

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 6111 of 2015 (O&M)
Date of decision:- 01.12.2020

Raghubir SinghPetitioner
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. Sanjay Vij, Advocate, for the petitioner.
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)

The State for the purpose of developing Residential, Commercial and Institutional area at Sector 52, Gurugram issued the notifications dated 05.05.1997 and 04.05.1998 under section 4 and 6 of the Land Acquisition Act, 1894, subsequently followed by the award dated 03.05.2000. Though the proceedings concluded way back in the year 2000 under the Land Acquisition Act, 1894, however with the advent of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land owners were vested with a right to seek declaration to the effect that the acquisition proceedings qua their land wherein the award has been announced 5 years or more prior to the enactment of Act of 2013; has lapsed on account of non-payment of compensation or dereliction on behalf of the acquiring authority in taking physical possession of the land. This deemed fiction has been enshrined in Section 24(2) of the Act of 2013 and accordingly the present petition has been filed seeking the

relief under section 24(2) of the Act of 2013. In addition to this he has prayed to quash the order dated 29.06.2012 on the ground that the respondent authority has released only small piece of land out of total 10 biswa 12 bighas and the review filed by the petitioner has also been rejected.

2. The petitioner has averred that he is in possession of the land in question and the residential structure exists on the land in question prior to the issuance of notification under section 4 of Act of 1894. The petitioners challenged the acquisition proceedings by way of CWP no. 14213 of 2004, which was however dismissed by this Court on the ground of delay and laches vide order dated 14.09.2004. The petitioner thereafter assailed the order passed by this Court by filing SLP, later converted into Civil Appeal no. 2022 of 2006, which came to be decided vide order dated 20.04.2011 relying on the judgments passed in ***Jagdish Chand and another v. State of Haryana and another 2005(10) SCC 162*** and ***Sube Singh v. State of Haryana 2001(7) SCC 545***.

3. Thereafter, the respondents released an area of 306 square yards and acquired the remaining land. Being dissatisfied, the petitioner filed review application for reconsidering release of more area, however the respondent authorities rejected the claim vide order dated 19.02.2013 which has now been impugned in the present petition. The perusal of the order shows that the constructed area of the petitioner was 124 sq. ft. i.e 114 sq. yards approximately and was entitled to release of 228 sq. yards land, instead land measuring 306 sq. yards had been released from the acquisition as the applicant at the time of

hearing had chosen to get the piece of land abutting to the road leading to the village. As far as the acquired land is concerned, the petitioner is entitled for the compensation for the land as well as for the constructed area which is not released. Since the land of the petitioner stands already released and the rest of the land stood acquired way back in 2000, we find no impediment in the order passed by the respondent authorities.

4. Further as far as the prayer regarding lapsing of acquisition proceedings under section 24(2) of the Act of 2013 is concerned, it has been submitted by Mr. Ankur Mittal appearing on behalf of the respondents that the possession of the land was taken by recording the rapat no. 487 dated 03.05.2000 and since possession by way of rapat has been held to be a valid mode of possession, therefore due possession of the land stands taken and the land has thus, vested in the State. As regards the compensation, it has been apprised that it is lying deposited in the account of LAC. The Hon'ble Supreme Court in ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496***, has put the controversy surrounding the interpretation of section 24(2) of the Act of 2013 at rest and has observed as follows in para 363:

‘....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’.

5. The perusal of the aforesaid principles leaves no scope of doubt with respect to the interpretation of Section 24(2) of the Act of 2013. It is submitted that the Hon’ble Supreme Court has clearly held the rapat Roznamcha to be a valid mode of taking possession and has emphatically held that the vesting of the land takes place the moment possession of the land has been taken and has further observed that the title of the landowner ceases with the taking of possession and thereafter if the same is said to have been retained by the ex-landowner it is only as a trespasser. This court in CWP no. 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others, has elaboratively discussed the Indore Development Authority (Supra), and observed as follows with regard to the aspect of ‘physical possession’ in para 32:-

‘.....(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)..’

Further tendering of the award amount has been held to be the sufficient fulfillment of obligation of State to pay the compensation. It

has been held that the word 'paid' used in section 24(2) of the Act of 2013 cannot be construed to mean actual payment of the compensation or depositing the award amount in the Reference Court, it only implies that the amount was made available to the landowner. This aspect has been discussed by this Court in Sehdev Singh's case (supra) in the following manner in para 32:

'.....(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)....'

5. In view of the afore-stated facts and the principles laid down by the Hon'ble Supreme Court In Indore Development Authority (Supra) and also followed by this High Court in Sehdev Singh's (Supra), the contention of the petitioner that the possession of the land was not taken is negated as the same stands taken by recording rapat Roznamcha and further the compensation amount stands duly tendered. Therefore in view of the guidelines laid down in para nos. 363(5), (7) and (9) of the judgment, none of the conditions required for

declaring the acquisition to have been lapsed are fulfilled and thus relief as prayed in respect of deemed lapsing of proceedings cannot be granted. Thus, the petition is hereby dismissed; pending applications also are disposed of in same terms and the interim order, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

01.12.2020
ravinder

(ARUN PALLI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No