

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

CWP-17087-2017

Date of decision : 01.12.2020

Vinod Goel 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).

RAVI SHANKER JHA, CHIEF JUSTICE

1. The petitioners have challenged in this writ petition the notification dated 03.07.1995 and 02.07.1996 issued under Section 4 & 6 of the Land Acquisition Act, 1894, followed by the award dated 29.06.1998 for the public purpose namely for development and utilization of land for commercial, institutional, recreational and residential purpose in conformity of development plan, Sector – 20A, Faridabad. The perusal of the prayer clause of the writ petition would show that, the petitioners are seeking lapsing of acquisition proceedings in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and RE-settlement Act, 2013 on the ground that neither the possession of the land has been taken nor the compensation has been paid to the petitioners. Further the challenge has been

which was passed pursuant to the directions issued by this Court in C.W.P. No. 20115 of 2014 titled as Vinod Goyal Vs. State of Haryana. The perusal of the order would show that the said writ petition was filed seeking the similar relief i.e. lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013.

2. The notice of motion in the instant case was issued on 02.08.2017 and the petition was thereafter adjourned sine-die awaiting the decision of the Hon'ble Constitution Bench of Hon'ble Supreme Court of India on the interpretation of Section 24 (2) of the Act of 2013 which came to be decided in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496***. Accordingly, this petition has now been taken up for hearing for 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 reproduced the concluding paragraph of the judgment wherein the Hon'ble Supreme Court of India 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. We have perused the order dated 18.04.2017 vide which the representation of the petitioners claiming lapsing of the acquisition proceedings under Section 24 (2) of the Act of 2013 was decided and rejected. The Zonal Committee formed to look into the matter sought the reports from the E.O. HUDA, Faridabad, LAO Faridabad and DTP Faridabad. The Land Acquisition Officer, Faridabad in his report has stated that the possession of the land in question was taken and handed over to Estate Officer, HUDA, Faridabad vide rapat rojnamcha No. 567 dated 29.06.1998 and further reported that the petitioners did not file any objection under Section 5-A of the Land Acquisition Act, 1894.

4. It has been further stated that out of the total amount of compensation of award, 89% of the award amount has been paid and as far as rest of the amount is concerned, it is lying unpaid. The perusal of the order further shows that the site in question has been planned for public utility 19meters and 12 meter wide internal roads in Sector 20-B, Faridabad. The development works i.e. roads, water supply, sewer, electricity line etc have already been completed near the land under writ petition.

5. In view of the speaking order as has also been discussed above, there remains no doubt that possession of the land was duly taken by recording the panchnama in the form of rapat rojnamcha No. 567 dated 29.06.1998, which

implies that the due possession of the land was taken and thus, the same vested in the State free from all encumbrances. In view of the observations made by the Hon'ble Supreme Court of India in Para No. 244 and 245 of the judgment passed in Indore Development Authority (supra). The relevant paragraphs are reproduced hereunder:-

*“...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.

6. Further the fact that the majority of the compensation amount stands paid, it can be easily inferred that the compensation was duly tendered, however, the claim of the petitioners that the compensation was not paid to them is clearly not tenable. The Hon'ble Supreme Court of India in Indore Development Authority (supra) has categorically observed that the word 'paid' does not means actual payment of the compensation or deposit of the compensation in the reference court, it means that the compensation was tendered in terms of Section 31. The relevant paragraph is reproduced hereunder:-

*'...118. Section 34 deals with a situation where any of the obligations under Section 31 is not fulfilled, i.e., when the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of 9% per annum from the time of so taking possession until it shall have been so paid or deposited; and after one year from the date on which possession is taken, interest payable shall be at the rate of 15% per annum. **The scheme of the Act of 1894 clearly makes it out that when the award is passed under Section 11, thereafter possession is taken as provided under Section 16, land vests in the State Government. Under Section 12(2), a notice of the award has to be issued by the Collector. Taking possession is not dependent upon payment. Payment has to be tendered under Section 31 unless the Collector is "prevented from making payment," as provided under section 31(2). In case of failure under Section 31(1) or 31(3), also Collector is not precluded from making payment, but it carries interest under Section 34 @ 9% for the first year from the date it ought to have been paid or deposited and thereafter @ 15%. Thus, once land has been vested in the State under Section 16, in case of failure to pay the compensation under Section 31(1) to deposit under Section 31(2), compensation has to be paid along with interest, and due to noncompliance of Section 31, there is no lapse of acquisition. The same spirit has been carried forward in the Act of 2013 by providing in Section 24(2). Once possession has been taken though the payment has not been made, the compensation has to be paid along with interest as envisaged under section 34, and in a case, payment has been made, possession has not been taken, there is no lapse***

under Section 24(2). In a case where possession has been taken under the Act of 1894 as provided by Section 16 or 17(1) the land vests absolutely in the State, free from all encumbrances, if compensation is not paid, there is no divesting there will be no lapse as compensation carries interest @ 9% or @ 15% as envisaged under Section 34 of the Act of 1894. Proviso to Section 24(2) makes some wholesome provision in case the amount has not been deposited with respect to majority of landholdings, in such an event, not only those persons but all the beneficiaries, though for minority of holding compensation has been paid, shall be entitled to higher compensation in accordance with the provisions of the Act of 2013. The expression used is “all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act”, i.e., Act of 1894, means that the persons who are to be paid higher compensation are those who have been recorded as beneficiaries as on the date of notification under Section 4. The proviso gives effect to, and furthers the principle that under the Act of 1894, the purchases made after issuance of notification under Section 4 are void. As such, the benefit of higher compensation under the proviso to Section 24(2) is intended to be given to the beneficiaries mentioned in the notification under Section 4 of the Act of 1894...’

7. Therefore, in view of the above, it is clear that none of the contingencies prescribed in Section 24 (2) of the Act of 2013 are fulfilled and therefore, the petitioners are not entitled to any relief claimed in the petition.

8. Before parting it would be relevant to note here that the petitioners have also raised the plea of discrimination and that the notifications issued for acquiring the land of the petitioners were bad in law in the light of the fact that on earlier occasions as well the notifications were issued which were either quashed by this Court or were allowed to lapse. As has been also noted above that neither the petitioners filed objections under Section 5-A of the Act of 1894 nor does at any point of time the petitioners had challenged the acquisition proceedings on an earlier occasion until C.W.P. No. 20115 of 2014, that too on the ground of Section 24 (2) of the Act of 2013.

9. In view of the same, this court does not find any cogent reason to reopen the concluded acquisition proceedings way back in the year 1998 on the grounds which were available to the petitioners at the time when the notification under Section 4 was issued and the petitioners had chosen not to object to the same. Therefore, in view of what has been discussed hereinabove, the present petition is dismissed as being squarely covered by the decision of the Hon’ble Supreme Court in Indore Development Authority (surpa) especially directions in Para No. 363 (5 and 7). The pending applications also meet the same fate and the interim order, if any, also stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 01, 2020
ndj

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