

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 20473 of 2016 (O&M)

Date of decision:- 01.12.2020

Ramesh Devi and others

.....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. Vikram Singh, Advocate, for the petitioners.
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 deemed fiction envisaged under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is the issue in consideration in the present petition. The petitioners have challenged in this writ petition the notification dated 09.06.2003 and 02.06.2004 issued under Section 4 & 6 of the Land Acquisition Act, 1894, followed by the award dated 20.12.2005 for the public purpose namely for Development and Utilization of Land as Residential and Commercial Institutional area for Sector 57, Gurugram. They are seeking the declaration under Section 24 (2) of the Act of 2013 to the effect that the acquisition proceedings qua the land in question stands lapsed as neither the possession of the land has been taken nor does the compensation has been paid to the petitioners. Besides this, the challenge has been made to the order dated 30.08.2016 whereby the representation of the petitioner seeking

lapsing of the acquisition proceedings has been rejected by the respondent authorities.

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 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:

'...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. The petitioners have stated to be in the possession of the land falling in Khasra no. 1005 (3 Bigha-7 Biswa) and Khasra no. 1003/1 (1 Bigha) situated in village Wazirabad, Tehsil and District Gurgaon. It is the submission of the petitioners that though the award was announced 5 years prior to the commencement of the Act of 2013, however neither the physical possession of the land in question was taken nor the compensation was paid.

4. The contention of the petitioner to be in physical possession of the land has been negated by the respondents on the ground that the same was taken by recording the rapat entry no. 155 dated 20.12.2005 and in view of the law laid down by the Hon’ble Supreme Court in Indore Development Authority (Supra), the possession of the land stands duly taken by way of rapat and the land thus vests in the State. Any possession retained thereafter is only as a trespasser. The reliance in this regard has been placed on the following observations made by the Hon’ble Supreme Court:

“...244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical

possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

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.

5. Further controverting the contention of the petitioners that no compensation has been paid to them, the respondents have categorically stated that the petitioners have already received the compensation for Khasra no. 1003/1 and as far as the Khasra no. 1005 is concerned, same has not been received by the petitioners. The same also finds mention in the speaking order passed and neither this position has been negated by the petitioners in the petition while

challenging the speaking order nor the petitioners have filed any replication to the reply filed on behalf of respondents, therefore, it can be easily inferred that the compensation was duly tendered and the petitioners by choice have not received the same qua one kharsa no., and no benefit thereof can be given to the petitioners on this ground. The Hon'ble Supreme has held the tendering of the amount of compensation sufficient to fulfill the obligation of paying the same. The reference can be made to para 203 of the judgment, which is quoted as below:

*'.....203. The word "paid" in Section 31(1) to the landowner cannot include in its ambit the expression "deposited" in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. **However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment.** In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners' counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. **However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue.** Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit....'*

6. In addition to the aforesaid, Mr. Ankur Mittal, the Ld. Additional Advocate General Haryana appearing for the respondents has drawn our attention towards the judgment of this Court in CWP no. 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others, wherein this Court has discussed in detail the judgment passed by the Hon'ble Supreme Court in Indore Development Authority (Supra) and has culled out the following aspects, specifically with regard to the possession and compensation. The relevant paras are referred herein below:

'.....(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.

7. In view of the aforesaid principles and the factual position of the case at hand, it is ample clear that the possession of the land stands duly taken by recording the rapat Roznamcha, which has been held to be a valid mode of taking possession of the land and further the compensation amount stands duly tendered in the terms of para 203 and 363(7) of the Indore Development Authority (Supra), therefore, we have no hesitation to hold that both the conditions required for seeking lapsing of the acquisition proceedings under section 24(2) of the Act of 2013 remain unfulfilled. Thus, the relief prayed for i.e. deemed lapsing of the acquisition proceedings, cannot be granted to the petitioners and the petition is accordingly dismissed. 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