

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 1344 of 2015 (O&M)

Date of decision:- 01.12.2020

Rajesh Kumar Aggarwal

.....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. Sharad Aggarwal, Advocate, for the petitioner.
Mr. Ankur Mittal, Addl. Advocate General, Haryana,
for the respondents.

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

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RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

The petitioner has challenged in this writ petition the notification dated 12.05.1995 and 10.05.1996 issued under Section 4 & 6 of the Land Acquisition Act, 1894, followed by the award dated 06.05.1998 for the public purpose namely for Development of Residential and Commercial area in Sector 64, Faridabad. The petitioner is seeking the declaration under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 to the effect that the acquisition proceedings qua his land stands lapsed as neither the possession of the land has been taken nor does the compensation has been paid to the petitioner.

2. The present petition was kept pending awaiting the decision of the Constitution Bench of the Hon'ble Supreme Court on the interpretation of section 24(2) of the Act of 2013, which has been

decided in ***Indore Development Authority v. Manoharlal and others*** ***AIR 2020 SC 1496***. Accordingly this petition has now been taken up for hearing for the final disposal in terms of the principles enunciated in Indore Development Authority (Supra). Before advertng to the facts of the case, we feel it appropriate to refer the concluding paragraph of the judgment, wherein the Hon'ble Supreme Court has laid down the following guidelines as regards the interpretation of section 24(2) of the Act of 2013:-

'....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. For seeking lapsing of the acquisition proceedings, Section 24(2) of the Act of 2013 provides for the fulfilment of two conditions, which the Hon'ble Apex Court has held to be conjunctive in nature i.e. both the conditions must be fulfilled for declaring the acquisition proceedings to have been lapsed. These conditions are namely, the physical possession of the land not been taken and the compensation not been paid. This implies that if the possession of the land has been taken, but the compensation is unpaid or vice versa, there can be no lapsing of acquisition proceedings under section 24(2) of the Act of 2013.

4. As far as the possession of the land in question is concerned, Mr. Mittal has submitted while referring to the written statement that the same was taken by drawing the panchnama/ memorandum in the form of Rapat Roznamcha No. 573 dated 06.05.1998 and was handed over to E.O HUDA. The Hon'ble Supreme Court has recognized the recording of the rapat Roznamcha as the valid mode of taking possession and has further observed that the same amounts to taking of physical possession of the land. Once the possession of the land is taken the land vests in State free from all encumbrances and thus, the title of the land owner ceases therefrom and if the person claims to retain the possession of the land it is only as a trespasser and not as an owner.

5. Further the respondents have submitted that out of the total amount of the award announced i.e. Rs. 10,44,33,148/-, an amount of Rs. 10,40,30,944/- already stands disbursed and the rest of the amount is lying deposited in the LAC account. The disbursement of 99.61% of the amount of compensation clearly shows that the same was duly

tendered, however, the petitioner had chosen to not to receive the same. Since the State's obligation to pay the compensation is fulfilled when the same is tendered as per section 31(1) of the Land Acquisition Act, 1894 therefore, the second condition prescribed under Section 24(2) of the Act of 2013 i.e. compensation must not have been paid also remains unfulfilled. In this regard the reference can be made to the judgment passed by this Court in CWP no. 8878 of 2011 Sehdev Singh and others v. State of Haryana and others, wherein this Court while making reference to the Indore Development Authority (Supra) summarized the finding of the Apex Court in para 32 with regard to the possession and the compensation as follows:

(d) As far as the aspect of compensation for the land acquired is concerned, the Hon'ble Supreme Court of India has categorically observed that 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. What is required to be proved is that the compensation amount was tendered which has been explained in para 203 that the tendering of the amount would mean that the amount is made available to the landowner and that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalized for the default in making the payment. While referring to section 31(1), 31(2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. section 71 and 80 of the Act of 2013, the Hon'ble Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per section 34 of the Act of 1894. Even the Hon'ble SC has further clarified that once the payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Hon'ble SC has further observed that if a landowner has filed the reference for higher compensation he cannot claim that he was not paid the amount. (para 224 of the judgment)

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(f) As regards the mode of taking possession, the Hon'ble Supreme Court had clarified that drawing of inquest report/memorandum would mean that physical possession has been taken. The law with regard to vesting of land has once again be reiterated

to hold that once the possession has been taken under section 16 of the Act of 1894, the land vest in the State and there cannot be any divesting or lapsing. (para 244, 245 and 363(7) of the judgment).

6. Because the physical possession of the land stands taken by recording of rapat Roznamcha in view of the principle laid down in para 363(7) of Indore Development Authority (Supra) and the compensation stands tendered under section 31 of the Land Acquisition Act, 1894 as has been laid down in para 363(5), therefore, none of the conditions prescribed under section 24(2) of the Act of 2013 are fulfilled, thus no lapsing of the acquisition as prayed for, has occurred. Accordingly, the relief claimed by the petitioner cannot be granted and therefore, the present petition is accordingly dismissed and the interim order, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

01.12.2020
ravinder

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