

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

CWP-226-2015

Date of decision : 01.12.2020

Ashish Mittal and another

.....Petitioners

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Gaurav Mohunta, 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 notifications dated 03.07.1995 and 02.07.1996 under section 4 & 6 of the Land Acquisition Act, 1894 followed by the award dated 29.06.1998 for the acquisition of the land for the public purpose namely development and utilization for commercial, institutional, recreational and residential purpose in conformity of development of Sector 20-A, Faridabad. The petitioners are seeking the declaration in view of the provisions envisaged under Section 24 (2) of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (herein being referred to as Act of 2013).

2. The notice of motion in the instant case was issued on 07.04.2015.

Since the issue involved in the instant case was with regard to the interpretation of Section 24 (2) of the Act of 2013, it was adjourned sine-die awaiting the

decision of the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India which has now been 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 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 refer the concluding paragraph of the judgment wherein the Hon'ble Supreme Court of India has laid down the guidelines in respect 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. Mr. Ankur Mittal, Ld. Additional Advocate General, Haryana appearing on behalf of the State of Haryana has drawn attention towards the fact that the present petition is not maintainable at all at the instance of the

have purchased the land in question after the issuance of notification under Section 4 of the Act of 1894. In this regard the reference is made to Para Nos. 2 & 3 of the writ petition, from the perusal of which it is crystal clear that the petitioners are subsequent purchasers. The relevant paras from the writ petition are re-produced hereinbelow:-

“2... That petitioner no. 1 is owner in physical possession of land measuring 519 square yards (18 Marlas) comprised in Khata No. 27 Khasra No. 94 bearing plot Nos. 4,5,6 & 7 situated in Village Daultabad, Tehsil and District Faridabad having purchased the same from his vendor for consideration vide sale deed dated 05.10.2009 in pursuance to the agreement to sell dated 12.11.1996.

3. Likewise petitioner no. 2 is owner in physical possession of land measuring 300 square yards (10 marlas) comprised in Khata No. 27 Khasra No. 94 situated in Village Daultabad Tehsil and District Faridabad as is evident on perusal of the mutation dated 07.07.1997. Copy of the mutation dated 07.07.1997 is appended herewith as Annexure P-1...”

4. The perusal of Annexure P-1 annexed with the petition further makes it clear that the said land was sold to the petitioners vide sale deed dated 31.10.1996. Clearly both the petitioners have purchased the land subsequent to the issuance of notification dated 03.07.1995. It is settled law that the subsequent purchaser has no right to challenge the acquisition proceedings as any alienation of land after issuance of notification under Section 4 does not bind the government or the beneficiary under acquisition. Further the Hon’ble Supreme Court of India in *Shiv Kumar 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 and over ruled the judgment passed in *Government of NCT of Delhi Vs. Manav Dharam Trust and Antother reported in 2017 (6) SCC 751*, whereby a different opinion was taken by the Bench that though the subsequent

purchaser has no locus standi to challenge the acquisition proceedings, however, the petitioner seeking declaration that the acquisition proceedings have lapsed in view of the operation of Section 24 (2) of the Act of 2013 can be maintained. However, at present the law is certainly clear onto the aspect that the subsequent purchaser can neither challenge the acquisition proceedings nor can seek the lapsing of the same under section 24(2) of the Act of 2013.

5. It is further pertinent to note here that the Hon'ble Supreme Court of India recently in ***Indore Development Authority (supra)*** has upheld the view taken in ***Shiv Kumar (supra)*** to the effect that that the subsequent purchaser cannot seek lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013. Para No. 337 is reproduced hereinbelow:-

‘...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...’

6. The law regarding subsequent purchaser has also been discussed in detail in CWP no. 10645 of 2018- Ram Prasad Yadav v. State of Haryana and

‘.....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....’

In view of the same 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 have no right to either challenge the acquisition proceedings or to seek the lapsing of the acquisition proceedings.

7. Be it as may be, the perusal of the reply filed on behalf of the respondents shows that the possession of the land in question was taken by recording rapat entry No. 569 dated 29.06.1998 and therefore, the land vested in the State the moment rapat entry, recording the action of taking possession was made. In this regard, it would be relevant to refer to the Para Nos. 244 and 245 of the judgment in Indore Development Authority (supra) that once the possession is taken by recording the panchnama, the land vests in the State absolutely and any possession retained by the land owner thereafter is only by way of trespasser. The same are reproduced herein below:

“...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.**

8. In the conceptus of what has been discussed hereinabove, it is evident that firstly the present writ petition is not maintainable, as the petitioners are subsequent purchasers and further even the relief under Section 24 (2) of the Act of 2013 cannot be availed by the petitioners as the possession has already been taken by the State by recording the rapat and further as has been apprised to this Court that 92.62% of the total amount of compensation has already been disbursed, which shows that the compensation amount was duly tendered and therefore, in the light of the principles enunciated in Para 363

2013 is fulfilled, hence the present petition is accordingly 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