

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 2374-2015 (O&M)
Date of decision:- 01.12.2020

Sunheri 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. Ranjit Saini, 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, C.J. (ORAL)

1. Whether the acquisition proceedings qua the land of the petitioners have lapsed or not under section 24(2) of the Act of 2013 is the issue in consideration in the present petition. The land of the petitioners was acquired vide notifications dated 09.06.2003 and 02.06.2004 issued under Section 4 & 6 of the Land Acquisition Act, 1894 for the public purpose namely for Development and Utilization of Land as Residential and Commercial Institutional area for Sector 57, Gurugram. Finally, the award came to be announced on 20.12.2005. The petitioner has sought the lapsing of the acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 on the ground that though the possession of the land in question has been taken, however the compensation has not been paid to the petitioners and the same is lying deposited in the account of LAC.

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 are seeking lapsing of the acquisition proceedings on the ground of compensation having not been paid as

admittedly, the respondents have taken the possession of the land and have utilized the land in question. It is worthwhile to mention that the Hon'ble Apex Court while interpreting section 24(2) of the Act of 2013 has held that the conditions prescribed in section 24(2) of the Act of 2013 are conjunctive in nature i.e. the requirement of law for declaring the acquisition proceedings to have been lapsed is that both the conditions must be simultaneously fulfilled i.e. neither the possession of the land must have been taken nor the compensation must have been paid. Since the petitioners are not disputing the factum of the respondents having taken the possession, there can be no deemed lapsing on account of compensation having not been paid. The reference in this regard can be made to para 99 of the judgment passed in Indore Development Authority (Supra):-

'...99. In this Court's considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and"

Thus, in view of the own admission of the petitioners that the possession of the land claimed has already been taken by the State/beneficiary department, therefore, the claim of the petitioner seeking lapsing of the acquisition proceeds is liable to be rejected on this ground alone.

4. Further, Mr. Ankur Mittal, Ld. Additional Advocate General Haryana, appearing for respondents has stated that possession of the land was taken by recording rapat Roznamcha no. 204 dated 20.12.2005 and the compensation amount was tendered and is lying deposited in

the Account of LAC. The Hon'ble Supreme Court while interpreting the word 'paid' used in section 24(2) of the Act of 2013 has categorically held that it does not imply actual payment or deposit in the Court, however the same means tendering of the amount of compensation. This aspect has been discussed in detail by this Court in *CWP 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others*, the relevant para of which is reproduced 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)....'

Thus, as far as the obligation of the State to tender the amount of compensation is concerned, it duly stands fulfilled and thus, the contention of the petitioners to the effect that no compensation was paid to them deserves to be rejected.

5. In view of the aforesaid discussion, it is clear that the possession of the land stands taken by recording the rapat Roznamcha, which has been recognized as the valid mode of taking possession and in consequence thereof the land has vested in the State free from all encumbrances, thus cannot be divested. Moreover, the obligation of tendering the compensation amount has also been fulfilled thereby implying that none of the conditions required for deemed lapsing is fulfilled and thus, the relief prayed for by the petitioners cannot be granted. The petition is thus 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	YesNo
Whetherreportable	YesNo