

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

CWP No. 3040 of 2019 (O&M)

Date of Decision:03.02.2022

Uma Lal Yadav

.... 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. Ram Bilas Gupta, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for respondents No.1, 4 and 5.

Mr. Amar Vivek Aggarwal, Advocate and
Mr. Shiva Parashar, Advocate for HUDA.

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

RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

1. 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 07.10.1991 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 has been taken by the State nor compensation has been paid/ deposited till date. In view of said facts, prayer has been made to declare the acquisition proceedings have lapsed under section 24(2) of Act of 2013. Beside the petitioner has also challenged order dated

13.10.2017 vide which the representation of the petitioner seeking lapsing of the acquisition proceedings was rejected by the respondent authorities.

2. The interpretation of section 24(2) of Act of 2013 had remained under cloud for long until it finally came to be decided by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496***, whereby the Apex Court has laid down the guiding principles in order to decide whether in given facts and circumstances, the acquisition proceedings can be declared to have been lapsed in view of deeming fiction provided under section 24(2) of Act of 2013. The concluding paragraph 363 of the judgment 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.

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 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:-

- (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 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 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 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, he is owner in possession of the land /house measuring 100 sq. yards comprised in Khasra No. 50//14 (8-0) situated within the Revenue Estate of Village Mewla Maharajpur, Tehsil, Ballabgarh, District Faridabad. The land of the petitioner along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 02.08.1989 and 01.08.1990 issued under section 4 and section 6 of the Land Acquisition Act, 1894, followed by award dated 07.10.1991 for the public purpose namely, Development and Utilization of land as Residential and commercial Sector 45 Faridabad. It has been alleged by the petitioner that the respondents have adopted pick and choose policy as the land of some influential persons has been released from the acquisition proceedings and the acquisition proceedings is nothing but a colourable exercise of power at the instance of the State. It is the specific contention of the petitioner that the despite having acquired the land way back in the year 1991, the possession of the land has not been taken by the State and even the compensation amount has neither been paid nor deposited in the reference Court. In view of aforesaid facts, it has been contended that on account of non-

taking of possession of the land of the petitioner even after announcement of award, and non-payment of compensation to the petitioner qua the acquired land, the acquisition proceedings shall be declared to have been lapsed in view of section 24(2) of Act of 2013. On the afore-stated grounds the petitioner has also laid challenge to the speaking order dated 13.10.2017 passed by the respondent authorities.

5. In response to the submissions made by the petitioner, Mr. Ankur Mittal Ld. Additional Advocate General Haryana appearing for State of Haryana, has contended that the present petition is squarely covered by the principles laid down in Indore Development Authority (Supra) and thus, has prayed for its dismissal. It is his contention that instant writ petition filed at the instance of the petitioner deserves to be dismissed at the outset as the petitioner has no locus standi to maintain challenge to the acquisition proceedings being subsequent purchaser as the land qua which the lapsing has been sought was purchased by the petitioner vide sale deed dated 12.11.1990 i.e. after issuance of notification under Section 4 of the Act of 1894 and thus, the said sale deed is not binding on the State. In order to substantiate his contention, he has placed heavy reliance on the judgment passed by Three judges' bench of the Hon'ble Supreme Court of India in the case of *Shiv Kumar and Anr v. Union of India and others cited as AIR 2019 SC 5374*, wherein the Hon'ble Apex Court after discussing the consistent law with respect to right of a subsequent purchaser, re-affirmed that the transaction of sale after issuance of section 4 notification is void and such a purchaser cannot challenge the acquisition proceedings much less can he claim lapsing of acquisition proceedings under section 24(2) of Act of 2013. He has referred to para 337 of the judgment passed in Indore

Development Authority (Supra) wherein the Constitution bench has affirmed the judgment passed in Shiv Kumar's case and observed that the provision of section 24(2) of Act of 2013 is not meant to be invoked on the basis of void transactions. He has also relied on the judgment passed by this Court in ***CWP no. 10645 of 2018 titled as Ram Prasad Yadav v. State of Haryana and others*** wherein a detailed discussion has been made with respect to the right of a subsequent purchaser as far as land acquisition proceedings are concerned. Thus, it is his submission that the petitioner being subsequent purchaser cannot seek lapsing of acquisition proceedings and the present petition deserves merits dismissal on this ground alone.

6. He further submits that the averments of the petitioner that he is in the actual physical possession of the land in question has no legs to stand as the possession of the land stands taken by recording Rapat Roznamcha no. 66 dated 07.10.1991 which amounts to taking of physical possession of the land and accordingly land in question stands vested in the State free from all encumbrances. Also, as regards the compensation it is his contention the amount of compensation was duly tendered to the petitioner along with the other landowners which fact stands substantiated as the majority of compensation out of total award amount stands disbursed. This implies that the petitioner has chosen not to receive the compensation intentionally. In totality of the aforesaid submissions, Mr. Mittal has vehemently contended to dismiss the present writ petition as none of the essential requirements for invoking provision of section 24(2) of Act of 2013 is fulfilled.

7. Further, Mr. Mittal submits that the land in question has been earmarked on the development plan of Sector 45, Faridabad and the same forms a part of colony cluster which has been unauthorizedly developed and does not form part of abadi deh of Mewla, Maharajpur. The entire cluster falls within the alignment of Sector dividing road of Sector 45 and 46, Faridabad and partly affects the site of District Centre, therefore, the land in question is essential for achieving the public purpose for which the land was acquired.

8. After having perused the pleadings of both the contesting parties and recording their contentions, we have no hesitation to hold 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) and the prayer of the petitioner claiming lapsing of acquisition proceedings deserves dismissal. The first and foremost requirement for entertaining a writ petition is to see whether the person approaching the Court has locus to invoke extraordinary jurisdiction of this Court or not. The acquisition proceedings can be challenged by the landowners recorded in the revenue record at the time of issuance of notification under section 4 of Act of 1894. Admittedly, the petitioner had purchased the land after issuance of notification under Section 4 of the Act of 1894, which implies that he is a 'subsequent purchaser.' As contended by Mr. Ankur Mittal, the law as regards the locus of a subsequent purchaser to challenge the acquisition proceedings is well settled and consistently, it has been held that a subsequent purchaser has no right to assail or question the acquisition proceedings. He has referred to the judgment passed by this Court in case of Ram Prasad Yadav (Supra) wherein this Court after discussing the catena of judgments on the point in issue, reiterated that a

subsequent purchaser has no right to assail the acquisition proceedings. It is so because any encumbrance created on the land after issuance of notification under section 4 of the Act of 1894 would not bind the State. Likewise, if any transaction of sale has been carried with respect to the land notified under section 4 of Act of 1894, such transaction as observed by the Apex Court in Shiv Kumar (Supra) is a 'void transaction' and no rights can be said to have been flowed from such transactions which are void ab initio. Such vendee has no right to challenge the acquisition proceedings much less can he claim lapsing of acquisition proceedings under section 24(2) of Act of 2013.

9. Even though, the undisputed facts of the petitioner being subsequent purchaser, is sufficient to foreclose the doors for him but yet since the petitioner has claimed himself to be in physical possession of the land and has claimed that acquisition proceedings have lapsed in view of Section 24 (2) of Act of 2013, we would like to test this argument of the petitioner on the touchstone of the interpretation made by the Hon'ble Supreme Court of India and the guiding principles laid there.

10. Though the petitioner has contended to be in actual physical possession of the land in question, however, said averment does not find substance in view of the interpretation of 'physical possession' given by the 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. 66 dated 07.10.1991, 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. Therefore, as observed above the possession of the land in question stand duly taken by recording Rapat Roznamcha no. 66 dated 07.10.1991, and land stands vested in the State free from all encumbrances. Accordingly, the plea of the petitioner of him being in physical possession of the land is hereby rejected.

11. As regards the compensation, 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 that the compensation amount was duly tendered to the landowners and same stands substantiated from the fact that majority of compensation has already been disbursed. The aforesaid facts, thus, goes on to show that compensation amount was duly tendered to the petitioner but he has chosen not to accept the same and thus, now he cannot claim that the compensation has not been paid to him.

12. Though the petitioner has also raised the plea that the respondents have adopted pick and choose method in acquiring the land and that the acquisition proceedings is colourable exercise of power, we are not inclined to accept the contention of the petitioner in view of the fact that the challenge being made to the acquisition proceedings is hit with delay and laches as for good 28-29 years, the petitioner had chosen to stay quiet and accept except the fate of the acquisition proceedings. Now, under the garb of Section 24(2) of Act of 2013, the petitioner does not get a license to re-open the concluded proceedings once again. Hence, the plea of discrimination raised by the petitioner is hereby rejected.

13. Before parting, we feel it appropriate to refer here to the contention of Mr. Mittal that the State acquired the land for the public purpose public namely for development and utilization of land as Residential and Commercial Sector 45 Faridabad. The public purpose is achieved by drawing/approving the lay out plan. As per the lay out plan prepared for the acquisition in question, the land in question is very much essential to achieve the public purpose as the entire colony of which the land in question forms part affects the alignment of sector dividing road of Sector 45 & 46 and partly falls within the District Centre Site in Sector 45, Faridabad as per the layout plan. 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.

14. 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, requisite period of five years is not completed, acquisition proceedings stands upheld, possession stands 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 the speaking order dated 13.10.2017 is accordingly, upheld.

15. 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

03.02.2022
Manoj Bhutani

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