

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 18413 of 2017 (O&M)

Date of decision:- 01.12.2020

Surender and others

.....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. 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 controversy involved in the present writ petition is whether the acquisition proceedings qua the land of the petitioners can be said to have been lapsed under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as Act of 2013). The land in question was notified to be acquired vide notification dated 05.05.1997 and 04.05.1998 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by the award dated 03.05.2000 for the public purpose namely, Development and Utilization of Land for Residential, Commercial and Institutional area at Sector 52, Gurugram. The prayer in the petition is for declaring the acquisition proceedings to have been lapsed under section 24(2) of Act of 2013 with the further prayer to quash the order dated 24.07.2017 vide which the representation of the petitioner seeking lapsing of acquisition proceedings has been rejected.

2. Before advertizing to the facts of the case, it is worthwhile to mention that 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***. The Hon'ble Court has put the controversy surrounding the section 24(2) of the Act of 2013 at rest and has laid down the following guidelines/principle in concluding paragraph of the judgment are reproduced herein below:

'...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'.

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).

3. The petitioners are seeking lapsing of the acquisition proceedings on the ground that they are in the physical possession of the land in question. We have perused the order vide which the claim of the petitioner has been rejected. From perusal thereof, it transpires that the possession of the land in question was taken by way of rapat entry no. 487 dated 03.05.2000. Worthwhile to mention here that the Hon'ble Apex Court in Indore Development Authority (Supra) has held the drawing of panchnama as a valid mode of taking possession of the land and further has categorically observed that any landowner retaining the possession thereafter is only a trespasser as the title of the land owner ceases when the possession of the land is taken. To quote:

*“...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.

4. Therefore the claim of the petitioners that they are in the physical possession of the land is rejected. As far as the compensation is concerned, the petitioners have already received the compensation amount vide cheque dated 05.09.2000 and 19.09.2000 as transpires from the order impugned in the petition. In addition to this, the constructed portion of the land owners have already been released by the government. In the light of the said facts, Mr. Ankur Mittal, Ld. Additional Advocate General Haryana, while referring to the principles laid down in Indore development Authority (Supra) has submitted that for declaring the acquisition proceedings to have been lapsed under section 24(2) of the Act of 2013, both the conditions prescribed in Section 24(2) must be fulfilled, however in the matter at hand both the conditions remains unsatisfied as the possession stands duly taken by recording the Rapat Roznamcha and the compensation has already been received as far as the land in question is concerned and thus, he has prayed for the dismissal of the present petition.

5. We have perused the facts of the present petition in the light of the principles enshrined by the Apex Court, which leaves no scope for doubt with regard to the aspect that with the recording of memorandum the physical possession of the land stands taken by the State and the moment the possession is taken the title of the land owner ceases and the same vests in the State free from all encumbrances. In case any person claims to be in the possession of the acquired land after the possession is taken by the State, it is only as trespasser and not as a landowner. Therefore, since the possession of the land has been taken and the compensation has been paid to the petitioners, none of the contingencies mentioned in section 24(2) of the Act of 2013 is fulfilled and since the proceedings cannot be declared to have been lapsed, the present petition is hereby dismissed, pending applications also meet the same fate and the interim order, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

01.12.2020
ravinder

Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No