

C.W.P. No. 18746 of 2015 (O&M)

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

C.W.P. No. 18746 of 2015 (O&M)

Date of Decision:-03.02.2022

Urmila Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present:- Mr. Navmohit Singh, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for the respondents.

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

RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

1. Vide the instant petition, the petitioner while claiming that the acquisition proceedings qua her land measuring 10 marla comprised in Khasra NO. 94//25/2 min situated within the revenue estate of Village Jagadhri, Tehsil Jagadhri, District Yamuna Nagar vide the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 (herein after to be referred to as 1894 Act) dated 05.04.1990 and 04.04.1991 respectively; followed by the award under Section 11 of the 1894 Act dated 15.03.1993, thereby acquiring the land for the public purpose namely, development and utilization of land for residential, commercial and industrial area, Sector – 18, Jagadhri have lapsed as envisaged under Section 24 (2) of the Right to Fair

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Compensation and Transparency in Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after to be referred as 2013 Act) as neither the physical possession has been taken nor the amount of compensation has been deposited, as prayed for issuance of declaration as such.

2. In the writ petition, the petitioner has claimed that she purchased the land measuring 10 marla (5/64 share) falling in Khasra no. 94//25/2 situated within the revenue estate of Hadbast No. 400 Village jagadhri Tehsil Jagadhri, District Yamuna Nagar vide the registered sale deed dated 20th May, 1985. The said land owned by the petitioner became part of acquisition proceedings initiated vide notification under Section 4 of the 1894 Act dated 05.04.1990; followed by the declaration under Section 6 of the 1894 Act dated 04.04.1991 and award under Section 11 of the 1894 Act dated 15.03.1993. The petitioner claims to have constructed a residence over the land in question qua which she claims to be in physical possession. As regards the compensation, it has been stated that the compensation for the land acquired had not been paid to her. While relying upon the provisions of Section 24 (2) of the 2013 Act, the petitioner has claimed that even though the acquisition proceedings qua the land in question stands lapsed but yet authorities have started interfering in their peaceful possession and have even verbally asked her to vacate the property.

3. Pursuant to notice of motion issued by this Court on 7th September, 2015, the matter was adjourned sine die awaiting the decision of the Hon'ble Constitution Bench of the Hon'ble Supreme Court of India which was seized of the issue as regards the interpretation of Section 24 (2) of the

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2013 Act so as to claim lapsing of the acquisition. The Constitution Bench decided the pending issue in the case titled as ***Indore Development Authority Vs. Manohar Lal and others cited as AIR 2020 SCC 1496***. The penultimate paragraph as regards the guidelines issued by the Hon'ble Supreme Court of India are reproduced herein under:-

'...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'*

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4. Pursuant to the decision passed in Indore Development Authority (supra), the State was called upon to file response as regards the averments made in the present petition and also to demonstrate as to how the case in hand is covered with the judgment passed by the Hon'ble Constitution Bench of the Supreme Court of India. As a consequence thereto, the State has filed its short reply dated 23rd March, 2021 wherein while referring to the interpretation made by the Hon'ble Supreme Court of India, it has been stated that pursuant to passing of the award in the case in hand, the possession of the land was taken vide Rapat Rojnamcha No. 718 dated 15.03.1993. Not only this, the mutation of the land in question was transferred in favour of the beneficiary department i.e. HUDA (now HSVP) vide mutation No. 1941 dated 11.11.2003. So far as the status of the land in question and the pleadings made by the petitioner that a house was constructed prior to the initiation of process of acquisition i.e. issuance of notification under Section 4 of 1894 Act, it has been specifically mentioned that the land in question of the petitioner was vacant at the time of issuance of notification under Section 4 of 1894 Act. This was further supplemented by contending that the petitioner did not even file any objection under Section 5A of the 1894 Act. So far as the compensation is concerned, it was stated that the compensation amount was duly tendered to the petitioner but she did not accept the same which, she is at liberty to receive. While relying upon the dicta laid down in Indore Development Authority (supra) it is contended that in view of the law laid down by the Hon'ble Supreme Court of India, the plea of being in physical possession or of compensation having not been paid is no more available to

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the petitioner. Not only this, reference has also been made to the reference filed by the petitioner under Section 18 of 1894 Act seeking re-determination of the compensation amount which also disentitles her to claim that the compensation has not been paid to her. It has further been stated by the State in its reply that the land in question is very much essential for completion of development, for which, it is required so much so it affects the infrastructure projects including of the road. The reliance placed by the petitioner upon ***Pune Municipal Corporation and Anr v. Harakchand Misrimal Solanki and others cited as 2014(3) SCC 183*** was repelled by the State by referring to the Indore Development Authority (supra) wherein this judgments has specifically been over-ruled. In the end the prayer is made for dismissal of the present petition as neither of the contingencies as provided in Section 24 (2) of the 2013 Act is available to the petitioner.

5. Despite the short reply having been filed on 23rd March, 2021, the petitioner has chosen to not to file any replication. Mr. Ankur Mittal appearing for the State while referring to the exposition in Indore Development Authority (supra) has argued that to claim lapsing as postulated under Section 24 (2) of 2013 Act, both the contingencies provided are required to be fulfilled meaning thereby that neither the possession has been taken nor the compensation has been paid. If the possession has been taken and the compensation is not paid and vice-versa, the plea of lapsing from acquisition is not available. He had further argued that so far as the physical possession of the land in question is concerned, drawing the panchnama/Rapat Roznamcha is sufficient to construe that the physical

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possession has been taken. In the case in hand, the possession of the land in question is stated to have been taken vide Rapat Roznamcha No. 718 dated 15.05.1993 which was followed by recording the mutation in favour of HUDA (now HSVP) vide mutation No. 1941 dated 11.11.2003, hence the physical possession stands taken. As far as the aspect of compensation is concerned, while relying upon Para no. 203 of Indore Development Authority (supra), he argued that the tendering the amount of compensation is sufficient to discharge obligation to make the payment which further means that the amount was made available to the land owner. Further, since the petitioner has chosen to file reference under section 18 of the 1894 Act, therefore, in terms of Para No. 224 of Indore Development Authority (supra), the plea being raised by the petitioner that the compensation amount has not been paid, is not available. He has further argued that the land in question is very much essential to complete the development work as per the planning made to achieve the public purpose, for which, the land has been acquired as the land in question affects water works, part of 9 meters wide road and part of 30 meters wide road.

6. We have considered the respective pleadings and the arguments raised by the competing parties. The interpretation made by the Hon'ble Constitution Bench in Indore Development Authority (supra) was minutely perused. So far as the legal position about the applicability of Section 24 (2) of 2013 Act is concerned, it is unambiguously clear that to claim lapsing of the acquisition, both the contingencies are required to be fulfilled which means that if either of the contingency is not fulfilled, the benefit of deeming

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fiction of lapsing is not available. So far as the word 'physical possession' occurring in Section 24 (2) is concerned, it has been interpreted to mean that the Rapat Roznamcha is recorded and after recording of Rapat Roznamcha, if anybody re-enters the acquired portion or even retain the acquired portion, the status will be only of a trespasser. Similarly, as regards the word paid occurred in Section 24 (2) of 2013 Act; it has been interpreted to mean that the amount was made available to the land owner. Apart from the above, the Hon'ble Supreme Court of India has also clarified that if a land owner seeks re-determination of the compensation amount by resorting to the provisions of Section 18 of the 1894 Act, the plea of non-payment of compensation to him will not be available. In the present case, as specifically contended in the reply that the compensation amount for the land in question was duly tendered to her and she has even filed the reference under Section 18, therefore, the petitioner now cannot take the plea that the compensation amount was not paid to her. If that being so, both the contingencies in the present case are not fulfilled and as a result thereof, the claim of the petitioner seeking lapsing of the acquisition qua her land is liable to be rejected.

7. As a sequel to the discussion made here in above, reference to exposition in Indore Development Authority (supra), keeping in view the fact that Rapat Roznamcha stands recorded in favour of the beneficiary department, the compensation amount having been duly tendered and also that the petitioner filed the reference seeking enhancement and above all keeping in view the land in question is very essential to which the public purpose for which the land had been acquired, we are of the considered

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opinion that neither of the contingencies provided under Section 24 (2) of 2013 Act is made out in the present case and accordingly the present petition is hereby dismissed.

8. 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