

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

CWP-19459-2019 (O&M)
Reserved on : 29.03.2022
Date of decision : 31.08.2022

Praveen Rao

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Rupinder Singh Khosla, Senior Advocate,
with Mr. Sarvesh Malik, Advocate for the petitioner.

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

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RAVI SHANKER JHA, C.J.

1. Whether the acquisition proceedings initiated vide the notifications under Section 4 and 6 of the Land Acquisition Act 1894 dated 13.05.2002 and 08.05.2003; followed by the award under Section 11 of the Act of 1894 dated 03.02.2004, in respect of the land in question i.e. Khasra nos. 64/1 (3-8), 64/2(3-8), 52//11/2 (0-3) 64//3/2 (0-8), 64//3/5 (0-7), 65/5 (2-7) total measuring 10 Kanal 1 Marla to the extent of 1/12th share situated in Village Dhundahera, District Gurugram, have 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, is a poser involved here.

2. The undisputed facts involved in the case at hand as contended by the petitioner himself are that he received the compensation for the land in question and further, that his co-sharer filed two writ petitions qua his share involved in Khasra Nos. 64//1 and 64//2 bearing CWPs No. 1356 of 2004 and 2813 of 2004 which are still pending and the interim order is operating therein. Thus, the claim of lapsing of acquisition proceedings qua the land in question is based upon the alleged fact of being in physical possession of the land in question. Notably, the time when the petition was filed, the provision of Section 24(2) of the Act of 2013 was

available to be invoked even if either of the two contingencies as provided in the statute is available. The provision of Section 24(2) of the Act of 2013 has been interpreted by the Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others SLP (C) 9036-9038 of 2016 decided on 06.03.2020*** and thus, the question posed before us is required to be answered in terms of the exposition of law by the Constitution Bench in Indore Development Authority (Supra).

3. Before entering into the respective pleadings by the parties, it needs necessary mention that owing to the pendency of interpretation of the provisions of Section 24(2) of the Act of 2013 before the Supreme Court, the petitions including the present one wherein the writ jurisdiction of this Court under Article 226 of the Constitution of India was sought to be invoked, were kept pending; awaiting the outcome of the issue at hand by the Supreme Court. After seeing various interpretations, the controversy erupted was finally set at rest by the Constitution Bench of the Supreme Court in the case titled as ***Indore Development Authority (supra)***. The penultimate para of the judgment 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'.

4. That the sum and substance of the interpretation of Section 24(2) of the Act of 2013 by the Supreme Court is that the first and foremost condition to seek lapsing is that 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, the 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 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 the Act of 2013.

5. Having perused the judgment passed by the Supreme Court in Indore Development Authority (supra) and the principles laid down, now we proceed to test the factual matrix of the case at hand pleaded before us on to the afore reproduced laid down principles by the Supreme Court.

6. As per the case put forth by the petitioner, he is 1/12th share holder in the area comprised in Khasra nos. 64/1 (3-8), 64/2(3-8), 52//11/2 (0-3) 64//3/2 (0-8), 64//3/5 (0-7), 65/5 (2-7) total measuring 10 Kanal 1 Marla situated in Village Dhundahera, District Gurugram. The land was never partitioned and thus, the joint objections dated 13.06.2002 were filed by his grandfather along with the rest of the family thereby praying for release of the land. The land was, however, included in the declaration issued under Section 6 of the Act and finally, an award dated 03.02.2004 was passed for the public purpose, namely, for completing and integrating the infrastructural facilities and other public utilities such as roads, water supply, sewerage, electrification, drainage etc. within the already developed

Industrial Sectors 18 and 19 Udyog Vihar Phase IV & V situated in Village Dhundahera, Tehsil and District Gurugram. It has further been submitted that their co-sharer filed two writ petitions i.e. CWP No. 1356 of 2004 and CWP No. 2813 of 2004 in respect of the land bearing Khasra Nos. 64//1 and 64//2 which are pending with the interim order operating in the said petitions. It has been asserted by the petitioner that due to the pendency of the said petitions, he along with other co-sharers are retaining the possession. Reliance in this regard has been placed on the information supplied by the HSIIDC under RTI. It has also been claimed that the land is not required by the State Government for the stated public purpose but indeed the purpose is to grant license to the builders/colonizers as most of the acquired land is surrounded by the land of private builders.

7. Pursuant to the notice of motion issued, the HSIIDC had filed its short reply controverting the contentions made by the petitioner. It has been specifically contended that the possession of the entire land stands taken vide Rapat No. 361 dated 01.03.2004 except the land under litigation in the pending writ petitions filed by the co-sharers of the petitioner as stated in the petition itself. The compensation for the entire land, however, stands accepted by the predecessors in interest of the petitioner. While placing reliance on Indore Development Authority (Supra), it has been contended that once the true owner has taken the compensation and even the possession has been taken, the writ petition filed by the petitioner deserves to be dismissed.

8. Mr. Ankur Mittal, learned Additional Advocate General, Haryana, submits that in view of the interpretation by the Constitution Bench in Indore Development Authority (Supra), the instant writ petition is not even maintainable. He has argued that the award in the case at hand was announced on 03.02.2004. The possession of the land in question except the land under litigation was taken by recording Rapat Roznamcha and thus, the land stood vested in the State. The acquisition proceedings were completed way back in the year 2004, therefore, it is undisputedly a case of stale claim which is not entitled to be reopened in the guise of Section 24(2) of the Act of 2013. So far as the land which is under litigation at the hands of the co-sharer of the petitioner wherein the interim order is operating till date, the plea of 24(2) itself is not maintainable as excluding the status quo period will clearly result into not fulfilling the pre-requisite window period of 5 years between the date of award and coming into the effect of the Act of

2013. He has further argued that even otherwise after the interpretation made by the Supreme Court, the plea of lapsing is available only if both the contingencies as provided in Section 24(2) of the Act of 2013 are fulfilled i.e. the physical possession not taken and the compensation not being paid. It is the own case of the petitioner that the compensation of the land in question stands taken and thus, one of the contingencies of payment of compensation is not available with the petitioner, which itself is the end of road for him. So far as the possession part is concerned, it has been specifically asserted and pleaded in the reply as well that the physical possession of the land in question except the land involved in the pending writ petitions, at the instance of the co-sharer of the petitioner stands taken by duly recording the Rapat Roznamcha. At the end, he has argued that the land stood vested in the State free from all encumbrances and even if the petitioner is stating himself to be in the possession of the land, it is only in the capacity of a trespasser and not as an owner. As a conspectus of the aforesaid submissions, he has prayed for the dismissal of the instant writ petition as none of the contingencies required for declaring the acquisition proceedings to have been lapsed is fulfilled in the case at hand.

9. 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 reasons.

I. **Physical possession of the land in question stands taken**

10. The petitioner in the instant petition has claimed to be in the physical possession of the land in question. Positive case set up by the petitioner is that even though the award was passed on 03.02.2004 but yet the physical possession has not been taken from him. In this regard, the respondents have filed the reply submitting therein that after the announcement of the award possession was duly taken by recording Rapat No. 361 dated 01.03.2004 except for the land involved in the pending writ petitions at the instance of the co-sharers of the petitioner. The Supreme Court of India in Indore Development Authority (Supra) has categorically held that the recording of panchnama is the valid mode of taking possession of the land and amounts to taking of physical possession of the land. Once the possession of the land is taken, it vests in the State free from all encumbrances and any person who retains the possession of the land

thereafter is a trespasser. 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.*

11. As regards the land involved in the pending writ petitions at the instance of the co-sharers of the petitioner bearing CWP No. 1356 of 2004 and 2813 of 2004, it is the conceded case of the parties that the interim order is operating in the said petitions. That being so, the same is required to be

excluded while computing the window period of 5 years between the announcement of the award and coming into the effect of the Act of 2013 i.e. 01.01.2014. Since the said interim order is still operating, there would be no dispute that the plea of lapsing under Section 24(2) will not be clearly available. Reference in this regard can be made to Para 331 of Indore Development Authority (supra).

12. Thus, we are of the considered opinion that the physical possession of the land except qua which stay is in operation stands duly taken and the plea being raised by the petitioner of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. **Whether the compensation amount for the land in question was tendered or not.**

13. It is the own pleaded case of the petitioner that the land in question was under the joint ownership and they received the compensation. So far as the petitioner's share is concerned, HSIIDC in their reply has also contended that his predecessor in interest has taken the amount of compensation. This leaves no scope for further deliberation onto this aspect except to record that the State has fully discharged its liability towards payment of compensation to the recorded owners.

III. **None of the contingencies as given under Section 24(2) of the Act of 2013 are fulfilled?**

14. The Supreme Court in Indore Development Authority (supra) has clearly observed that for deemed lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, both the conditions i.e. payment of compensation and taking of possession must not be fulfilled i.e. if either of the condition is fulfilled, the lapsing cannot happen. The Supreme Court has observed that word "or" occurring in Section 24 (2) of the Act of 2013 must be read as "and/nor". Relevant paras from the judgment are reproduced here in below:-

"...99. In this Court's considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and".

101. In *M/s. RanchhoddasAtmaram and Anr. v. The Union of India and Ors.*⁷⁷, a Constitution Bench of this Court observed that if there are two negative conditions, the expression “or” has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

“(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, “or” really means “either” “or.” In the *Shorter Oxford Dictionary* one of the meanings of the word “or” is given as “A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative.” It is also there stated, “The alternative expressed by “or” is emphasised by prefixing the first member or adding after the last, the associated adv. *EITHER*.” So, even without “either,” “or” alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word “or” between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.’

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import.”

(emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse...

15. In the case at hand as reflected from the own pleadings of the petitioner as well as from the reply filed, it is evident that after the award was announced on 03.02.2004, the physical possession was taken by recording Rapat no. 361 dated 01.03.2004 except the land under litigation in the pending writ petitions at the instance of the co-sharers of the petitioner. As far as the compensation part is concerned, it is admitted that the compensation stands paid to the recorded land-owner. In view thereof, both the contingencies as provided in Section 24 (2) of the Act of 2013 are not

fulfilled.

IV. **Essentiality of the land in question**

16. Mr. Ankur Mittal, on the strength of the facts recorded in the reply, submits that the land in question as acquired for the public purpose namely, for completing and integrating the infrastructural facilities and other public utilities such as roads, water supply, sewerage, electrification, drainage etc. within the already developed Industrial Sectors 18 and 19 Udyog Vihar Phase IV & V situated in Village Dhundahera, Tehsil and District Gurugram and has been planned as per the development plan of the sector duly approved by the competent authority. The land is therefore, necessary for completing the infrastructure so much so the land under Khasra Nos. 64//1 and 64//2 falls under ROW of the Sector road (Shyam Chowk to Old Delhi Highway). We have considered this part of arguments raised by the respondents and are in complete agreement with the same as it is an essential factor to be kept in mind while dealing with the case arisen out of the acquisition of the land.

V. **Claim of the petitioner is dead and stale**

17. The Apex court in Indore Development Authority (Supra) on one hand has referred to the cases wherein the challenge to the acquisition proceedings has been negated as “concluded cases”, on the other hand, the Supreme Court has also held that the “claims barred by law/dead claims” cannot be revived under Section 24(2) of the Act of 2013. In the ambit of concluded cases, the Court has not only included the cases wherein earlier challenge to acquisition proceedings has failed but also included such cases wherein the land stands vested in the State and no challenge was made to the acquisition proceedings and landowners have acquiesced to the fate of such proceedings. In *Sehdev Singh and others v. State of Haryana and others* CWP 8878 of 2018, we have discussed in detail the four categories of concluded cases which are enumerated herein below:-

“....a. The cases where the landowners challenged the acquisition proceedings, they failed and the possession was taken after the announcement of award cannot take benefit of section 24(2) of the Act of 2013. (para 338)

b. The cases where the beneficiaries/ landowners filed references and sought the enhancement of compensation, enhancement was made and the compensation was deposited in the treasury and thereafter the lapsing has been sought. (para 339)

- c. Where after taking the possession of the land, development is complete, infrastructure has been developed and the challenge has been made to the acquisition proceedings under section 24(2). (para 339)*
- d. The cases wherein the claims for release of land under section 48 of the Act of 1894 have been dismissed and thereafter the claims have been made to declare the acquisition proceeds as has been lapsed. (para 339)..”*

18. In the case at hand, the acquisition proceedings concluded way back in the year 2004. The possession of the land was taken and the compensation has been paid to the recorded owner. In such like cases, where the proceedings stood completed way back and there was no challenge to the acquisition proceedings, the same cannot be reopened under the guise of Section 24(2) of the Act of 2013.
19. As a conspectus of what all has been discussed hereinabove especially the fact that after the announcement of the award, the possession was taken by recording Rapat Roznamcha, and the obligation to pay the compensation stands discharged and also that the land in question is very much essential to achieve the public purpose, for which it is acquired, we are of the considered opinion that no ground is made out in the petition to interfere with the acquisition proceedings much less holding that the acquisition proceedings are deemed to have lapsed and, thus, the claim made by the petitioner is rejected and the petition filed is hereby dismissed.
20. Since the main petition has been dismissed, all the pending applications, if any, stand disposed of.
21. Status quo order, if any, is hereby vacated.

(RAVI SHANKER JHA)

CHIEF JUSTICE

(ARUN PALLI)

JUDGE

31.08.2022

Amodh Sharma

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