

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

CWP-6954-2016

Date of decision : 01.12.2020

Shyam Lal 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. Manoj Kaushik, Advocate,
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE

1. A short legal issue, apparently devoid of merit has been urged before us as to whether the acquisition proceedings in the case at hand can be said to have been lapsed in view of the deemed fiction envisaged under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The land in question was acquired vide notification dated 03.07.1995 and 02.07.1996 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by the award dated 29.06.1998 for the public purpose namely, development and utilization of the land for commercial, institutional, recreational and residential purposes in conformity with the Development Plan of Sector 20-A Faridabad. The petitioners are

seeking the declaration to the effect that the acquisition proceedings qua the land of the petitioners stands 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).

2. The notice of motion in the instant case was issued on 12.04.2016 and the status quo regarding the possession was directed to be maintained in the meantime. The petition was thereafter adjourned sine die 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 petitioner is seeking lapsing of the acquisition proceedings on the ground that the respondents have not taken the possession of the land in question however they have received the compensation amount and as such they are ready to pay back the amount of compensation. The relevant paras from the writ petition wherein such an admission is made is reproduced herein below:

*‘...5. That thereafter the abovementioned land of the petitioners was ultimately acquired under the erstwhile Land Acquisition Act and the award no. 13 dated 29.06.1998 was passed. The copy of the award dated 29.06.1998 is annexed as Annexure P-3, for the kind perusal of this Hon’ble Court. **Although the petitioners had received some amount of compensation but the possession has never been taken from them in pursuance of the land acquisition award. Although the land was acquired for public purpose of development and utilization as Residential and Commercial area of sector 20-A Gurgaon under Haryana Urban Development Authority Act, 1977, under notification under section 4 dated 03.07.1995 and notification under section 6 dated 02.07.1996 and ultimately award dated 29.06.1998 was passed by the respondents.***

6. *That even after the passing of the award dated 29.06.1998, the petitioners have never been dispossessed from the said land **and the petitioners and other family members are ready and willing to pay back the compensation alongwith interest (if any) received by their predecessors/ ancestors.** Further as per the revenue records till date the petitioners’ are in possession over the said land and the revenue records reflects them as “Possession” & “Gair Mumkin Abadi” and it is further stated that the petitioners are still continuing in the possession of their respective and joint share over the acquired land and the said land has not been utilized for the public purposes (for which it was acquired by the respondents)....’*

4. Admittedly, the amount of compensation has already been received by the petitioners. The Hon'ble Supreme Court in ***Indore Development Authority (Supra)*** has held that for claiming the lapsing of the acquisition proceedings both the contingencies mentioned in section 24(2) of the Act of 2013 must be fulfilled i.e. neither the possession of the land must have been taken nor the compensation have been paid. In the eventuality when one of the condition remains unsatisfied, the acquisition proceedings under section 24(2) would not lapse as has been observed in para 363(3) and also para 99 of the judgment which is reproduced hereunder:

'...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".

5. It is further pertinent to mention that the Hon'ble Apex Court has held that the word 'paid' occurring in the section 24(2) of the Act of 2013 does not mean the actual payment of compensation or deposit of the same in the Reference court, it means the tendering of the compensation amount and the deposit of the same with Land Acquisition Collector or the treasury amounts to tendering of the same. The reference in this regard is made to para 242 of the judgment:

'...242. The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with

respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings i.e., taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. **It was urged before us by one of the Counsel that lands in the Raisina Hills and Lutyens' Zones of Delhi were acquired in 1913 and compensation has not been paid. The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims.** There are several litigations before us where landowners, having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several rounds of litigation...'

6. In view of the above, it would not be gainsaying that in the case at hand the amount of compensation was not only tendered but in fact was actually paid and received by the petitioners. Therefore, in accordance with para 363(3) of the judgment, the petitioner cannot claim lapsing of the acquisition proceedings under section 24(2) of the Act of 2013.

7. In addition to this Mr. Ankur Mittal, Additional Advocate General Haryana appearing on behalf of the respondents has submitted that the possession of the land in question was also taken vide rapat Roznamcha no. 568 dated 29.06.1998 and as has been held by the Apex Court that the recording of panchanama is valid mode for taking the possession and once the possession is taken the land vests in the State and the possession retained by the landowner thereafter is only in the capacity of trespasser and nothing more. The reference in this regard is made to para 244 and 245 of the *Indore Development Authority (Supra)*:

*“...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.

8. In order to declare the acquisition proceedings to have been lapsed under section 24(2) of the Act of 2013, it is imperative that neither the possession of the land must have been taken nor the compensation must have been paid. The above narrated facts and the principles laid down by the Hon’ble Supreme Court especially in Section 363(3), 363(5) and 363(7) leaves no scope of doubt that none of the contingencies as prescribed in section 24(2) of the Act of 2013 stands fulfilled as the possession of the land duly stands taken by recording rapat Roznamcha and admittedly the compensation of the land has been received by the petitioners as averred in the petition itself. Therefore, nothing survives for consideration in the present petition and the petition is hereby dismissed, all the pending applications meet the same fate and the interim order also stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

December 01, 2020
ndj

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