

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 15545 of 2016 (O&M)

Reserved on : 29.03.2022

Date of Decision: 31 August, 2022

M/s Hind Metalchem Industries (P) Ltd.

.... 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. M.L. Sharma Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana and
Ms. Kushaldeep Kaur Manchanda, Advocate for the
respondents.

RAVI SHANKER JHA, CHIEF JUSTICE

The petitioner has filed the instant petition for issuance of writ in the nature of Certiorari for quashing the notifications dated 10.11.2000 and 28.11.2001 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 as well as the award dated 23.04.2003 to acquire the land for the public purpose namely, development of Industrial Estate in Village Kundli, District Sonapat, vide which the land of the petitioner was acquired. Petitioner further sought for issuance of a declaration to the effect that the acquisition proceedings have lapsed in view of Section 24(2) of Act of 2013.

2. As per the case set up by the petitioner, it is a registered firm under the name & style of M/s Hind Metalchem. Industries Pvt. Ltd. set up on the land comprised in Khasra No. 84//11 (8-0), 84//12/1 (5-6), total measuring 13 Kanal 16 marla, situated in Village Kundli, Tehsil and District Sonapat. The company is working and running business on the said land

since 1970 and has constructed sheds, staff quarters, office, toilets, pump house and boundary walls and also installed the machinery therein. The said land was notified to be acquired vide notification dated 10.11.2000 issued under Section 4 of the Act of 1894 for the public purpose, namely, the development of Industrial Estate in Village Kundli. The petitioner thereafter filed objections under Section 5A of the Act of 1894 and without giving any opportunity of hearing to it, the respondent-State went on to issue a declaration under Section 6 of the Act of 1894 on 28.11.2001.

3. As contended on behalf the petitioner, the issuance of declaration was beyond the stipulated period of one year provided under Section 6 of the Act of 1894 and thus, even though the notification under Section 4 had lapsed, yet the respondent-State went on to acquire the land in question. It is further, pleaded that the acquisition is arbitrary as the Industrial Unit was set up much prior to the issuance of notification under Section 4 of act of 1894 and in view of the law laid down by the Hon'ble Supreme Court of India in the case of ***Sube Singh Vs. State of Haryana, 2001(7) SCC 545***, the Industrial Unit deserves to be released from the acquisition proceedings. The notifications have not been published in accordance with the provisions of the Act of 1894 as neither were they published in two daily newspapers nor they were placed at a convenient place. Even the notices issued under Section 9 of the Act of 1894 were not in order and still the respondent-State announced the award on 23.04.2003.

4. The acquisition proceedings came to be challenged by the petitioner before this Court in Civil Writ Petition No. 5938 of 2003, which was disposed of vide order dated 29.10.2013 with a direction to the respondent-State to reconsider the matter for releasing part of the acquired

applied/obtained CLU before issuance of notification under Section 4 of the Land Acquisition Act; (ii) all the petitioners are ready and willing to give an undertaking that industrial units shall be put into operation in a time bound manner; (iii) they have no objection against part acquisition of their property to the extent it is needed for 'green belt' and/or for implementation of the layout plan; (iv) they are also ready and willing to deposit the EDC and other statutory charges; (v) those who have received the compensation, are ready and willing to refund the same along with interest as admissible under the Land Acquisition Act, and (vi) the petitioners have sufficient proof to show that they intend to utilize the land for 'industrial purpose' only.

5. Thereafter, the petitioner moved a representation dated 11.02.2014 in terms of the aforesaid order which was decided on 14.10.2014 by the authorities rejecting the claim of the petitioner. After such rejection, the petitioner made several representations for consideration of its case; however, no decision was taken on such representations. It is contended by the petitioner that the order passed by the respondent-State is contrary to the orders and directions issued by this Court. Even though the challenge has been made to the order passed by the respondent authorities, yet the petitioner has failed to plead as to how and in what manner the order dated 14.10.2014 is illegal, cryptic and unconstitutional. In addition to the aforesaid, the petitioner has also sought benefit of Section 24(2) of the Act of 2013 for release of its land on the ground that the acquisition proceedings qua the land in question have lapsed.

6. Refuting the contentions raised by the petitioner, Mr. Ankur Mittal, learned Additional Advocate General, Haryana has contended that the actual, factual as well as legal position is altogether different and in

land in question was notified for acquisition under Section 4 of the Act of 1894 vide notification dated 10.11.2000, which was published in the official gazette on 05.12.2000 and in two daily newspapers namely, Hari Bhoomi (Hindi) dated 21.11.2000 and Indian Express (English) dated 20.11.2000. Thereafter, objections under Section 5A of the Act of 1894 were invited and considered by the Sub Divisional Officer (Civil)-cum-Land Acquisition Collector, Sonapat and a report was submitted to the Government. The objections of the petitioner were also received and same were duly considered after visiting the site in question on 03.02.2001 wherein it was found that petitioners had constructed a pucca shed over the land measuring 969 sq. yds., and servant quarters over the land measuring 189 sq. yds., comprised in Khasra No. 84//11 (8-0) which was surrounded by a boundary wall. On the land comprised in Khasra No. 84//12/1 (5-6), a boundary wall was found constructed. Further as per the report, three old machines were lying at the site in dilapidated conditions which were not in use for past many years and accordingly a recommendation was made to acquire the land in question. After considering the report of LAC, a declaration under Section 6 was issued on 28.11.2001, which was published in the official Gazette on 28.11.2001 and in two daily newspapers Hari Bhoomi (Hindi) dated 08.12.2001 and Indian Express (English) dated 08.12.2001.

7. He submits that there is no procedural irregularity in issuance of notifications as the same were duly published in the manner prescribed in the Act and further, the declaration under Section 6 has been duly issued within one year of the date of publication of Section 4 notification as the last date of publication of notification under Section 4 was 05.12.2000, whereas the declaration under Section 6 was issued on 28.11.2001 which implies that

8. The petitioner thereafter approached this Court by filing a Civil Writ Petition No. 5938 of 2003, wherein dispossession was stayed on 22.04.2003. During the pendency of the petition, the Award was announced on 23.04.2003. The writ petition was disposed of vide order dated 29.10.2013 with a direction to the respondents to consider the claim of the petitioner keeping in mind the factors as enumerated above in paragraph No.4.

9. In compliance of the said order, Additional Chief Secretary to Government Haryana, Industries and Commerce Department passed a speaking order rejecting the claim of the petitioner for release of land from acquisition. While rejecting the claim, the petitioner was duly heard who submitted that he had purchased the land in question prior to issuance of notification under Section 4 and was running cotton waste spinning plant which was in operation from 1979 to 2000. Admittedly, the compensation was taken by the petitioner and now he is willing to refund the compensation along with interest thereon, if the land in question is released from acquisition. In order to verify the facts, a site visit was made wherein it was found that out of total land measuring about 8345 sq. yds (about 6760 sq. yds), there exists a shed, in an absolutely dilapidated condition, over an area measuring appx. 40 sq. yds. i.e. over an area of 11.25% of the total area. The condition of the shed, as is evident from the photographs, was in abandoned condition. As per CTP, HSIIDC, the part of the subject land was situated in the RoW of an internal circulation road of 15 mtrs. width and that the petitioner had not obtained any CLU permission for the subject land. In view of the aforesaid facts, the claim of the petitioner was rejected, however, it was directed that in case the petitioner makes an application for allotment of

upto 1 acre size to the petitioner at the allotment rate applicable at the time of receipt of the application. The relevant findings of the speaking order are reproduced herein below:-

“C.2.6 Conclusion

- (i) *Keeping in view the facts stated above, once the landowners have lifted the Compensation amount and also filed References under Section 18 of the Act for seeking enhancement of compensation, which also stands allowed, there is no provision in law under which the petitioners could be allowed to refund the said compensation amount with interest, though so observed by the Hon’ble High Court. The Hon’ble High Court has also not given any such directions. Even the Hon’ble Court may not be able to grant such a relief is even remotely considered, the land acquisition proceedings may never come to a finality as most of the landowners may be willing to opt for such a situation. There is a catena of judgments of the Hon’ble Apex Court on the subject. The possession could not be taken on account of the orders of the Court. Furthermore, once the petitioners have accepted the compensation, and one of two conditions have been satisfied, this case is not even covered under Section 24(2) of the new Act.*
- (ii) *As regards the keenness of the petitioners to set up an industrial unit in the area, it is directed that in case the petitioners make an application for allotment of an industrial plot in Industrial Estate, Kundli, the HSIIDC shall allot a plot up to one acre (4050 sq. mtrs.) size to the petitioners at the allotment rate applicable at the time of receipt of application, within a period of three months from the date of receipt of application from the petitioners....”*

10. The aforesaid order was not challenged by the petitioner for almost two years and now it is being assailed without even pointing out as to how the said order is bad in law. In this regard, Mr. Mittal submits that the instant petition is barred by delay and laches as it has been filed after two years after passing of the speaking order whereby the acquisition proceedings were duly upheld and the claim of the petitioner was rejected. The subsequent filing of the representation would not give any cause of action to the petitioner to cover the delay in approaching this Court. He has placed reliance on the judgment of the Supreme Court of India in case

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SCC 281, wherein the Supreme Court had declined to interfere with the acquisition proceedings on the ground of delay in approaching the Court even though representations were given by the land owner for release of the land. Further a reliance has been placed on the judgment passed by the Supreme Court in case **Nagar Panchayat Kymore Vs. Hanuman Prasad Dwivedi [Civil Appeal No. 289-290 decided on 10.01.2022]**, wherein the Supreme Court reiterated that representation would not revive the cause of action. Similar view was taken by the Supreme Court in **Surjeet Singh Sahni Vs. State of U.P. [SLP (C) 3008 of 2022]**, decided on 28.02.2022.

11. Mr. Mittal further submits that the industrial unit of the petitioner was not functional at the time of acquisition as it was lying abandoned and further the industrial unit was setup without any valid CLU permission taken by the petitioner from the competent authority. Therefore, no ground for release of the land is made out in favour of the petitioner in view of the factors which were recorded by this Court in order dated 22.07.2013 passed in Civil Writ Petition No. 5938 of 2003. As regards the undertaking given by the petitioner for refund of the compensation amount, Mr. Mittal has heavily placed reliance on the judgment passed in **Indore Development Authority Vs. Manohar Lal and others SLP(C) 9036-9038 of 2016** wherein the Supreme Court of India has categorically held that there is no provision in the Land Acquisition Act, 1894 for refund of the amount of compensation and thus, petitioner's request cannot be acceded to. With respect to the reliance being placed on the judgment passed by the Supreme Court in case **Sube Singh Vs. State of Haryana and others (supra)**, Mr. Mittal submitted that the said judgment is not applicable in the case at hand because the petitioner has failed to point out as to how non-release of the land is discriminatory and further, it is settled law that there is no

restriction to acquire the constructed portion of the land. In this regard, he has referred to the judgments rendered in *M/s Anant buttons Limited Vs. State of Haryana* AIR 2005 SC 565, *Geeta and others Vs. State of Haryana and others* 2015(3) RCR Civil 65, *Sanjeev Kumar Vs. State of Haryana and others* 2010(5) RCR Civil 811, *Zile Singh and others Vs. State of Haryana and another* 2008(2) RCR Civil 440.

12. As regards the prayer of the petitioner invoking Section 24(2) of the Act of 2013, he submits that it is not maintainable as the requisite period of 5 years prior to commencement of Act of 2013, which is first and foremost requirement to invoke Section 24(2) of Act of 2013 is not fulfilled. Though Award was announced on 23.04.2003, however since dispossession was stayed even before the announcement of Award i.e. on 22.04.2003 and was in operation till 29.10.2013 therefore, after excluding such period, the requisite period of 5 years is not completed. Accordingly, Section 24(2) of Act of 2013 cannot be invoked by the petitioner.

13. Since, the interim order was in operation, the possession of the land could not be taken by the respondent-State. Thus, no inaction can be attributed to the respondent-authorities for non taking of the possession of the land in question. As regards the compensation, Mr. Mittal submits that admittedly, the petitioner has received the amount of compensation and has also filed a Reference under Section 18 of the Act of 1894, therefore, the contingencies prescribed in Section 24(2) of Act of 2013 remained unfulfilled and no declaration for lapse of acquisition proceedings can be made.

14. With respect to challenge to the acquisition proceedings on merits, the contentions of the petitioner can be summarized in the following

- i. The declaration was not made within one year of the publication of notification under Section 4 of the Act of 1894.
- ii. The notification under Section 4 and Section 6 of the Act of 1894 were not published in the manner prescribed.
- iii. The construction of the petitioner shall be released in view of law laid down by the Supreme Court of India in *Sube Singh and others Vs. State of Haryana* (supra).
- iv. The acquisition proceedings have lapsed in view of Section 24(2) of the Act of 2013 as even though the petitioner has received the amount of compensation, the possession of the land has not been taken till date.
- v. The undertaking has already been given by the petitioner for refund of compensation amount received.

15. We do not find any merit in the contention of the petitioner that the notifications under Sections 4 and 6 of the Act of 1894 were not in the prescribed manner because as submitted by the learned Counsel for the respondent-State, the notification under Section 4, though issued on 10.11.2000, but it was published in the official gazette on 05.12.2000 and in two daily newspapers, namely, Hari Bhoomi (Hindi) dated 21.11.2000 and Indian Express (English) dated 20.11.2000. Therefore, the last date of the publication of the notification was 05.12.2000 and as prescribed in Section 4 of Act of 1894, last date for publication is to be referred as the date of publication for calculating the period of one year for issuance of declaration under Section 6 of Act of 1894. In this regard, a Reference is made to sub Section (1) of Section 4, which is reproduced herein below:-

(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] a notification to that effect shall be

*published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [**(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the notification)**]*”

16. The declaration under Section 6 of Act of 1894 was issued on 28.11.2001, which is within one year of the last date of the publication of Section 4 of Act of Act of 1894. Thus, the contention of the petitioner that the issuance of declaration under Section 6 of Act of 1894 is beyond the period of one year is hereby rejected. Also, a perusal of the written statement filed on behalf of the respondent-State as well as the submissions made before this Court reveal that the substance of notifications was duly published in the modes as prescribed in the Act and thus, the contention as regards the procedural irregularity in issuance of the notifications is also rejected.

17. We have also considered the rival contentions of the parties with respect to the release of construction on the land in question. The petitioner has heavily relied on the judgment passed by the Supreme Court of India in case *Sube Singh and others v. State of Haryana and others* (*supra*) to contend that the respondent-State cannot make any discrimination between the manner of existing construction on the land sought to be acquired and thus, the land of the petitioner along with construction thereon shall also be released from the acquisition.

18. We have perused the judgment passed in the case of *Sube Singh* (*supra*) and are in agreement with Mr. Mittal that the said judgment is not applicable in the facts of the instant case as in *Sube Singh's* case (*supra*), the specific argument raised by the writ petitioners was that though the existing structures of certain landowners were released from the acquisition

proceedings, however the structures of the petitioners were acquired discriminately. It was in this regard, the observations were made that no classification can be made as regards the types of constructions on the land.

19. It is trite law that the judgment is to be read in the light of the factual matrix of the case and cannot be relied upon by reading one line in favour, which indeed is the manner in which petitioner is trying to interpret the judgment. The ratio of the judgment cited by the petitioner, when read in the light of the facts suggests that it is distinguishable and is not applicable to the case at hand because the petitioner has not pleaded specifically as to how it has been discriminated. Coupled with the fact that the construction by the petitioner was unauthorised as no permission for 'change of land use' was taken by the unit and at the time of acquisition same was lying vacant. The position of law is, as pointed out by Mr. Mittal, that if the construction is unauthorised, the same cannot be a ground for release of land, reference is made to the judgment of the Supreme Court in cases ***Tek Ram Dahiya v. State of Haryana SLP(Civil) 28469 of 2011 decided on 31.10.2011*** and ***New Vidya Niketan Educational Society v. State of Haryana and others CWP No. 7711 of 2009***. Thus, reliance placed upon the judgment passed in the case of Sube Singh (Supra) is inconsequential.

20. The law as regards the acquisition of construction is lucid and well settled up till the Supreme Court and even the judgments passed by the Supreme Court after Sube Singh (supra) have categorically held that there is no bar for the State to acquire the construction under the Land Acquisition Act, 1894. The Reference in this regard is made to the judgment of the Supreme Court of India in ***M/s Anand Buttons Ltd v. State of Haryana AIR 2005 SC 565***, wherein while dealing with the contention as to whether the

construction can be acquired or not, Supreme Court categorically held that:-

‘...13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief...’

21. Similar observations were given by a Division Bench of this Court in case ***Zile Sigh and others v. State of Haryana and others 2008(2) RCR (Civil) 440***, wherein the Hon’ble Court while referring to the policy of the State to release the constructed area from acquisition proceedings held that implementation of policy is the exclusive domain of the State Government and there is no prohibition in the Act of 1894 for acquisition of the structures. The relevant paragraph from the judgment is reproduced hereon below:-

‘...9. As regards the plea for release of the petitioners' land, suffice it to say that implementation of the policy of release falls within the exclusive domain of the State. The petitioners cannot, as a matter of right, claim or pray for release of their land, on the basis of the policy. Even otherwise, their plea for release of land stands rejected by the Government. We find no error, whether of fact or of law in the State proceeding to acquire the petitioners' land. Governments acquire land, pursuant to powers conferred by the Land Acquisition Act. The definition of land, as set out in the Act, does not draw any distinction between land and/or structures, raised thereon, and, therefore, in the exercise of its powers, under the Land Acquisition Act, a Government may proceed to acquire land whether vacant or constructed. The decision to acquire land rests on the subjective satisfaction of the Government, and can only be made subject matter of judicial review, where the acquisition is occasioned by mala fides, is arbitrary, unreasonable, or violative of the provisions of any existing law. We find no such error or infraction in the decision of the State Government to acquire the petitioners' land/structures....’

22. The aforesaid legal position was reiterated by this Court in ***Geeta and others v. State of Haryana and others 2015 (3) RCR (Civil) 65*** and ***Sanjeev Kumar v. State of Haryana and others 2010 (5) RCR (Civil) 811*** in the following terms:-

‘....Having heard the learned counsel for the parties at a considerable length we find that acquisition of the land is for a public purpose which is within the domain of the respondent state. What area should be acquired and what area should be left out of acquisition is not the concern of the Courts. In order to sustain the allegations of discrimination the Court has to be satisfied that wild discrimination has been practiced. It is not possible to release whole property from acquisition especially when the stand of the State is that property of the petitioner is acquired for development of mandis...’

23. Therefore, there remains not even an iota of doubt as regards the legal position that the decision to acquire and not to acquire the land/ construction is of the State and not within the domain of the Courts. The only duty bestowed on the Court is to see that acquisition proceedings have been carried in accordance with the procedure prescribed and for the public purpose. Till the time the procedure followed by the State authorities for acquiring the land is legal, interference in the acquisition proceedings is totally unwarranted.

24. As regards the plea of lapsing of acquisition proceedings, it is imperative to understand the scope and extent of applicability of Section 24(2) of Act of 2013 which was in dispute for a long time and came to be settled by a Constitution Bench of the Supreme Court of India in case ***Indore Development Authority v. Manoharlal and others (supra)*** thereby laying down principles for declaring the acquisition deemed to have been lapsed under Section 24(2) of Act of 2013 were laid down. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting Section 24(2) of Act of 2013, and in this regard the Reference is made to the

concluding paragraph of the judgment which 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....”

25. The sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court is that to seek lapsing, both the contingencies provided i.e. about the physical possession and the payment of compensation are to be fulfilled meaning thereby if either of the condition is not satisfied, there would be no lapsing. As far as the obligation to make the payment in lieu of the land acquired is concerned, it has been clarified that such obligation to pay is complete by tendering the compensation which would mean that the compensation amount was made available to the land owner and if he has not accepted the same, it will not be available for the land owner to claim that the compensation has not been paid. Similarly, word “deposit” has been interpreted to mean depositing with the LAC or the Treasury or the Reference Court. Drawing of panchnama has been considered to be a valid proof of taking physical possession and once the land stands vested in the State, there is no divesting provided under Section 24 (2) of the Act of 2013. The Supreme Court has further clarified that the period for which any interim order was in operation, will be excluded while

computing the gap period of five years. Similarly, it has been clarified that Section 24 (2) of the Act of 2013 does not give rise to new cause of action to question legality of concluded proceedings of land acquisition as it applies to only those cases wherein the proceedings were pending on the date of enforcement of Act of 2013.

26. 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 petitioner is not entitled to claim lapsing of acquisition proceedings.

27. The Supreme Court in Indore Development Authority (supra) has categorically held that the plea of 24 (2) is available to only those land owners, in respect of which the acquisition proceedings were pending on the date of coming into effect the Act of 2013 i.e.. 01.01.2014. It has been clarified that Section 24 contemplates pending proceedings and not the concluded one. After detailed discussions and placing reliance on the previous judicial pronouncements, the Supreme Court in Para No. 359 has made it clear that Section 24(2) cannot be used to revive dead and stale claims and concluded cases. Para 359 of the aforesaid judgment is extracted herein below:-

‘...359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the Court, where rights and claims have been lost and negated. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under Section 24(2) of the Act of 2013...’

28. It is admitted that the petitioner had earlier challenged the acquisition proceedings by filing a Civil Writ Petition No. 5938 of 2003, which was disposed of vide order dated 29.10.2013 to consider the claim of the petitioner in terms of the parameters laid down by the Court in order dated 22.07.2013. The representation filed thereafter was rejected by the respondent-State vide order dated 14.10.2014 on the grounds as discussed above. Thereafter the petitioner did not challenge the said order and after two years has approached this Court. In the meantime, as pleaded by the petitioner, he kept on giving representations. We are unable to agree with the contention being raised by the petitioner as once the order rejecting the claim of the petitioner was not challenged immediately and is being impugned after two years, such challenge is clearly barred by delay and laches. The logical corollary is, thus, that the acquisition proceedings are upheld and same is final, as a result of which the claim of petitioner is a dead claim and cannot be revived under the guise of Section 24(2) of Act of 2013.

29. Further the filing of representation would neither give a new cause of action nor will keep alive the cause of action in favour of the petitioner, as held by the Supreme Court in case ***Yunus (Baboobhai) A. Hamid Padvekar Vs. State of Maharashtra*** 2009 (3) SCC 281. The Supreme Court therein dismissed the challenge to the acquisition proceedings on the ground that the filing of representation would not be sufficient to explain the delay in approaching the Court. Similar observations have been made in cases ***Nagar Panchayat Kymore Vs. Hanuman Prasad Dwivedi*** Civil Appeal No. 289-290 decided on 10.01.2022 and ***Surjeet Singh Sahni Vs. State of U.P.*** SLP (C) 3008 of 2022 decided on 28.02.2022. Thus, mere filing of representation in the instant case is not

of the petitioner was rejected. It goes without mention that acquisition is for public purpose and if such proceedings are challenged after efflux of time and are eventually entertained, it would amount to hampering the development process all together.

30. The petitioner cannot seek any relief in terms of the provision of Section 24(2) of Act of 2013 as requisite period of five years is not completed since the dispossession of the petitioner from the land in question was stayed on 22.04.2003 i.e., prior to announcement of Award and the interim stay continued till 29.10.2013. It being so, said period is required to be excluded while computing the window period of 5 years between the announcement of the award and coming into effect of the Act of 2013 i.e. 01.01.2014 in terms of the principles laid down in ***Indore Development Authority (supra)***. In this regard, a reference is made to para 331 of the judgment, which is reproduced herein below:-

‘...331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curae neminem gravabit would result in injustice...’

31. In terms of the aforesaid, we have no hesitation to hold that after excluding the period of operation of the interim order, the requisite period of 5 years is not completed and thus, Section 24(2) of Act of 2013 cannot be made applicable to the acquisition proceedings qua the land in question.

32. Even on aspect of contingencies provided in Section 24(2) of Act of 2013, we do not find any merit in the submissions made on behalf of the petitioner. The possession of the land could not have been taken due to the operation of stay order on dispossession, whereas the compensation amount had already been received by the petitioner. In view of law laid down by the Hon'ble Court, in order to claim lapsing of acquisition proceedings both the contingencies must be fulfilled. Section 24(2) of Act of 2013 prescribes two contingencies i.e. non-taking of possession and non-payment of compensation; if possession is taken but compensation is not paid or if possession is not taken but compensation is paid, there can be no lapsing of acquisition. Applying the principle on case at hand, there can be no declaration as regards the lapsing of acquisition proceedings.

33. As regards the contention of the petitioner that he is ready to refund the compensation amount, it is worthwhile to refer to para 132 of the judgment in **Indore Development Authority** (supra):-

'...132. Since the Act of 1894 never provide for the lapse in case the compensation amount was not deposited, non-deposit carried higher interest. The provisions under the new Act are identical: there is no lapse of any acquisition proceeding by non-compliance with Section 77. Interpreting "or" under Section 24(2) of the Act of 2013 disjunctively, would result in an anomalous situation - because, once compensation has been paid to the landowner, there is no provision for its refund. It was fairly conceded on behalf of the landowners that they must return the compensation in the case of lapse if possession has not been taken. In case possession is with the landowner and compensation has been paid, according to landowners' submission, there is deemed lapse under Section 24(2) by reading the word "or" disjunctively. It would then be open to the State Government to

withdraw the money deposited in the Reference Court. It was also submitted that it is inherent in the notion of lapse that the State may recover the compensation on the ground of restitution. In our opinion, the submissions cannot be accepted as an anomalous result would occur. In case physical possession is with the landowner; and compensation has been paid, there is no provision in the Act for disgorging out the benefit of compensation. In the absence of any provision for refund in the Act of 2013, the State cannot recover compensation paid. The landowner would be unjustly enriched. This could never have been the legislative intent of enacting Section 24(2) of the Act of 2013. The principle of restitution, unless provided in the Act, cannot be resorted to by the authorities on their own. The absence of provision for refund in the Act of 2013 reinforces our conclusion that the word "or" has to be read as conjunctively and has to be read as "and." The landowners' argument about the State's ability to recover such amounts, in the absence of any provision, by relying on the principle of restitution, is without merit, because firstly such principle is without any legal sanction. The State would have to resort to the remedy of a suit, which can potentially result in litigation of enormous proportions; besides, the landowners can well argue that the property (i.e. the amounts) legally belonged to them and that the limitation for claiming it back would have expired. Several other potential defences would be available, each of which would result in multifarious litigation. Therefore, the contention is ex-facie untenable and insubstantial..'

34. From a perusal of aforesaid, it transpires that observations of the Supreme Court are categoric onto the aspect that there is no provision in the Land Acquisition Act, 1894 for refund of compensation and in absence of same, refund is not possible. In view of the law laid down by the a Constitution Bench, even the undertaking given by petitioner is *nonest*, therefore, neither such undertaking can be enforced nor it can be relied upon by the petitioner.

35. As a sequel of the above discussion and in view of the settled legal position, present petition merits dismissal on the following grounds:-

- (i) There is no procedural irregularity in issuance of notification under Section 4 and declaration under Section 6 of Act of 1894.
- (ii) The order rejecting the claim of the petitioner for release of land has been passed based on cogent and plausible reasons.

(iii) The petitioner is not entitled to invoke Section 24(2) of Act of 2013 as the requisite period of five years is not fulfilled, claim of the petitioner is a dead & stale claim and the petitioner has already received the amount of compensation.

The petition is dismissed and the pending applications, if any, also meet the same fate.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31 August, 2022
ravinder

Whetherspeaking/reasoned	√Yes/No
Whetherreportable	√Yes/No