

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 26266 of 2014 (O&M)

Date of decision:- 01.12.2020

Jagdish Yadav 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. Navneet Singh, Advocate for
Mr. Ashok Jindal, 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)

After having lost the earlier challenge to the acquisition proceedings on merits, the petitioners have once again challenged in this writ petition the notification dated 18.09.2006 and 19.09.2006 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by the award dated 15.09.2008 for the acquisition of the land for the public purpose namely, Development and Utilization of Land for service road and green belt on either side of National Highway No. 8 from Delhi Haryana Border upto Rajiv Chowk, Gurgaon; on the ground that the acquisition proceedings have lapsed in view of 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) as though the possession of the land has been taken by the respondent authority, however no compensation has been paid to the petitioners.

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 advertng 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 foremost issue that needs adjudication is whether the petitioner having once lost the earlier challenge to the acquisition proceedings can seek lapsing of acquisition proceedings under section 24(2) of the Act of 2013 or not. Admittedly, the petitioner had challenged the aforesaid acquisition proceedings by filing writ petition bearing CWPNo. 14344 of 2011 titled as Jagdish Yadav and others v. State of Haryana and others. The said writ was dismissed by this Court vide order dated 07.11.2012 and the following observations were made:

On merits, we find that as per the averments made by the petitioners themselves were dispossessed prior to filing of the present petition. The petitioners have filed the writ petition after three years of the award. It is unbelievable that the petitioners were not aware of the acquisition proceedings. In fact, that is not even the stand of the petitioners. Therefore, the petitioners have failed to invoke the jurisdiction of this Court impugning the notification within the reasonable time of initiation of the acquisition proceedings.

4. The perusal of the aforesaid leaves no scope of doubt that the possession of the land in question was taken by the respondents long time ago. The petitioners thereafter assailed the order passed by this Court before the Hon’ble Supreme Court by filing SLP (C) no. 9692 of 2013 which was dismissed vide order dated 11.03.2013, meaning thereby the acquisition proceedings qua the land of the petitioner stood upheld and had attained the finality. It is worthwhile to mention here that the Hon’ble Apex Court in ***Indore Development Authority (Supra)***

has categorically held that the section 24(2) of the Act of 2013 does not give an umbrella protection to those who have already lost the challenge to the acquisition proceedings in an earlier round of litigation and thus cannot be used as a tool to revive the dead claims. In this regard reference is made to paras 359 and 363(9) of the judgment:

359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negated. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013....

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363 (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’.

5. As has been observed above that the earlier petition filed by the petitioners was dismissed and the acquisition qua the land in question was upheld, therefore the petitioners cannot invoke the provision of section 24(2) of the Act of 2013 and the present petition deserves to be dismissed on this ground alone. However, we feel it appropriate to examine other aspects as well.

6. Mr. Ankur Mittal, Additional Advocate General, Haryana, has submitted that the possession of the land was taken by recording the rapat no. 22 dated 17.09.2008 and further as far as the status of compensation is concerned, the same is lying deposited in the account of Land Acquisition Collector. He further submits that the Hon'ble Apex Court in Indore Development Authority (Supra) has held that drawing panchnama is the valid mode of taking possession and once the possession is taken, the land vests in the State and there can be no divesting afterwards. Further the Hon'ble Court has also observed that the States' obligation to pay the compensation is complete when the amount is tendered and the actual payment or deposit in the Court is not required for fulfilling the obligation to make the payment. Therefore, the present case is squarely covered by the principles laid down by the Hon'ble Apex Court in paras 363 (5), (7) and (9) of the judgment. The said aspect has also been discussed in detail in the judgment passed by this Court in CWP no. 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others. The observations made therein are 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)

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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 observations made herein above, the present petition is the second round of litigation challenging the acquisition proceedings. Therefore, in view of the law summarized in para 363 (9) of the Indore Development Authority (Supra) the present petition is liable to be dismissed as the acquisition proceedings already stands upheld in the earlier round of litigation upto the Hon’ble Supreme Court of India. Even otherwise, no ground for declaring the acquisition proceedings to have been lapsed have been made out as admittedly, the possession of the land stands taken by the respondent authorities and the compensation is lying deposited with LAC and thus, the present petition is dismissed, all the pending applications, if any, meet same fate and the interim order stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

01.12.2020
ravinder

Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No