

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

**C.W.P. No.2813 of 2015 (O&M)
Date of Decision:13.08.2020**

T.K.Dhillon and others

...Petitioners

Vs.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Abhilaksh Grover, Advocate,
for the petitioners.

Mr. Lokesh Sinhal, Advocate,
for the applicant-respondent no.4.

Ms. Amrita Nagpal, Advocate,
for the applicant-respondent no.5.

RAKESH KUMAR JAIN, J.

Case was taken up through video conferencing on 17.07.2020.

In the main writ petition, the prayer made by the petitioners is for the issuance of a declaration to the effect that the notification dated 24.08.2000 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") and the notification dated 22.08.2001 (Annexure P-4) issued under Section 6 of the Act in respect of the acquisition of 53 Acres 15 Kanals 5 Marlas of land pertaining to the proforma respondent no.5-The Saraswati Kunj Cooperative House Building Society Ltd. (hereinafter referred to as the "Society") have been lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "Act of 2013") and

consequently prayed for quashing both the aforesaid notifications issued under

Sections 4 and 6 of the Act and also the Award dated 21.07.2003 (Annexure P-5) passed under Section 11 of the Act.

At the time of preliminary hearing of the present writ petition, the following order was passed by this Court on 19.02.2015:-

“Issue notice of motion returnable on 22.04.2015.

Any action taken shall be subject to further orders.

To be listed along with CWP No.958 of 2015.”

Thereafter, the following order was passed by this Court on 17.08.2015:-

“List on 07.01.2016 to await the decision of Hon’ble Supreme Court in Civil Appeal No.4835 of 2015 titled State of Haryana and another Vs. Maharana Partap Charitable Trust.

To be heard along with CWP No.958 of 2015.”

Thereafter, on 07.06.2016, the following order was passed by this Court:-

“The hearing of the present petition is adjourned sine die with a direction to post the writ petition for hearing after the decision of Hon’ble Supreme Court in Civil Appeal No.4835 of 2015 titled State of Haryana and another v. Maharana Partap Charitable Trust.

The liberty is given to the parties to apply for hearing of the petition after decision of the aforesaid Civil Appeal as well.

The parties shall maintain status quo regarding possession till further orders.”

Thereafter, a C.M. No.7213-CWP of 2017 was filed in CWP No.21091 of 2014, in which the following order was passed by this Court on 13.10.2017:-

“Prayer in the present application is for the modification of the order dated 21.12.2016 passed by this Court whereby the petition was ordered to be listed after the decision of Hon'ble the Supreme Court in C.A. No. 4835/15 **State of Haryana & Anr. Vs. Maharana Partap Charitable Trust**.

The said order was challenged by the applicants before Hon'ble the Supreme Court in Special Leave to Appeal (C) CC No. 7788 of 2017. Vide order dated 17.04.2017 while disposing of the said Special Leave to Appeal, the applicants were given liberty

to file application before this Court for modification of the order dated 21.12.2016. This is how the matter is listed before us.

Learned counsel for the applicants submitted that the claim by the applicants/petitioners in the writ petition can be heard and decided on merits keeping in view various judgments of Hon'ble the Supreme Court wherein issue of lapsing of acquisition under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act') has been gone into.

The Full Bench of this Court in **Maharana Partap Charitable Trust vs. State of Haryana & others, 2015(1) RCR (Civil) 451** dealt with issue as to whether period of stay in any acquisition proceedings is to be excluded for the purpose of consideration of five years provided in Section 24(2) of the 2013 Act. Final opinion expressed was that period of stay is to be excluded. Leave to appeal was granted by Hon'ble the Supreme Court. Civil Appeal No. 4835 of 2015 against the aforesaid Full Bench judgment in **Maharana Partap Charitable Trust's case (Supra)** is admitted and pending consideration before Hon'ble the Supreme Court.

Earlier judgment of Hon'ble the Supreme Court in **Sree Balaji Nagar Residential Association Vs, State of Tamil Nadu & Ors,(2015) 3 SCC 353**, taking a view that period of stay is not to be excluded was considered by this Court in **Maharana Partap Charitable Trust's case (Supra)**. Subsequently, vide order dated 12.01.2016 passed in SLP (C)No. 10742 of 2008 titled as **Yogesh Neema & Ors. Vs. State of M.P & Ors.** Hon'ble the Supreme Court referred the following two questions of law to be considered by a larger Bench while doubting the view expressed in **Sree Balaji Nagar Residential Association's case (supra)**.

- i) Whether the conscious omission referred to in paragraph 11 of the judgment in Sree Balaji Nagar Residential Association (Supra) makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of

the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act?

- ii) Whether the principle of “actus curiae neminem gravabit”, namely act of the court should not prejudice any parties would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession as contemplated in Section 24(2) of the 2013 Act?

It has further been submitted by learned counsel for the applicants that prior to the aforesaid reference and even subsequent thereto in number of cases Hon'ble the Supreme Court had been dealing with issue of lapsing of acquisition in terms of various earlier judgments starting from **Pune Municipal Corporation Vs. Harakchand Misirimal Solanki, 2014(1) RCR (Civil) 880**. Only the cases where there was stay of acquisition proceedings, are not being decided. Hence, order dated 21.12.2016 deserves to be modified and arguments in the main petition be heard as issue of stay of acquisition proceedings is not involved in the present petition.

Learned counsel for the State fairly does not dispute the aforesaid contentions raised by learned counsel for the applicants regarding various orders passed by Hon'ble the Supreme Court dealing with issues under Section 24(2) of the 2013 Act, where no stay was involved including order passed in **Yogesh Neema's case (supra)** where question referred to larger Bench is to the issue period of interim stay to the acquisition proceedings.

After hearing learned counsel for the parties, going through the order dated 21.12.2016 and keeping in view the order passed by Hon'ble the Supreme Court in **Maharana Partap Charitable Trust's case (supra)**, the present petition deserves to be listed for hearing, while modifying the orders passed on 7.1.2016 as reiterated on 21.12.2016 for hearing the case on merits.

At the time of hearing, it was pointed by learned counsel for the parties, that besides the case in hand there are number of cases where this Court had adjourned those cases to be taken up after the

decision of Hon'ble the Supreme Court in **Maharana Partap Charitable Trust's case(Supra) and Yogesh Neema's case (supra)**, but in those cases issue regarding stay of acquisition proceedings may not be involved.

Accordingly, the present application is allowed and the petition is directed to be listed for hearing on merits on 30.10.2017.

Learned State counsel to apprise the Registry regarding the cases, which have been adjourned to be, listed after the decision of **Maharana Partap Charitable Trust's case (supra)** and **Yogesh Neema's case (supra)**, to enable the Registry to list those cases on the next date of hearing after notice to their respective counsels for the parties.

Registry may also carry out that exercise and list the cases for hearing on the next date of hearing.”

Accordingly, the present writ petition was re-listed for hearing on 03.04.2019 and the following order was passed by this Court:-

“Learned State counsel submits that the matter is still pending before Hon’ble the Apex Court.

Adjourned to 11.07.2019.”

On 11.07.2019, the following order was passed:-

“Learned State counsel submits that decision of Hon’ble Supreme Court in **State of Haryana and others vs. M/s G.D. Goenka Tourism Corporation Limited and another** is still pending.

Adjourned sine die.

To be listed for hearing on moving of an application by either side.”

Applicant-respondent no.4 has now moved C.M. No.5981-CWP of 2020, in which prayer has been made for disposal of the present writ petition in terms of the decision rendered by the Supreme Court in **SLP (C) No.9036 of 2016** titled as **“Indore Development Authority vs. Manoharlal & Ors. Etc.”**, decided on 06.03.2020.

Notice in the aforesaid application was issued on 09.07.2020 after passing the following order:-

“Case taken up through Video Conferencing.

This application is filed by respondent No.4 for seeking disposal of the main writ petition in view of the decision of the Hon'ble Supreme Court in SLP (C) No. 9036 of 2016 titled as Indore Development Authority Vs Manohar Lal and others.

Counsel for the applicant/respondent No.4 has submitted that though the petitioner has been unsuccessful in challenging the notifications dated 24.08.2000 (Annexure P-2) and 22.08.2001 (Annexure P-4) issued under Sections 4 and 6 respectively of the Land Acquisition Act, 1894, up to the Hon'ble Supreme Court, but the present writ petition was filed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act, 2013 (for short 'the Act') on the ground that since the possession has not been taken and compensation has not been paid, therefore, the acquisition proceedings have lapsed. It is submitted that Section 24 (2) of the Act has now been interpreted in the decision of the Indore Development Authority (Supra) by the Hon'ble Supreme Court to the effect that once the land has been acquired and vested, it cannot be divested in view of the Section 24(2) of the Act. It has also been held that once the acquisition is unsuccessfully challenged then it cannot be further challenged in view of Section 24(2) of the Act.

Notice in the application to the counsel for the petitioners for 17.07.2020.”

Upon notice, counsel for the petitioners has put in appearance and we have heard the arguments of all the parties in the main writ petition with their consent.

At this stage, we may reproduce brief facts of this case, which are as under:-

The petitioners have averred in the writ petition that they are the members of the Society, which was constituted to acquire land for the

purpose of developing residential complexes/houses for its members. It is further averred that the Society has purchased a huge chunk of land on 25.01.1990 and on 30.06.1995, license no.3 of 1995 was granted to the Society for developing residential colony on the land measuring 115.86 acres, which formed part of Sectors 53 and 54 of the Development Plan of Controlled Area, Gurugram. It is further averred that vide notification issued under Section 4 of the Act dated 24.08.2000, followed by the notification issued under Section 6 of the Act dated 22.08.2001, land measuring 53 Acres 15 Kanals 5 Marlas of the Society was acquired, regarding which Award under Section 11 of the Act was passed by the Collector on 21.07.2003.

It is an admitted fact that the Society had challenged the acquisition proceedings, much-less the notifications issued under Sections 4 and 6 of the Act, by way of CWP No.7880 of 2002, which was dismissed on 31.10.2013 after having been tagged with CWP No.11332 of 2000. Review Application No.272 of 2014 was also dismissed on 16.05.2014. Thereafter, SLP (C) No.15898 of 2014 was filed by the Society, which was withdrawn on 21.11.2014.

Counsel for the applicant-respondent no.4 has submitted that the present writ petition has been filed by the petitioners only on the ground that Section 24 of the Act of 2013 was enforced w.e.f. 01.01.2014, award was announced on 21.07.2003 and after expiry of more than 5 years, neither the payment of compensation has been made to the land owners/beneficiaries nor it is deposited in the Court. It is submitted that this ground is no more available to the petitioners in view of the latest decision of the Supreme Court rendered in **Indore Development Authority's case (supra)**. It is further submitted that the petitioners themselves have averred in para no.21 of the writ

petition that the possession of the land in question has been shown to have been given to HUDA in papers but the physical possession is with the Society.

It is further submitted that in para no.24 of the writ petition, the petitioners have themselves averred that the compensation of the acquired land is lying deposited in the office of the Land Acquisition Collector. It is, thus, submitted that once the possession has already been taken even on papers and the compensation has been deposited by the authorities, for which the land was acquired, even with the Collector, the rigors of Section 24 of the Act of 2013 would not apply.

It is pertinent to mention here that during the pendency of the writ petition, CM Nos.6407-CWP of 2020 have also been filed under Order 1 Rule 10 of the CPC for impleadment of the applicant- allottees of HUDA of the land which forms part of the land in dispute.

Counsel for the petitioners has raised no objection to the impleadment of the applicants as party respondents.

Accordingly, the application bearing CM No.6407-CWP of 2020 is allowed and the applicants therein are impleaded as party respondents.

Counsel for the petitioners, however, has submitted that the compulsory acquisition has lapsed because 5 years had passed after the award was announced by the Collector and the possession was not taken from them. However, he could not dispute the averments made by the petitioners in para nos.21 and 24 of the writ petition.

We have heard learned counsel for the parties and examined the available record.

The petitioners have raised the issue of the interpretation of Section 24 of the Act of 2013. Section 24 of the Act of 2013 is reproduced here-as-under for the ready reference:-

anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,--

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
 - (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.
- (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

The interpretation of aforesaid Section 24 of the Act was a subject matter before the Constitution Bench of the Supreme Court, in which the lead case was **Indore Development Authority’s case (supra)**. In the said case, the following questions were framed:-

“1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013') and Section 31 of the Land Acquisition Act, LA (Act of 1894')? Whether non-deposit of compensation in court under section

31(2) of the Act of 1894 results into lapse of acquisition under section 24(2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under section 31(1) of the Act of 1894 and section 24(2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?

2. Whether the word 'or' should be read as conjunctive or disjunctive in Section 24(2) of the Act of 2013?

3. What is the true effect of the proviso, does it form part of sub Section (2) or main Section 24 of the Act of 2013?

4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24(2) of the Act of 2013?

5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24(2) of the Act of 2013 ?

6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into.”

The Hon'ble Supreme Court, after an elaborate discussion, has culled out the following decision as answers to the aforesaid questions, which are reproduced as under:-

“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.”

In para no.7 of the aforesaid conclusions, it is provided that the mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) of the Act of 2013 is by drawing inquest report/memorandum. In the present case, the petitioners themselves have admitted in para no.21 of the writ petition that the possession has been taken on papers and handed over to the HUDA.

Further, it has been held in para no.3 of the aforesaid conclusions that in case possession is taken and compensation is not paid or vice-versa, the acquisition shall not lapse, whereas in the present case, the compensation has already been deposited with the Land Acquisition Collector. Furthermore, in Clause 9 of the aforesaid conclusions, it has been held that 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.

In the present case, the Act of 2013 came in to force w.e.f. 01.01.2014,

initiated vide notification dated 24.08.2000 (Annexure P-2) issued under Section 4 of the Act, notification dated 22.08.2001 (Annexure P-4) issued under Section 6 of the Act and the Award dated 21.07.2003, was dismissed on 31.10.2013.

Thus, looking from any angle, we do not find any substance in the writ petition filed by the petitioners rather there is a substance in the argument raised by the counsel for applicant-respondent no.4 who has made a prayer for disposal/dismissal of the writ petition in view of the decision rendered by the Supreme Court in **Indore Development Authority’s case (supra)**.

Thus, while allowing the application bearing CM No.5981-CWP No.2020, the present writ petition bearing CWP No.2813 of 2015 is hereby dismissed being denuded of any merit.

No costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

August 13, 2020
*Vinod**

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No