IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17097-2015 (O&M)

Date of decision : 01.12.2020

Harish Pal and another .....Petitioners

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. Ram Bilas Gupta, Advocate,
for the petitioners.

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).

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RAVI SHANKER JHA, CHIEF JUSTICE

1. Shorn of unnecessary details the petitioners by invoking the extraordinary jurisdiction of this Court have challenged the notification dated 02.08.1989 and 01.08.1990 issued under section 4 and 6 of the Land Acquisition Act, 1894;followed by the award dated 07.10.1991 thereby acquiring land for the public purpose namely, development and utilization of the land for residential and commercial sector 45 Faridabad. The petitioners are challenging the action of the respondent authorities in not releasing the residential houses/ land and the petitioners are further seeking lapsing of acquisition proceedings under section 24(2) of the Right to Fair Compensation

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and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as Act of 2013).

2. Notice of motion in the instant case was issued on 19.08.2015 and the status quo regarding the possession was directed to be maintained in the meantime. The petition was thereafter adjourned sine die 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 adverting to the facts of the case, we feel it appropriate to reproduce the concluding paragraph of the judgment, wherein the Hon'ble Supreme Court has laid down the guidelines as regards the interpretation of section 24(2) of the Act of 2013 (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.***

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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

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> ***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. While the petitioner is seeking lapsing of the acquisition proceedings under section 24(2) of the Act of 2013, one of the additional prayers made by the petitioner is regarding discrimination in releasing the land of other similarly situated persons. Suffice to mention that admittedly this is the second round of litigation initiated at the instance of the petitioners challenging the acquisition proceedings in question. As is also evident from the response filed on behalf of the respondent- State that on an earlier occasion the petitioners had filed CWP no. 2034 of 1991 thereby challenging the aforesaid notifications. The petition was allowed by this Court vide order judgment dated 03.08.2010 and from the perusal thereof, it transpires that earlier also the petitioners had challenged the acquisition proceedings on the ground of discrimination and taking note of the same, the directions were issued to release the land of the petitioners from the acquisition to extent occupied by the structures which were used for residential purpose only on the date of issuance of notification under section 4 of the Act of 1894. The relevant part from the order is reproduced herein below:

> ***'….As has been held above, the respondent-State has discriminated qua the petitioners in cases where the residential houses were in existence prior to the issuance of the notification under section 4 of the Act. Accordingly, case falling in Category no. 1 i.e. CWP nos. 1593, 1906, 1992, 1706, 1887, 2034 and 1929 of 1991 are allowed. Direction is issued to the respondents in these cases to release the land of the petitioners from acquisition to the extent occupied by structures which were used for residential purpose only on the date of issuance of notification under section 4 of the Act along with equal open area for the beneficial enjoyment of petitioners from their land. It is clarified***

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> ***here that the land under the constructed area not being used for residential purpose strictly i.e. for the purposes subservient to agriculture like tube-well, cattle shed, fodder store/ shed, dairy, farming, poultry farming etc. shall not be treated as released as it would violate and not fit in the purpose of acquisition…'***

It was further directed that the interim order shall continue until the directions passed by this Court are not complied with.

4. Accordingly, in compliance of same, it has been stated that an area measuring 120 square yards stands released from the acquisition vide order dated 24.06.2015, therefore in view thereof the plea of the discrimination being raised by the petitioners again is not tenable as the same is barred by res judicata since no new ground portraying the discrimination has been averred in the petition.

5. Mr. Ankur Mittal, Ld. Additional Advocate General Haryana has submitted in this regard that even otherwise the plea of the discrimination cannot be raised at this stage now and more so after the judgment in Indore Development Authority (Supra) wherein the Hon'ble Court has categorically held that the recording of rapat roznamcha is the valid mode of taking possession of the land and once the possession of the land is taken the same vests in the State free from all encumbrances and that there can be no divesting thereafter. He has submitted that in the era existing prior to the pronouncement of Indore Development Authority (Supra) there was no authoritative pronouncement qua the aspect that the recording of panchnama is the valid mode of taking possession and the State Government exercising its power under section 48 of the Land Acquisition Act, 1894 released the land, even though the rapat entry taking possession of the land used to be there. However, once it has

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been held that rapat constitutes the physical possession of the land, the Government cannot exercise the power under section 48 of the Act of 1894. Supporting his contention he has drawn our attention towards the following observations made by the Hon'ble Supreme Court of India:

> *'....254. This Court in V. Chandrasekaran & Anr. v. Administrative Officer & Ors dealt with the concept of vesting under the Act of 1894. The facts of the said case indicated that the appellants and the officials of the State and Development Board connived with each other to enable the appellant to grab/encroach upon the public land, which was acquired and falsified the documents so as to construct flats thereon. Considering the gravamen of the fraud, the Chief Secretary of the State was directed to trace out such officials and to take suitable action against each of them. It was also held by this Court that alienation of land subsequent to notification under Section 4(1) is void and no title passes on the basis of such sale deed. This Court held that once land vested in the State free from all encumbrances, it cannot be divested. Once land has been acquired, it cannot be restored to tenure holders/persons interested, even if it is not used for the purpose for which it is so acquired. Once possession of land has been taken, it vests in the State free from all encumbrances. Under sections 16 and 17, the acquired property becomes the property of the Government without any limitation or condition either as to title or possession.*
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> *255. In National Textile Corporation Ltd. v. Naresh kumar Badrikumar Jagad & Ors, the concept of vesting was considered. This court observed that vesting means an absolute and indefeasible right. Vesting, in general sense, means vesting in possession. Vesting may include vesting of interest too. This Court observed thus:*
>
> > *"38. "Vesting" means having obtained an absolute and indefeasible right. It refers to and is used for transfer or conveyance. "Vesting" in the general sense, means vesting in possession. However, "vesting" does not necessarily and always means possession but includes vesting of interest as well. "Vesting" may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act. The word "vest" has different shades, taking colour from the context in which it is used. It does not necessarily mean absolute vesting in every situation and is capable of bearing the meaning of a limited vesting, being limited, in title as well as duration. Thus, the word "vest" clothes varied colours from the context and situation in which the word came to be used in the statute. The expression "vest" is a word of ambiguous import since it has no fixed connotation and the same has to be understood in a different context under different sets of circumstances. [Vide Fruit &*

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Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344, Maharaj Singh v. State of U.P. AIR 1976 SC 2602, Municipal Corpn. of Hyderabad v. P.N. Murthy AIR 1987 SC 802, Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu 1991 Supp (2) SCC 228, M. Ismail Faruqui v. Union of India AIR 1995 SC 605, SCC p. 404, para 41, Govt. of A.P. v. Nizam, Hyderabad (1996) 3 SCC 282, K.V. Shivakumar v. Appropriate Authority (2000) 3 SCC 485, Municipal Corpn. of Greater Bombay v. Hindustan Petroleum Corpn. AIR 2001 SC 3630 and Sulochana Chandrakant Galande v. Pune Municipal Transport (2010) 8 SCC 467.]"

256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. ***The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner…****'*

257. After the land has vested in the State, the total control is of the State. Only the State has a right to deal with the same. In Municipal Corporation of Greater Bombay & Ors. v. Hindustan Petroleum Corporation & Anr167, this Court discussed the concept of vesting in the context of Section 220 of the Bombay Municipal Corporation Act. It has referred to various decisions including that of Richardson v. Robertson, (1862) 6 LT 75 thus:

"8. It is no doubt true that Section 220 provides that any drain which vests in the Corporation is a municipal drain and shall be under the control of the Corporation. In this context, the question arises as to what meaning is required to assign to the word "vest" occurring in Section 220 of the Act? In Richardson v. Robertson 6 LT at p. 78, it was observed by Lord Cranworth as under: (LT p. 78)

"The word 'vest' is a word, at least, of ambiguous import. Prima facie 'vesting' in possession is the more natural meaning. The expressions 'investiture'

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> *— 'clothing' — and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the Bar, that by long usage 'vesting' originally means the having obtained an absolute and indefeasible right, as contradistinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."*
>
> *15. We are, therefore, of the view that the word "vest" means vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision of the Act."*
>
> *258. The word 'vest' has to be construed in the context in which it is used in a particular provision of the Act. Vesting is absolute and free from all encumbrances that includes possession. Once there is vesting of land, once possession has been taken, section 24(2) does not contemplate divesting of the property from the State as mentioned above…'*

6. He has further relied on the recent judgment passed by the Hon'ble Supreme Court of India in ***ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD. v. GILLAPUKRI TEA COMPANY LIMITED & ORS. ETC. CIVIL APPEAL NO(S). 251-252 of 2021,*** wherein the Hon'ble Supreme Court while relying upon the Constitution Bench judgment observed as under:

> '….**The recent decision of the Constitution Bench of this Court in Indore Development Authority v. Manoharlal and Ors. has also affirmed that once possession is taken by the State, the land vests absolutely with the State and the title of the landowner ceases. We find no reason to deviate from this settled position of law and thus are unable to agree with the High Court's reliance on the letters dated 21.07.2012 and 06.01.2014 to nullify the original award and allow fresh acquisition proceedings in respect of the first respondent's land which had already been acquired and has been under the possession of the appellant since 11.06.2010….'**

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Therefore, the natural corollary that can be drawn from the aforesaid is that once the title of the land owner has ceased on taking the possession of the land, the claim of the petitioner that he has been discriminated against is liable to be rejected at this stage on two grounds i.e. firstly, after considering the plea of discrimination an area measuring 120sq. yards already stands released from the acquisition and secondly, land stands vested in the State.

7. Now coming onto the aspect of maintainability under section 24(2) of the Act of 2013, the Hon'ble Supreme Court of India in Indore Development Authority (supra) has categorically held that section 24(2) of the Act of 2013 does not give a new cause of action to question the legality of the concluded proceedings of land acquisition and further it does not open a door to invalidate the judgments passed by the Courts whereby the claims of the landowners have been negatived. In this regard reference is made to para 359 and 363(9) of the judgment:

> ***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 negatived. 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….***
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> ***XXXXXXX***
> ***XXXXXX***
>
> ***(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***

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> ***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'.***

8. Since the earlier petition filed by the petitioners was allowed to the extent the residential structures were in existence and the acquisition proceedings qua the rest of the land stood upheld, and further in compliance of the order dated 03.08.2010, an area measuring 120 sq yards stands released from the acquisition proceedings, therefore the petition under section 24(2) of the Act of 2013 is clearly not maintainable.

9. Be it as may be, as far the contingencies prescribed in the section 24(2) of the Act of 2013 are concerned, i.e. physical possession of the land not been taken and the compensation not been paid; both of them are not fulfilled since firstly, the interim order granting stay on the dispossession was in operation all through out and the Hon'ble Apex Court in categoric terms has held that while calculating the five year window period, the duration during which the interim orders were in operation has to be excluded as the authorities were precluded from taking the possession of the land in question. In this regard, reference is made to paras No. 297 and 363 (2) of the judgment :-

> ***'….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***

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> ***<u>the possession or order of status quo or stay of further proceedings, the authorities cannot proceed; nor can they pay compensation.</u> 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.***
> *XXXXXX XXXXXX XXXXX*
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> ***363 (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.***

10. Therefore applying the aforesaid principles, the status quo was in operation till 24.06.2015 i.e. until the land of the petitioners was released from the acquisition. Thereafter again the status quo was ordered to be maintained in the present petition on 19.08.2015. Therefore, the petitioner having enjoyed the interim protection of this Court all through out cannot invoke section 24(2) of the Act of 2013 to seek lapsing of the acquisition proceedings as determinative period i.e. the award must be 5 years or more old as on 01.01.2014 is not fulfilled after the period during which interim order was in operation is excluded.

11. Further it has been apprised by Mr. Mittal that the compensation as regards the claimed land is lying deposited in the account of Land Acquisition Collector and is available for disbursement and he has also stated that the majority of the compensation i.e. to the tune of 81.67% of the total award amount has already been disbursed which further point out towards the fact that the compensation was duly tendered and was available for disbursement and as has been held by the Hon'ble Apex Court in Indore Development Authority (Supra) that the word 'paid' occurring in the body of section 24(2) of the Act of 2013 implied tendering of the compensation and not the actual payment or

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deposit in the reference court, accordingly the second contingency to seek lapsing is also not fulfilled. The relevant para is reproduced herein below:

> *'….242. The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation.* ***In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013.*** *Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings i.e., taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. It was urged before us by one of the Counsel that lands in the Raisina Hills and Lutyens' Zones of Delhi were acquired in 1913 and compensation has not been paid. The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims. There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation…'*

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12. In view of the aforesaid facts, which have not been controverted by the petitioners, and also in light of the law laid down by the Hon'ble Apex Court in Indore Development Authority (Supra), the relief as has been claimed by the petitioners in the present writ petition cannot be granted and thus, the petition is accordingly dismissed. As a consequence thereof, the pending application, if any, also meets the same fate. Interim order, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 01, 2020
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No

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