IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3001 of 2019

Date of Decision: 03.02.2022

Luxmi Devi …. Petitioner

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. Navneet Singh, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with Mr. Saurabh Mago, Assistant 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)

The controversy involved in the matter at hand revolves around the applicability of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 onto the facts of the case wherein the award under section 11 of The Land Acquisition Act 1894 was announced on 24.03.1993 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioner, neither the possession of the land is taken nor compensation has been paid/deposited. Therefore, the acquisition proceedings qua the land in question have lapsed in view of Section 24(2) of the Act of 2013.

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2. The controversy cropped up around interpretation of Section 24(2) of Act of 2013 was put at rest by the Constitution Bench of the Hon'ble Supreme Court of India in case ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*** thereby laying down principles for declaring the acquisition deemed to have been lapsed under section 24(2) of Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting section 24(2) of Act of 2013, in this regard reference is being made to the concluding paragraph of the judgment would be suffice and same is 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.***
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> ***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***

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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 exposition of the law made by the Apex Court can be summarized in the following manner for more clarity on the principles laid down by the Constitution Bench:-

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(a) In all those cases wherein the acquisition process had been initiated but the award has not been announced under section 11 of the Act of 1894, on the date of commencement of the Act of 2013 i.e. 01.01.2014, there is no lapse of proceedings and the same will continue, however, with the rider that the compensation has to be determined under the provisions of Act of 2013. All those cases wherein the award under section 11 of the Act of 1894 has been announced prior to commencement of the Act of 2013, the provisions of the Act of 2013 would have no bearing or application and the proceedings will continue in respect of those cases, as if, the Act of 1894 has not been repealed.

(b) The word 'or' used in between the both the contingencies of section 24(2) of the Act of 2013 is to be read as ***'nor'*** or as ***'and'*** which means that to seek lapsing of the acquisition proceedings both the contingencies must be fulfilled. Meaning thereby, that if the possession had been taken but the compensation was not received, there would be no lapse. Similarly, if compensation has been accepted but the possession has not been taken, there would be no lapsing. ***(reference to para 99 and 363(2) of the judgment)***

(c) 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

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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.

(d) While reading the proviso to section 24 of the Act of 2013 to 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

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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.

(e) 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.

(f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of section 24(2) cannot be invoked.

(g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of section 24(2) of the Act of 2013 cannot be invoke as it does not revive stale and time barred claims.

(h) In para 337, the Hon'ble Court has made it clear that the provision of section 24(2) of the Act of 2013 is meant to be invoked by the

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beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of section 24(2) of the Act of 2013.

4. As per the case put forth by the petitioner, she is in possession of the land comprised in Khewat no. 622 Khatoni no. 903 Khasra no. 192 Killa no. 30 total measuring 1 Kanal 0 Marla situated in Rewari, Tehsil and District Rewari. Her predecessor in interest was *Gair marusi* and in possession of the aforesaid land. The said land was acquired by the State of Haryana vide notifications dated 30.03.1990 and 27.03.1991 issued under section 4 and section 6 of the Land Acquisition Act, 1894, followed by award dated 24.03.1993 for the public purpose namely, for development and utilization of land as Residential and Commercial sector 4 at Rewari. It is the case of the petitioner that despite having acquired the land in question, the State has failed to take possession of the land and till date she is in actual physical possession of the land in question. Further it has been contended that the petitioner has not received compensation amount and thus, the acquisition proceedings have lapsed in view of Section 24(2) of the Act of 2013. The petitioner had earlier filed CWP no. 17810 of 2014 seeking lapsing of acquisition proceedings which was disposed of vide order dated 06.05.2015 to decide the representation filed by the petitioner seeking lapsing of acquisition proceedings. Accordingly, representation was filed by the petitioner which was decided by the respondent authorities vide order dated 14.10.2016 and the claim of the petitioner was rejected on the ground that the possession of the land stands taken by recording Rapat no. 489 dated 24.03.1993 and the compensation amount has not been

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taken as the petitioner is not the recorded owner of the land in question and the petitioner is in unauthorized possession of the land. Though said order has not been challenged by the petitioner, however in the pleadings the said order has been sated to have been passed against the provisions of Section 24(2) of Act of 2013.

5. Per-contra, Mr. Ankur Mittal, learned Additional Advocate General, Haryana appearing for the State of Haryana submits that the contention of the petitioner of being in the possession of the land in question is devoid of merit as the possession of the land was taken by recording Rapat Roznamcha no. 489 dated 24.03.1993 and same was handed over to the beneficiary department. Further, he contends that the compensation for land in question was duly tendered i.e., was made available to the petitioner, however same has not been received. He further submits that as per the revenue record Custodian is the owner of the land in question and as such the predecessor in interest was Gair Marusi i.e. they were in cultivating possession of the land, hence, she has no right to assail the acquisition proceedings. Therefore, it is submitted that since none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled as possession of the land stands duly taken and the obligation of the State to pay the compensation stands discharged with the tender of compensation; the present petition merits dismissal.

6. After having perused the pleadings of both the contesting parties and recording their contentions, we have no hesitation to conclude that the matter at hand is squarely covered by the principles laid down by the Hon'ble Supreme Court of India in the case of Indore Development Authority (supra)

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and the prayer of the petitioners claiming lapsing of acquisition proceedings deserves dismissal in view of the following reasons:-

a) Though the petitioner has contended that she in actual physical possession of the land in question, however, the said averment is not tenable in view of the interpretation of '*physical possession*' made by the Hon'ble Apex Court in Indore Development Authority (Supra) wherein the Hon'ble Court has categorically held that the word possession used in the Act of 1894 has same meaning as that of physical possession used in Section 24 (2) of Act of 2013. When the State Government acquires the land and draws memorandum of taking possession which in the present case is by recording Rapat Roznamcha no. 489 dated 24.03.1993, that amounts to taking of the physical possession of the land and once the possession is taken, there is absolute vesting of the land in the State. Thereafter even if the landowner retains the possession of the land, he is a trespasser, and such possession of trespasser enures for his benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha no. 489 dated 24.03.1993, therefore, the physical possession of the land stands duly taken by the State. The plea of the petitioner that she is in physical possession of the land is thus, hereby rejected. If at all possession has been retained by her, it is only as trespasser and not as owner. As a consequence, thereof one of the essentials for claiming lapsing of acquisition proceedings goes.

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b) As far as the aspect of compensation is concerned, it is important to highlight here that the Hon'ble Apex court while interpreting the word 'paid' occurring in Sec-24(2) and the word 'deposited' used in proviso to Sec 24 (2) of 2013 Act has very categorically observed the meaning and effect of both by holding that the word 'paid' does not include deposit and in case, the amount has been tendered, the obligation to pay is fulfilled. What would construe to mean "tender of the amount" has been explained in Para 203 to mean that the amount is/was made available to the landowner and that would be a discharge of the obligation to make the payment. It is the specific stand of the Respondent State that the compensation amount was duly tendered to the landowners and for substantiating same attention of this Court has been drawn towards the fact that the majority of the total award amount has already been disbursed as out of total compensation amount of Rs. 3,87,28,630.40/-, an amount of Rs. 2,04,68,503.10/- has been disbursed. Once it is so, there does not remain even an iota of doubt that the compensation amount was duly tendered, however the landowners had chosen not to accept the same and thus, no inaction can be attributed to the State in this regard.

7. Mr. Ankur Mittal on the strength of the facts pleaded in the written statement has vehemently contended that the State acquired the land for the public purpose public purpose for utilization of land for Residential and Commercial sector 4 at Rewari. The land in question is very much essential to achieve the public purpose and it affects the planning of planning of 3 marla

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category plot (4 nos) and 12 m wide internal sector road. We have considered this part of argument raised by the respondents and we are in complete agreement with the same as this is an important factor to be kept in mind while dealing with the case arising out of the acquisition of land to achieve the public purpose and it is the state/its authority who is in the best position to decide about utilization of the land acquired, after it having been vested in State.

8. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority (supra), specifically after having recorded that in the case in hand, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, we have no hesitation to hold that in the instant case, the state has fully discharged its obligation qua both the contingencies occurring in section 24 (2) of 2013 Act and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.

9. Having dismissed the main writ petition, all pending applications, if any also meet the same fate. The writ petition is dismissed. Status quo if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

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

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