

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

**CWP No. 12935 of 2018 (O&M)
Date of decision 12.11.2021**

Santosh and ors.

...Petitioners

Vs.

State of Haryana and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Ram Bilas Gupta, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl.A.G, Haryana and
Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J.

Petitioners are seeking setting aside of impugned notification dated 02.08.1989 (P-6), notification dated 01.08.1990 (P-7), award dated 07.10.1991 (P-9) and order dated 30.10.2017 (P-12).

On notice, a short reply dated 12.12.2020 has been filed. In the reply, it has been stated that the writ petition is liable to be dismissed in terms of the submissions made in the following paragraphs based upon the judgment of the Hon'ble Constitution Bench in ***Indore Development Authority v. Manoharlal and others, AIR 2020 SC 1496.***

Further in the reply, it has been stated the possession of the land was taken vide Rapat no. 66 dated 07.10.1991. Qua the claimed land, the acquisition proceedings were challenged in CWP No. 1929-1991 wherein the dispossession was stayed vide order dated 05.02.1991. This petition was dismissed on 03.08.2010 with directions to release only that structures which were used only for residential purposes before the issuance of notification under Section 4 of the Act of 1894. Pursuant thereto, the land measuring 600

acquired. The possession was taken vide rapat No. 135 dated 13.11.2014.

The present matter was adjourned sine die awaiting the decision of Hon'ble the Supreme Court as it involves the question as regards applicability of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, which has now been decided by the Hon'ble 5-Judge Bench of the Hon'ble Supreme Court in SLP (C) 9036-9038 of 2016 titled as ***Indore Development Authority v, Manoharlal and ors.*** The concluding paragraph of the judgment is reproduced herein below for the kind consideration of this Hon'ble Court.

“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 NO 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 paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if the compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of 24 (2) the Act 2013 does not include 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 the Act 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) Act of 2013 is 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, ie., 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 the reply, it has been stated that out of the the total amount of the award 6,69,44,496/-, the amount of Rs.54678860/- has been disbursed and as far as the amount of compensation due to petitioner i.e. Rs. 1087066/- is concerned, they have not lifted the compensation amount and is lying unpaid. Thus, the petitioners cannot claim that the compensation was not offered to the petitioners. The land of the petitioners affects 1 No. plot of 14 marla, 22 No. plot of 1 karnal, 1 green park, 09 meter wide internal sector dividing road Sector 45-46, Faridabad, as per the development plan.

Hon'ble the Supreme Court in the SLP (C) 9036-9038 of 2016 titled as ***Indore Development Authority v, Manoharlal and ors.*** vide judgment dated 06.03.2020 has categorically observed that the possession taken through mode of Panchnama and RapatRoznamcha is a valid possession and once the possession is taken, the land vests absolutely in the State and cannot be given back. Since the possession in the present case has been duly taken vide Rapat no. 66 dated 07.10.1991 and vide rapat no. 135 dated 13.11.2014, therefore the possession is of the beneficiary department only. The relevant para of the judgment reads as under:-

“...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 is 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.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification

under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of the trespasser ensures for his benefit and on behalf of the owner.”

Further the Hon'ble Supreme Court has observed that for the deemed lapse of acquisition under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, both the conditions i.e. non-payment of compensation and non-taking of possession must be fulfilled. The Hon'ble Court has observed that the word 'or' in the section 24(2) of the Act of 2013 must be read as 'and' therefore since the possession has already been taken, there can be no lapse of acquisition qua the land of the petitioner. The relevant para of the judgment are reproduced as follows:

“...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".

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101. In M/s. RanchhoddasAtmaram and Anr. The Union of India and Ors.77, a Constitution Bench of this Court observed that if there are

two negative conditions, the expression "or" has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

"(13) It is clear that if the words form affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER" So, even without "either," "or" alone creates an alternative. If therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position Becomes different. The word "or" between the two clauses would spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import."

(emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law. under Section 24(2) if both steps have not been taken. i.e. neither physical possession is taken. nor compensation is paid, the land acquisition proceedings lapse...

Learned State counsel states that in terms of the judgment cited above, the present petition deserves to be dismissed as the possession has already been taken by mode of Rapat Roznamcha and the compensation has

been deposited, thus no lapse can be sought under the provisions of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Keeping in view the reply filed by the State, the present petition is dismissed, as the acquisition proceedings do not lapse as per section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as explained in *Indore Development Authority (supra)*.

(RITU BAHRI)
JUDGE

12.11.2021
G Arora

(KARAMJIT SINGH)
JUDGE

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