

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9920 of 2015 (O&M)
Date of decision:- 01.12.2020

Nirmala 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. Rajinder Goyal, 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, CHIEF JUSTICE (ORAL)

By way of instant petition the petitioner has invoked the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 thereby praying for declaring the acquisition proceedings qua his land to have been lapsed as neither the possession of the land of the petitioner has been taken nor the compensation amount has been paid. Suffice to mention that the land of the petitioner was acquired vide notification dated 30.05.2005 and 22.05.2006 issued under section 4 and 6 of the Land Acquisition Act, 1894 followed by the award dated 16.07.2007 for the public purpose namely, development of residential and commercial area for Sectors 22, 23 and 24 part, Jagadhari. The petitioner has also challenged the order dated 17.03.2015 vide which the representation of the petitioner seeking lapsing of acquisition has been rejected.

2. Before adverting to the facts of the case, it is worthwhile to mention that 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). The guidelines/ principle laid down by the Hon'ble Court in concluding paragraph of the judgment are reproduced herein below:

'...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 prayer of the petitioner is only confined to the declaration for deemed lapsing of acquisition proceedings under section 24(2) of the Act of 2013 on the ground that the petitioner is in the physical possession of the land in question and further has not received the compensation amount.

4. The perusal of the speaking order vide which the claim of the petitioner has been rejected, reveals that the possession of the land in question was taken by the respondent state by recording rapat entry no. 892 dated 16.07.2007. Since the same has been held to be the valid

mode of taking possession, therefore the possession of the land in questions stands duly taken and the land thus has vested in the State. This has been authoritatively held by the Apex Court that on taking the possession, the title of the land owner ceases and the possession if any, is retained by the petitioner, it is only as a trespasser and not as the land owner. Mr. Ankur Mittal, Ld. Additional Advocate General, Haryana has made a reference to the judgment passed by this Court in CWP no. 8878 of 2018 – Sehdev Singh and others v. State of Haryana and others wherein this Court while referring to Indore Development Authority (Supra) discussed in detail the contentions raised by the State as well as landowners and the manner in which the questions framed were dealt with and has ultimately concluded the various principles laid down by the Hon'ble Supreme Court in para 32 of the judgment. As far as possession is concerned, it was observed:

'....(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)...

5. As regards the compensation it has been stated by the Mr. Mittal, that out of the total award amount of Rs. 35,67,91,527/-, an amount of Rs. 30,62,00,204/- has already been disbursed which amounts to 85.82% of the compensation amount and rest of the amount is lying deposited in the account of LAC. The amount of compensation due to the petitioner i.e. Rs. 73,543/-, has been stated to be lying deposited with LAC. As has been held by the Hon'ble Supreme Court in

para 363(4) and more elaboratively in para 203 of the judgment, which is also reproduced herein below, we have no hesitation to infer that the compensation amount was duly tendered and was made available to the landowner, and thus, the obligation of the State to make the payment stands fulfilled. To quote:-

*‘....203. The word “paid” in Section 31(1) to the landowner cannot include in its ambit the expression “deposited” in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. **However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment.** In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners’ counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. **However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue.** Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit..’*

The perusal of the aforesaid makes it ample clear that the only obligation of the State is to make the award amount available to the land owner; actual payment or deposit of the award amount in the Court is not contemplated in the Land Acquisition Act, 1894 as a mandatory requirement to construe that the State has fulfilled its obligation to pay the compensation amount. The said legal proposition has also been summarized in Sehdev Singh’s case (supra) in the manner as follows:

'....(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)

(e) While reading the proviso to section be part of section 24(2) of the Act of 2013, the Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for 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. Regarding the deposit, it has been clarified in para 242 of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under section 34 of the Act of 1894 would be the consequence....'

6. Section 24(2) of the Act of 2013 contemplates the deemed lapsing of the acquisition proceedings qua which the award under section 11 of the Land Acquisition Act, 1894 has been announced five years or more prior to the commencement of the Act of 2013, however neither the physical possession of the land is taken nor the

compensation is paid. As the perusal of the aforementioned facts makes it clear that the possession of the land was taken by recording in Rapat Roznamcha and in terms of para 244 & 363(7) in Indore Development Authority (supra) it is a valid mode of taking possession and further the compensation also stands tendered, therefore on account of non fulfillment of both of the conditions, the acquisition qua the land of the petitioner cannot be said to have been lapsed. Therefore in view of the same, the relief prayed for in the present petition cannot be granted and 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	Yes/No
Whetherreportable	Yes/No