

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

CWP-1180-2015

Nirmala Sharma and othersPetitioners

Versus

State of Haryana and othersRespondents

CWP-1233-2015

Kulbhushan Narang and anotherPetitioners

Versus

State of Haryana and othersRespondents

CWP-11582-2015

Urmila DeviPetitioner

Versus

State of Haryana and othersRespondents

Date of decision : 01.12.2020

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

Present: Mr. Ranjit Saini, Advocate for the petitioners
 in CWP-1180-2015 and CWP-1233-2015.
 Mr. Amit Jain, Advocate, for the petitioner
 in CWP-11582-2015.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Pritam Singh Saini, Advocate, for respondent No.3
in CWP-1180-2015 and 1233-2015.

(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 aforesaid three writ petitions arise out of the same acquisition proceedings and therefore, are being disposed of by a common judgment.

2. In the present petitions, the land in question is stated to be acquired for the public purpose namely development work i.e. for providing amenities and facilities to the devotees of Shri Mata Mansa Devi Shrine Board, Panchkula in Village Bhainsa Tibba Tehsil and District Panchkula. The notification under Section 4 was issued on 02.06.1999, which was followed by the declaration dated 29.05.2000 issued under Section 6 of the Act of 1894 and subsequently the award was announced on 27.05.2002. In all these petitions, the common relief i.e. declaration to the effect that the acquisition proceedings have lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 has been prayed for.

3. The aforesaid petitions were kept pending awaiting the decision of the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India with regard to the interpretation of Section 24 (2) of the Act of 2013 which has since been decided in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*** and accordingly these petitions are taken up for hearing for the final disposal in terms of the principles laid down by the Apex Court in Indore Development Authority (supra). Before advertng to the facts of each case, we feel it appropriate to quote the concluding paragraph of the judgment wherein the Hon'ble Supreme Court has laid down the guidelines with regard to the interpretation of Section 24 (2) of the Act of 2013 (in para 363) :-

‘....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'.*

4. For the convenience, we will be discussing the facts of each matter individually, in the manner as follows:-

C.W.P. no. 1180 of 2015 – Nirmala Sharma and others v. State of Haryana and others

5. The petitioners in this writ petition are seeking lapsing of the acquisition proceedings on the ground that neither the physical possession of the land was taken nor the compensation was either paid or deposited with the reference court in accordance with Section 31 (2) of the Act of 1894.

6. At the time of the arguments Mr. Mittal, Additional Advocate General, Haryana appearing on behalf of State of Haryana has drawn our attention towards the fact that the present petition is not maintainable at all at

the instance of the present petitioners because admittedly they are the

subsequent purchasers as they have purchased the land in question after the issuance of notification under Section 4 the Act of 1894. In this regard the reference is made to Para no. 2 of the petition, from the perusal of which it is evident that the petitioners are subsequent purchasers:-

“2...That the petitioner no. 1 & 2 purchased the land vide sale deed dated 05.10.1999 comprising in Khasra No. 52/13, 18/1 measuring 8 kanals and the petitioner nos. 3 & 4 purchased the land comprising in Khasra No. 52//2/3, 8/2, 9 measuring 9 Kanals 5 Marlas situated in the revenue estate of Bhainsa Tibba, Tehsil and District Panchkula, Haryana vide registered sale deed 24.09.1999. After purchasing the land , the petitioners nos. 1 & 2 had constructed rooms, one latrine bathroom and garage in the above said land and petitioner no. 3 and 4 had also constructed five shops, 3 rooms, one laterin bathroom and one garage in the above land. The copies of the mutation showing the petitioners owner in possession of the land stated above are annexed as Annexure P/1 & P/2...”

7. Therefore, there can be no doubt that the petitioners purchased the plot subsequent to the issuance of notification dated 02.06.1999 and thus have no right to challenge the acquisition proceedings in view of the settled law that once the notification under Section 4 is issued, any alienation of land thereafter does not bind the government or the beneficiary department. Further the Hon’ble Supreme Court of India in ***Shiv Kumar and another Vs. Union of India and others AIR 2019 SC 5374*** has categorically observed that the subsequent purchaser cannot claim any lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013. The Hon’ble Supreme Court of India while observing so has overruled the earlier view taken by it in ***Government of NCT of Delhi Vs. Manav Dharam Trust and another 2017 (6) SCC 751*** whereby the bench had observed that the subsequent purchaser though has no locus standi to challenge the acquisition proceedings, however, he can seek the

lapsing of the acquisition proceeding under Section 24 (2) of the Act of 2013.

The reference here can also be made to the judgment passed in ***CWP no. 10645 of 2018- Ram Parsad Yadav v. State of Haryana and others***, wherein we have discussed in detail the law regarding subsequent purchaser and observed as follows:

‘...30. Thus, the proposition of law with regard to the ‘subsequent purchasers’ i.e. the person who has purchased the land after the issuance of notification under section 4 of the Land Acquisition Act, 1894 is well settled now, and in view thereof the subsequent purchaser neither has any locus standi to challenge the acquisition on any ground nor does has any right to claim the lapse of acquisition proceedings under section 24(2) of the Act of 2013. The only right that is available to the subsequent purchaser is to claim the compensation as much as he steps into the shoes of erstwhile owner. The object to not recognise such transactions is to keep the sanctity of the acquisition proceedings intact and to not allow anybody to jeopardise the acquisition proceedings in any manner....’

8. It is further relevant to mention that The Hon’ble Supreme Court of India in ***Indore Development Authority (supra)*** has upheld the view taken in ***Shiv Kumar (supra)*** to the effect that the subsequent purchaser has no right to seek lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013 in Para 337 of the judgment, the same is reproduced hereunder:-

‘...337. Before proceeding further, in our opinion, Section 24 contemplates pending proceedings and not the concluded ones in which possession has been taken, and compensation has been paid or deposited. Section 24 does not provide an arm or tool to question the legality of proceedings, which have been undertaken under the Act of 1894 and stood concluded before five years or more. It is only in cases where possession has not been taken, nor compensation is paid, that there is a lapse. In case possession has been taken, and compensation has not been deposited with respect to majority of landholdings, the beneficial provision of the statute provides that all beneficiaries shall be paid compensation as admissible under the Act of 2013. The beneficiaries, i.e., landowners contemplated under the proviso to Section 24(2), are the ones who were so recorded as beneficiaries as on the date of issuance of notification under Section 4 of the

Act of 1894. The provision is not meant to be invoked on the basis of void transactions, and by the persons who have purchased on the basis of power of attorney or otherwise, they cannot claim the benefit under Section 24 as is apparent from proviso to Section 24(2) and the decision in Shiv Kumar and Ors. v. Union of India and Ors...'

9. In view of the above, we have no hesitation to hold that the present petition is liable to be dismissed on the sole ground that the petitioners are subsequent purchasers and thus neither have any right to challenge the acquisition proceedings nor to seek the lapsing of the acquisition proceedings.

10. Be it as it may, from the perusal of the reply filed on behalf of the respondents, it transpires that the possession of the land was taken by recording the Rapat Entry No. 357 dated 27.05.2002 and, therefore, the land vested in the State the moment rapat entry was recorded. In this regard, it would be relevant to refer Para No. 245 of the judgment in ***Indore Development Authority*** (supra) that once the possession is taken, the land vests in the State absolutely and any possession retained by the land owners thereafter is only in the capacity of trespasser. It has further been apprised to this Court that 89.6% of the amount has already been disbursed and as far as the amount qua the claimed land is concerned, the same is lying deposited in the account of Land Acquisition Collector.

11. Therefore, in the light of what has been discussed hereinabove, it is clear that the present writ petition is not maintainable as the petitioners are subsequent purchasers and further even the relief of Section 24 (2) of the Act of 2013 cannot be claimed as the possession has already been taken by the State by recording the rapat and, therefore, in the light of principles enunciated in

Authority (supra), no ground is made out for interference and thus, the petition is hereby dismissed. All the pending applications also meet the same fate and interim order if any, stands vacated.

CWP no. 1233 of 2015 -Kulbhushan Narang and another v State of Haryana and others

12. The petitioners herein are seeking lapsing of the acquisition proceedings under section 24(2) of the Act of 2013 on the ground that the compensation has not been paid to the petitioners and that the possession was taken five years after the announcement of the award. The petitioners had earlier challenged the acquisition proceedings by way of CWP no. 8759 of 2002 (Nirmala Sharma and others Vs. State of Haryana and others) and CWP no. 11506 of 2002. CWP no. 8759 of 2002 was dismissed by this Court on 17.12.2003 by a detailed judgment taking into account all the arguments raised by the petitioners therein including that of discrimination. The order was thereafter assailed before the Hon'ble Supreme Court in Civil Appeal no. 2569-70 of 2005, which was disposed of vide order dated 11.04.2005 thereby upholding the decision passed by this Court and observed that the Board has deposited the amount of Rs.7,29,55,000.84 out of which an amount of Rs. 5,61,30,164.30 has been disbursed to the land owners. The Apex court further observed that the deposit of the money shows the intention of the Board to acquire the entire land involved in the notification. As far as CWP No. 11506 of 2002 is concerned, it was dismissed for non-prosecution vide order dated 20.05.2014. This clearly implies that the acquisition proceedings qua the land of the petitioners already stands upheld by the Hon'ble Supreme Court of India, whereas the Apex Court has laid down in Indore Development Authority (Supra) that once the acquisition proceedings already stands upheld by the

court, the validity of the same cannot be reopened by virtue of section 24(2) of the Act of 2013 and therefore no lapse of acquisition proceedings can be sought. In this regard the reference can be made to para no. 359 of the judgment, which is reproduced herein below:

‘....359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negated. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013....’

13. In view of the above, the present petition deserves to be dismissed on the ground that the petitioner cannot revive the dead claim by filing petition seeking relief under section 24(2) of the Act of 2013. However, we feel it appropriate to look into the aspect of deemed lapsing as well. In this respect as has also been observed by the Apex Court that the total award amount has been deposited by the Board and that the majority of the same has already been disbursed, which implies that the compensation amount was duly tendered.

14. Further Mr. Mittal has apprised that the possession of the land was taken by recording the rapat no 357 dated 27.05.2002 and therefore the land thereafter vests in the State free from all encumbrances and further it is the stand of the Respondent no. 3 that the land already stands utilized for the utilities. In view of the same, there remains no doubt that the possession of the land duly stands taken and handed over to the Board.

15. In the conspectus of what has been observed above, no ground of lapsing has been made out as the compensation amount duly stands tendered and as has been observed by the Hon'ble Apex Court in para 363(5) that the word 'paid' in the section 24(2) of the Act of 2013 amounts to tendering of the amount of compensation and is evident from the fact that the entire award amount was sent by the Board, and further the possession stands duly taken and the land has already been utilized, therefore none of the contingencies mentioned in section 24(2) of the Act of 2013 stands fulfilled and the acquisition proceedings cannot be declared to have been lapsed. Accordingly, the present petition is dismissed.

CWP no. 11582 of 2015 – Urmila Devi v. State of Haryana and others

16. In this writ petition the petitioners are seeking lapsing of the acquisition proceedings under section 24(2) of the Act of 2013 on the ground that neither the possession of the land has been taken nor the compensation has been deposited in the court. It is the case of the petitioners that they have challenged the acquisition proceedings in CWP no. 8456 of 2002 and the same was dismissed by this Court vide order dated 17.12.2003. As also referred above, that the order was assailed in Civil Appeal 2569-2570 of 2005 before the Hon'ble Apex Court, wherein though the acquisition proceedings were upheld vide order dated 11.04.2005, however the State was directed to provide plots through draw of lots to such persons who apply for the same. As per the petitioner neither the compensation has been given nor the plot has been allotted. On the same account the petitioner is seeking lapsing of the acquisition proceedings.

17. At the first it is unambiguously clear that the petitioner had already failed in the earlier round of litigation and thus in view of para 359 of the judgment in *Indore Development Authority* (supra) as also has been discussed above, the present petition is not maintainable at all. Even otherwise the possession of the land stands taken and it is stand of the respondent no. 3 i.e. the Shrine Board that the land has also been utilized and further that the compensation qua the land stands deposited in the court of Additional District Judge, Panchkula.

18. In view of the observations made herein above, we have no hesitation to hold that no ground for lapsing of the acquisition proceedings has been made out in the present writ petitions and therefore all three petitions are hereby dismissed. All the pending applications meet the same fate and the interim order if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 01, 2020
ndj

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