to Section 4 and is inhabited, the similar clause finds mention in policy dated

prior to Section 4 notification, therefore, the same could not have been released from the acquisition. Though, the petitioner has agitated this ground in his writ petition that the claim qua construction on land in question prior to acquisition has been rejected summarily, however, has failed to adduce any evidence in support thereof before this Court. Further, he has agitated that the acquisition qua his land stands lapsed in view of Section 24 (2) of the Act of 2013 as neither the possession of the land has been taken nor the compensation has been received by the petitioner. The respondents have filed the response controverting this aspect and have stated that the compensation amount was duly tendered. However, the petitioner had chosen not to receive the same and the same is lying deposited in the account of Land Acquisition Collector. Further, it has been submitted that out of the total amount of the award i.e. Rs. 10,70,61,570, an amount of Rs. 10,24,17,534/- has already been disbursed to the land owners, which implies that almost 95.66% of the compensation amount pertaining to the acquisition has been disbursed and paid to the concerned land owners, and the remaining amount was available with the Land Acquisition Collector for disbursement.

As far as the possession of the land is concerned, it is notable to mention here that the dis-possession of the petitioner was stayed by this Court vide order dated 08.04.1993 and the same continued until the speaking order was passed by the concerned authority, as when the earlier petition i.e. C.W.P No. 3832 of 1993 was disposed of, this Court had given a clear direction that interim order will continue to operate until the entire exercise stands completed, which completed with the passing of the speaking order i.e. 09.06.2014. The Hon'ble Supreme Court of India has discussed the effect of interim order in detail in

Indore Development Authority (supra), wherein the Hon'ble Court has observed that while calculating the window period of five years as given in Section 24 (2), the period during which the interim order was in operation is to be excluded. To quote:

‘....297. In cases where some landowners have chosen to take recourse to litigation (which they have a right to) and have obtained interim orders on taking possession or orders of status quo, as a matter of practical reality it is not possible for the authorities or State officials to take the possession or to make payment of the compensation. In several instances, such interim orders also impeded the making of an award. Now, so far as awards (and compensation payments, pursuant to such proceedings were concerned) the period provided for making of awards under the Act of 2013 could be excluded by virtue of Explanation to Section 11A. Thus, no fault of inaction can be attributed to the authorities and those who had obtained such interim orders, cannot benefit by their own action in filing litigation, which may or may not be meritorious. Apart from the question of merits, when there is an interim order with respect to the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation. Their obligations are intertwined with the scheme of land acquisition. It is observed that authorities may wait in the proceedings till the interim order is vacated.

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331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear

result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curaeneminemgravabit would result in injustice....’

5. Therefore, in view of the aforesaid observations, after excluding the period during which interim order was in operation i.e. from 08.04.1993 till 09.06.2014, the five years period as given under Section 24 (2) is not fulfilled and therefore, the claim of the petitioner that the physical possession of the land was not taken is clearly not tenable as the authorities were precluded to take the possession of the land in question by virtue of operation of the interim order. Thus, in the light of the fact that the five years period as provided under section 24 (2) of the Act of 2013 is not fulfilled, the petitioner cannot invoke Section 24 (2) of the Act of 2013. Accordingly, no relief as claimed by the petitioner in the present case can be granted to the petitioner and is thus, the present petition stands dismissed and the interim order, if any, stands vacated. Pending applications, if any, also meet the same fate.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 01, 2020
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No