

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP- 19431- 2015(O&M)

Reserved on: 16.05.2022

Date of pronouncement: 29.07.2022

Bhim Singh and others

...Petitioners

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. Kulbhushan Sharma, Advocate, for the petitioners.
Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana and
Ms. Kushaldeep K. Manchanda, Advocate, for the respondent(s).

RAVI SHANKER JHA, C.J.

1. The instant petition has been filed claiming that the acquisition proceedings carried out vide notifications issued under Sections 4 & 6 of the Land Acquisition Act, 1894 dated 04.11.1977 and 01.11.1980, respectively; followed by the award dated 02.09.1986, thereby acquiring the land for a public purpose, namely, for development and utilization of land as Residential areas in Sector 34 of Faridabad-Ballabgarh Controlled Area; qua the land of the petitioners has lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013.

2. Owing to the controversy erupted as regards the interpretation of the provisions of Section 24 (2) of the Act of 2013, like many other writ petitions, the proceedings in the instant petition were kept in abeyance awaiting the decision of the Hon'ble Supreme Court of India. The controversy was finally

put at rest by the Constitution Bench of the Hon'ble Supreme Court of India in *Indore Development Authority Vs. Manohar Lal and others* AIR 2020 SC 1496 penultimate paragraph of which is reproduced here in 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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'

2. That the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Hon'ble Supreme Court of India is that the first and foremost condition to seek lapsing is: 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 conditions 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 Hon’ble Supreme Court of India 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 a 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.

3. As per the case put forth by the petitioners, they are owners in possession of the land comprised in Killa no. 30//12 (8-0), 19 (4-0), 22 (8-0), total measuring 20 kanals, situated in the revenue eState of Village Palla, Tehsil and District Faridabad upon which the petitioners are running their nursery since the time of their ancestors and Samadhi of their ancestor is also existent on the land in question. The said land was acquired by the Government of Haryana by issuing notifications dated 04.11.1977 and 01.11.1980 under Sections 4 & 6 of the Acquisition Act, 1894 followed by award dated 02.09.1986. It is the case of the petitioners that despite having announced the award on 02.09.1986, the respondents have failed to take the possession of the land in question as they are still in the possession of said land in question. As regards the compensation, it is

the stand of the petitioners that neither the compensation has been paid to them nor it has been deposited in the Reference Court till date. Therefore, the acquisition proceedings qua the land in question stands lapsed in view of Section 24(2) of the Act of 2013.

4. It has been further averred by the Petitioners that they had also filed a Civil Suit seeking permanent injunction restraining their dispossession from the land in question. The Court of Civil Judge, Junior Division, Faridabad vide judgment and decree dated 20.12.2014, decreed the suit thereby restraining the defendants from dispossessing the plaintiff/ petitioners from the land in question except in due course of law. It is further submitted that earlier Faridabad Complex Administration had also filed ejectment petition against the father of the petitioners. The collector had passed the order of ejectment, however, the same was reversed in appeal by the Commissioner vide judgment dated 05.11.1982. In view of the aforesaid facts, the petitioners have prayed for declaring the acquisition proceedings to have lapsed.

5. Per contra Mr. Ankur Mittal, learned counsel appearing for the respondent-State submitted that the instant petition deserves to be dismissed in view of the law laid down by the Hon'ble Supreme Court in the case of **Indore Development Authority** (supra) as none of the contingencies prescribed in Section 24(2) of the Act of 2013 are fulfilled. The first requirement for claiming lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioners have failed to prove as the possession of the land in question was taken by the State which is proven from the fact that in jamabandi for the year 2003-2004, the Urban EState, Faridabad has been recorded as owner of the land in question. As per

petitioner's pleadings, they are *gair marusi* over the land in question. Once possession has been taken and the land records are in the name of the department, it is apparent that the petitioners are trespassers on the land acquired by the State for public purpose. He further submitted that, neither the concluded acquisition proceedings can be reopened under the guise of section 24(2) of Act of 2013, nor the manner of deposit of compensation can be questioned. In order to support his contention, he has relied upon para 242 of the Constitution Bench judgment in **Indore Development Authority's case** (supra). In the wake of the aforesaid, he submits that since possession of the land stands taken, revenue records are in the name of the beneficiary department and the proceedings stand concluded for all intents and purposes, the same cannot be reopened in view of section 24(2) of Act of 2013 and the instant petition deserves to be dismissed.

6. As regards the decree of permanent injunction relied upon by the petitioners, he has submitted that such decree would not change the fact that land in question is acquired land and all that the learned Civil Court had directed was to take the possession in accordance with law. This would not imply that any title has been vested in the petitioners pursuant to such decree. Once it is established that even the jamabandi reflects the name of the beneficiary department in ownership column, the possession, if any, retained by the petitioners is in the capacity of trespasser and same can be taken back in accordance with law. He further submits that reliance placed on order dated 05.11.1982 is also inconsequential as same was passed before the award was announced. Once award is announced, the land stood acquired and vested in the State.

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

8. The petitioners in the instant petition have claimed to be in the physical possession of the land in question. Positive case set up by the petitioners is that even though the award was passed on 20.09.1986, yet the physical possession has not been taken from them. In this regard, the respondents have filed the Written Statement submitting that the right, title and ownership of the State and also the possession is apparent from the jamabandi for the year 2003-2004, wherein the Urban Estate Department is recorded as owner. Once the factum of acquisition is not disputed and even the revenue entries are in favour of the acquiring department, there can be no doubt that the acquisition proceedings were duly concluded, possession was taken and the land vested in the State. Section 16 of the Act of 1894 provides that after taking the possession of the land, it vests in the State free from all encumbrances. Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and land is vested in the State. The reference in this regard is made to the following paragraphs from the judgment:-

“...244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form.

When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

*245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). **As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired.** The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.*

9. Thus, the plea raised by the petitioners of being in physical possession of the land in question is wholly misconceived and is liable to be rejected. Further, the reference being made to the decree passed by the Civil Court below is inconsequential as the decree has been passed restraining the respondents not to dispossess the petitioners except in accordance with law. Such an observation though would show that the petitioners are in possession, but in view of the finding that land has vested in the State, the possession

retained by the petitioners is as trespasser and not as owner. Thus, no legal right has accrued in favour of the petitioners to seek lapse of acquisition proceedings.

10. As regards the compensation for the land in question, stand of the State is that the same was duly tendered. We deem it appropriate to notice that petitioners had sought time on 15.09.2015 to find out as to whether the petitioners have lodged claim for compensation as occupants on the land in question and whether the owner has received the compensation or not. However, till date they have failed to comply with the said order. This clearly reflects that being occupants on the land in question, the entitlement of compensation to the petitioners is disputed and even if they were so entitled, in view of the fact that same was tendered, we do not find any merit in the contention of the petitioners that compensation amount was not paid.

11. We further find merit in the submissions made by Mr. Mittal on the strength of the observations made in **Indore Development Authority** (supra) to the effect that the acquisition proceedings concluded in 1960's, 1970's and 1980's cannot be reopened on the ground of manner of taking the possession of the land or tendering the amount of compensation. The relevant para is reproduced herein below:-

'...The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner of deposit of amount in the Treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the Treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly

made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the Court to examine the details of such claims..'

12. The re-opening of the proceedings after efflux of time cannot be allowed as procuring legible records poses a challenge. In such cases, especially where the revenue record entries are to the effect that the land is in the name of Government department, we do not find any reason to doubt and quash the acquisition proceedings by giving the litigant benefit of non-availability of record and disturb already settled rights. Such an approach would not only be destructive but would affect the public interest at large. Thus, there is no ground for us to interfere with the acquisition proceedings in the case at hand. Similar situation had arisen before the Hon'ble Supreme Court in the case of ***Mahavir and others v. Union of India*** (2018) 3 SCC 588, wherein the Hon'ble Court deprecated filing of such petitions and made strong observations in this regard, thereby denying the relief under section 24(2) of Act of 2013:-

21. The Court is duty-bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this Court in which matters had been contested up to this Court questioning the acquisition and the petitions have been dismissed by this Court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/landowners deliberately or they had refused to collect it and are not ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the Treasury which is also deposited as per the State Government's instructions issued time to time relating to how government money is to be dealt with. The act of failure to deposit money under Section 31 after possession is taken only imposes liability to pay higher interest under Section 34. The acquisition would not lapse under the Act.

22. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they

do not want to receive it, Section 24(2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by wilful act. The failure to deposit in Court under Section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

23. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but Courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

24. The High Court has rightly observed that such claims cannot be permitted to be raised in the Court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject-matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of Section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.

25. The High Court has observed that Raisina is a part of the Lutyens zone of Delhi. It is prime locality of New Delhi and government offices, etc. are located. The petitioners asked the High Court to infer and conclude that in the absence of some indication of the record being made available by them that their ancestors have not ever received any compensation. How the petitioners came to know that their ancestors had not received compensation has not been disclosed in the petition. The High Court has rightly declined to entertain such claims. The protective umbrella of Section 24 is not available to barred claims. If such claims are entertained under Section 24, it would be very-very difficult to distinguish with the frivolous claim that may be made even after tampering the records, etc. or due to non-availability of such record after so much lapse of time. Once right had been lost due to delay and laches or otherwise, it cannot be revived under provisions of Section 24 of the 2013 Act. The intendment of the 2013 Act is not to revive stale and dead claims and in the concluded case when rights have been finally lost. If there is delay and laches or claim is otherwise barred, it is not revived under Section 24(2) of the 2013 Act. The provision does not operate to revive legally barred claims...'

13. Even in *Indore Development Authority* (supra), the Hon'ble Supreme Court has categorically held that stale claims cannot be reopened under the guise of section 24(2) of Act of 2013. Thus, the acquisition proceedings under challenge being concluded decades back cannot be reopened in any manner.

14. Therefore, in view of the fact that the land has vested in the State way back in 1986, revenue records proves possession of the concerned authority on the land in question, there is no ground to declare that the acquisition proceedings have lapsed under section 24(2) of Act of 2013.

15. 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 at hand, the physical possession of the land in question having been taken, the obligation for payment of compensation discharged, 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 is dismissed.

16. Having dismissed the main writ petition, application(s), if any, also meets the same fate. Status quo, if any, stands vacated.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

29.07.2022
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO