

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 10240 of 2019 (O&M)

Date of Decision: 03.02.2022

Santosh Kumari

.... 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. Amit Jain, Sr. Advocate with
Mr. Dhruv Mittal, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana
for respondent No.1 and
Mr. Ankur Mittal, Advocate with Ms. Kushaldeep Kaur
Manchanda, Advocate & Mr. Shivam Garg, Advocate,
for respondents No. 2 to 4.
(The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE

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 award under section 11 of The Land Acquisition Act, 1894 was announced on 14.02.2008 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 having been lapsed under section 24(2) of Act of 2013. Besides seeking lapsing of acquisition proceedings under Section 24(2) of the Act of 2013, challenge has also been made to order dated 19.03.2019, the claim of the

petitioner was rejected in compliance of the directions passed by this Court vide order dated 20.05.2015 in Civil Writ Petition No. 13102 of 2014. The prayers made in the writ petitions are reproduced herein below:-

- (i) *A writ in the nature of certiorari/mandamus or such other appropriate writ, order or direction be issued quashing the Notification dated 03.08.2006 Annexure P/2 and Notification dated 14.07.2007 Annexure P/3, and the consequential proceedings, as having been lapsed in view of the provisions contained in Section 24(2) of the Act of 2013;*
- (ii) *A writ in the nature of certiorari for quashing of the order dated 19.03.2019 being illegal, unfair, unjust, arbitrary, unconstitutional, opposed to the principles of natural justice, equity and fair play.*
- (ii)(a) *It is prayed that during the pendency of present writ petition the dispossession of the petitioner shall remain stayed*
- (ii) *and such other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be issued in favour of the petitioners;*
- (iii) *filling of certified and true typed copies of the Annexures may be dispensed with;*
- (iv) *records relating to the case may be summoned or the perusal of this Hon'ble Court.*

2. The Civil Writ Petition was filed in the year 2019 but as revealed from the record, no notice of motion was issued till 09.12.2020. In the meantime, the instant writ petition was adjourned sine die to await the decision of the Hon'ble Supreme Court of India as regards the interpretation of the provisions of Section 24(2) of the Act of 2013. The perusal of the order impugned dated 19.03.2019 revealed that the same had been passed in compliance of the directions passed by this Court in Civil Writ Petition No. 13102 of 2014 dated 20.05.2015. The perusal of the order dated 20.05.2015 reveals that this Court by noticing the entire factual matrix of the case and the failed challenge made to the acquisition till the Hon'ble Supreme Court of India, granted liberty to the petitioner to file the representation by invoking the provisions of Section 24(2) of the Act of 2013. The concerned authority, however, rejected the claim of the petitioner by noticing that even

though, she has been found entitled for an alternative plot measuring 3 Marla in lieu of her land acquired but nothing was heard from her and thus, she was directed to remove the encroachment from the land in question. The aforestated events undisputedly shows that predominantly, the instant writ petition has been preferred seeking benefit as envisaged under Section 24(2) of the Act of 2013. However, in view of the pleadings made in the petition, following two issues are made out for adjudication:-

- I. Lapsing of acquisition proceeding qua the land in question under Section 24(2) of the Act of 2013.
- II. Directions passed by this Court in CWP No. 1846 of 2008 dated 10.09.2009 as regards the consideration of the case of the petitioner for an alternate plot in terms of the policy dated 07.12.2007 and subsequent order dated 05.05.2010 thereby, holding the petitioner entitled for a 3 marla plot in lieu of her land acquired.

3. As per the case put forth by the petitioner, she is owner in possession of the land measuring 273 sq. yds. comprised in Khasra No. 11/1/1, Khewat No. 122/108 Khatoni No. 165, Rectangle No. 29 situated in the Revenue Estate of Village Kassar, Tehsil Bahadurgarh, District Jhajjar, whereupon the petitioner has constructed a house. The said land along with other lands was acquired by the State of Haryana by issuing a notification dated 03.08.2006 and 14.06.2007 issued under Section 4 & 6 of the Land Acquisition Act, 1894 followed by award dated 14.02.2008. The petitioner had challenged the acquisition proceedings by filing Civil Writ Petition No. 1861 of 2008 which was disposed of by this Court vide order dated 10.10.2009 in terms of order dated 10.09.2009 passed in Civil Writ Petition

No.1846 of 2008 whereby, the acquisition proceedings qua the land of the petitioner was upheld, however, the petition was disposed of with direction to examine the claim of the petitioner for allotment of the plot under the policy instruction dated 07.12.2007. While disposing the writ petition this Court had directed that the dispossession of the petitioner from the acquired land will be subject to handing over the plot to the petitioner and in case the claim of the petitioner under policy dated 07.12.2007 is rejected, the petitioner shall handover the vacant possession of the land in question within 1 week from the receipt of the said order of rejection.

4. Pursuant to the directions passed by this Court, order dated 05.05.2010 was passed by the HSIIDC to the effect that petitioner fulfills the eligibility criteria for allotment of plot under R&R Policy and is entitled for a plot measuring 3 marla. It was decided to allot the plot measuring 3 marla situated in Industrial Estate, Bahadurgarh to the petitioner, however, since the details of the scheme were yet to be finalized, the directions were issued by the competent authority to issue regular letter of allotment after finalization of the said scheme. It was further noticed that the dispossession of the petitioner from the acquired land is stayed subject to the handing over the plot to the petitioner. The order dated 05.05.2010 was challenged by the petitioner by filing CWP no. 2615 of 2011 on the ground that she is eligible for plot measuring 150 square yards. The said writ petition was dismissed by this court vide order dated 08.05.2012 thereby holding that the petitioner has been rightly found eligible for allotment of 3 marla plot. Suffice to mention here that the petitioner has very conveniently remained silent in the petition as far as the aspect of challenge to the aforesaid order is concerned. The said order was assailed by filing SLP, however, said SLP also stands dismissed by the Hon'ble Supreme Court of India.

5. Thereafter, the Act of 2013 came into operation and the petitioner again approached this Court by filing CWP No. 13102 of 2014 for release of land of the petitioner as per Section 24 (2) of the Act of 2013, by contending that neither the possession of the acquired land has been taken by the State nor the compensation has been deposited till date. The said writ petition was disposed of vide order dated 20.05.2015 with direction to decide the representation of the petitioner by passing a speaking order. Thereafter, speaking order dated 19.03.2019 came to be passed vide which it was communicated to the petitioner that vide letter dated 21.11.2018 the petitioner was advised to contact the Estate Manager, HSIIDC, Bahadurgarh regarding allotment of plot under R&R Policy as per entitlement and vacate the premises within 10 days from the date of issuance of the letter. However, no application was received from the petitioner in this regard and thus, the petitioner was advised to remove the encroachment from the land within a period of 10 days. The petitioner by way of instant writ petition has now challenged the aforesaid order and has sought lapsing of acquisition proceeding under Section 24(2) of the Act of 2013 on the ground that the petitioner is in the possession of the land in question which is evident from the fact that while disposing of the earlier writ petition filed by the petitioner, this Court had directed to not to dispossess the petitioner from land in question till the time an alternative plot is allotted to the petitioner and has further contended that neither the compensation has been paid nor deposited in the reference Court despite the award was announced on 14.02.2008.

6. As noticed above, the notice of motion was not issued in the case in hand owing to the pendency of the issue as regards the interpretation of Section 24(2) before the Hon'ble Supreme Court of India. All throughout,

the petitioner also did not press for any other claim for issuance of notice of motion. The notice of motion was issued on 09.12.2020 and accordingly, the HSIIDC has filed its short reply in response to the case setup by the petitioner. Refuting the contentions raised by the petitioner, Mr. Mittal appearing for HSIIDC has submitted that the case in hand is squarely covered with the principles laid down by the Hon'ble Supreme Court of India in the case of Indore Development Authority (supra). As regards the contention of the petitioner of her being in the possession of the land, he submits that the possession was taken vide rapat no. 287 dated 14.02.2008 and the land stood vested in the State. By making reference to the contention of the petitioner of being in possession of the land, he contends that the petitioner cannot take advantage of the interim order to say that she is the valid owner of the land in question once the acquisition proceeding itself were upheld by this Court in CWP No. 1861 of 2008 and the dispossession was only stayed till the time the allotment of plot is not made in favour of the petitioner. Even otherwise the period during which interim order was in operation is to be excluded necessarily while computing 5 years period under Section 24(2) of the Act of 2013. Thus, as per him the possession of the land is continuing with the petitioner only by virtue of order of this Court, however, that would not have impact on the fact that the State is the exclusive owner of the land in question as the acquisition proceeding stands affirmed by this Court.

7. With respect to the aspect of the compensation, he submits that the amount of compensation was duly tendered but the petitioner did not come forward to accept the same, understandably for the reason that she was pressing for the release of land and eventually, the compensation amount was deposited in the learned Reference Court. It being so, the petitioner

cannot claim that the compensation amount was not paid to her. The Hon'ble Supreme Court in Indore Development Authority (supra) has clarified that the obligation to make the payment by the State stands discharged with the tendering of the amount which means that the amount has been made available. Thus, on this account as well, the petitioner cannot claim that the acquisition proceedings have lapsed.

8. As far as the plea of the allotment of an alternative plot in terms of the directions passed by this Court in Civil Writ Petition No. 1861 of 2008 dated 10.10.2009, Mr. Mittal has submitted that this an independent cause of action which cannot be correlated with lapsing being sought under Section 24(2) of the Act of 2013. In this regard, the directions having already been passed by this Court, filing of fresh writ petition for getting the directions issued earlier implemented and that to in a petition filed for seeking lapsing, is clearly not available. Both the reliefs claimed are antithesis to each other because if the lapsing is happening, there is no question of allotment of an alternate plot and if the claim for alternate plot in lieu of the land acquired is being pressed, there is no question of seeking lapsing of acquisition. In any case by referring to the short reply, he has argued that the eligibility of the petitioner for 3 marla plot under R&R Policy stands already determined on 05.05.2010. He has taken strong objection to the aspect that though the petitioner has made an attempt to join two cause of action in instant petition, yet she had chosen not to disclose that the order dated 05.05.2010 vide which the eligibility of the petitioner was determined, was challenged by her in Civil Writ Petition No. 2615 of 2011 which was dismissed by this Court vide order dated 08.05.2012 and has urged that this shows that the petitioner is not ready to take the plot allotted and is enjoying the possession of the acquired land under the guise of the

order dated 10.10.2009. Therefore, he submits that the issue as regards the question of lapsing of acquisition proceedings is to be decided independent of the fact of the allotment of alternate plot.

Issue No.1 - Lapsing of acquisition proceeding qua the land in question
under Section 24(2) of the Act of 2013

(i) The interpretation of section 24(2) of Act of 2013 had remained under cloud for long until it finally came to be decided by a Constitution Bench of the Hon'ble Supreme Court of India in case ***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'*

9. Having heard the respective arguments, going through the respective pleadings and above all the exposition in Indore Development Authority (supra), we are of the considered opinion that the instant writ petition is liable to be dismissed for more than one reason.

- (i) Though the petitioner has contended that she is in actual physical possession of the land in question, however, the said averment is not tenable firstly in view of the fact that the possession has been retained by the petitioner in terms of the order dated 10.10.2009 vide which the acquisition proceedings were upheld and directions were issued to not to dispossess the petitioner till the time she is allotted alternate plot and secondly, 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. 287 dated 14.02.2008 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. 287 dated 14.02.2008, 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. As a consequence, thereof one of the essentials for claiming lapsing of acquisition proceedings goes. The possession retained by the petitioner is only on account of the

- (ii) 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 same was deposited in the Reference Court on 11.03.2014. Once it is so, there does not remain even an iota of doubt that the compensation amount was duly tendered to the petitioners, however they had chosen not to accept the same and thus, no inaction can be attributed to the State in this regard.

Since, due possession of the land stands taken and the compensation stands duly tendered, none of the contingencies prescribed in section 24(2) of Act of 2013 are fulfilled and thus, there is no lapsing of acquisition proceedings in the case at hand.

- (iii) Despite the factum of possession taken or not taken or compensation paid or not paid, the instant writ petition is not

maintainable in view of the fact that the acquisition proceedings have already been upheld by this court and in view of the principles laid down in para-359 by the Supreme Court of India in Indore Development Authority (Supra) that section 24(2) of Act of 2013 cannot be used as a tool to revive the concluded proceedings.

ISSUE NO. 2 - Directions passed by this Court in CWP No. 1846 of 2008 dated 10.09.2009 as regards the consideration of the case of the petitioner for an alternate plot in terms of the policy dated 07.12.2007 and subsequent order dated 05.05.2010 thereby, holding the petitioner entitled for a 3 marla plot in lieu of her land acquired:-

10. As regards the issue pertaining to the allotment of an alternative plot under the R&R Policy in lieu of the acquisition of the land in question of the petitioner, in terms of the order dated 10.10.2009 passed by this Court in CWP No. 1861 of 2008 is concerned, we are in agreement with the arguments raised by the respondents that the same could not have been agitated in a petition being filed seeking lapsing under Section 24(2) of the Act of 2013. Moreover, the order dated 19.03.2019 was passed in compliance of the order dated 20.05.2015 in CWP No. 13102 of 2014 wherein also the directions given were to decide the plea of applicability of Section 24(2) of the Act of 2013 on the land in question. In compliance of the order dated 10.10.2009 passed by this Court in CWP No. 1861 of 2008, the eligibility of the petitioner was decided for an alternative plot of measuring 3 marla vide the order dated 05.05.2010. The perusal of the pleadings does not reveal the events taken place after passing of the order dated 05.05.2010 as to why the allotment was not made in favour of the petitioner. Though the petitioner has remained silent in the petition, however, as is pointed out by Mr. Mittal that the petitioner had challenged

the eligibility determined vide order dated 05.05.2010 by filing CWP no. 2615 of 2011 which was dismissed by this court vide order dated 08.05.2012. The said order was affirmed by the Hon'ble Supreme Court of India vide order dated 06.08.2012. Thereafter, even petitioner was asked to submit formal application for allotment of plot; however she refused to submit any. Therefore, it appears that apparently the petitioner is enjoying the fruits of order dated 10.10.2009 till date by not coming forward for allotment of alternate plot. At the same time even the approach of HSIIDC in pursuing the matter as regards the allotment of plot is lethargic and the ultimate sufferer is the development process for which the land was acquired as the land in question is affecting green belt on 30 mtr wide road in sector 4-B Bahadurgarh.

11. For balancing the equities and above all for ensuring the carrying out of the development activities, we deem it appropriate to direct the petitioner to appear before the Managing Director, HSIIDC along with all required documents within a period of one month so as to seek the allotment of 3 marla plot as per the eligibility determined vide order dated 05.05.2010 which stands affirmed till the Hon'ble Supreme Court of India failing which the liberty is granted to the corporation to move appropriate application in this court seeking clarification/ modification of order dated 10.10.2009 to the extent of allotment of alternative plot as already 12 years have passed and no nobody can be allowed to stall the process of development especially when the categoric case pleaded of the respondents is that the land in question affects the green belt.

12. Needless to mention here that the acquisition proceeding qua the land in question stands already upheld till the Hon'ble Supreme Court of India. The lapsing being sought under Section 24(2) of the Act of 2013 is

also being rejected, in view of the fact that none of the contingencies as provided under Section 24 (2) of the Act of 2013 is fulfilled. The directions being issued to MD HSIIDC are confined to the issue of allotment of alternative plot as per the eligibility already determined vide order dated 05.05.2010 (Annexure P-5) which stands affirmed uptill the Hon'ble Supreme Court of India. The outcome of the order to be passed by the MD HSIIDC in terms of our directions will not give a fresh cause of action to the petitioner to agitate against the acquisition proceedings but will be confined to only the aspect of allotment of the plot wherein also the eligibility stands already determined and the issue left to be decided is to make a formal allotment in terms of the order dated 05.05.2010 (Annexure P-5) already passed.

13. As a sequel the acquisition proceedings are upheld, the claim of the petitioner as regards the lapsing of acquisition proceedings is hereby rejected and the petition is disposed of in the aforesaid terms.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
ravinder

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