

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 148 of 2018
Reserved on : 29.03.2022
Pronounced on : 31.08.2022

Om 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

Present:- Ms. M.L Sharma, Advocate, and
Mr. Sushil Kumar Sharma, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana, and
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for respondent No. 1.

Ms. Kushaldeep Kaur Manchanda, Advocate,
for respondents No. 2 & 3.

RAVI SHANKER JHA, C.J.

1. The petitioners have filed instant writ petition seeking issuance of writ in the nature of Certiorari for quashing the notification dated 17.09.2004 and 27.10.2004 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 and award dated 09.03.2006 in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013').

2. The controversy which cropped up around interpretation of Section 24 (2) of the Act of 2013 was put to rest by the Constitution Bench of the Supreme Court in the case of ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*** thereby laying down principles for declaring the acquisition as deemed to have lapsed under

Section 24 (2) of the Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting Section 24 (2) of the Act of 2013, and in this regard the reference is being 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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’.

3. 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, 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 the 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.

4. As per the case put forth by the petitioners, they are owners in possession of the land bearing Khasra No. 1//21 (4-18), 22/1 (2-16), 2//1/1 (6-10), 2/1(6-12) measuring 20 Kanals 16 marlas situated within the revenue estate of Village Naurangpur, Tehsil and District Gurugram. The said land was acquired by the State of Haryana through Industries Department vide notifications dated 17.09.2004 and 27.10.2004 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, respectively, followed by Award dated 09.03.2006 for the public purpose, namely, the setting up of Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar, to be planned and developed as an integrated complex for Industrial, Institutional, Commercial, Recreational and other public utilities on land measuring 956 Acres 5 Kanal 18 Marla of villages Nabada Fatehpur, Naurangpur, Manesar, Lakhnoul, Naharpur Kasan and Shikohpur, Tehsil and District Gurugram. The petitioners have contended that till date they are in physical possession of the land in question and neither they have received the amount of

compensation nor it has been deposited in accordance with law before the Reference Court. Thus, they have prayed for declaring the acquisition proceedings to have lapsed under Section 24 (2) of Act of 2013.

5. The petitioners had earlier approached this Court by filing writ petition bearing CWP no. 18772 of 2014 seeking similar relief from this Court and same was disposed of vide order dated 07.05.2015 with directions to the respondents to decide the representation of the petitioners by passing a speaking order. Thereafter, in compliance of the said order, the representation given by the petitioners was considered and decided vide order dated 01.01.2017 and the claim of the petitioners was rejected by relying upon the report given by Field Officer to the effect that the petitioners on one hand were claiming to be in possession of the land in question and on other hand they filed a representation dated 15.09.2015 informing that one Sh. Neeraj illegally occupied their land, which makes it clear that the possession of the land in question is not with the petitioners. It was further observed that even otherwise, the possession of the land stands taken by recording rapat Roznamcha No. 707 dated 22.06.2006 and mutation No. 4300 dated 27.06.2013 has also been sanctioned. As regards compensation it was observed that the majority of compensation has been disbursed and the petitioners have intentionally not lifted the amount of compensation. Thus, in view of the aforesaid facts, the claim of the petitioners was rejected.

6. The petitioners have challenged the aforesaid order on the ground that finding as regards the possession of the land is wrong and further since compensation has not been received by them, the acquisition proceedings qua the land in question stand lapsed under Section 24 (2) of the Act of 2013.

7. Pursuant to issuance of notice of motion, the respondents have filed an affidavit of Deputy Secretary to Government of Haryana, Industries and Commerce Department to controvert the pleas raised by the petitioners wherein, while referring to the interpretation made by the Supreme Court, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, has pleaded that the petitioners were owners of the land measuring 20 Kanal 16 marla comprising in Khasra No. 1//21 (4-18), 22/1 (2-16), 2//1/1 (6-10) and 2/1 (6-12) of Village Naurangpur, Tehsil and District Gurugram. He has contended that the plea of the petitioners that they are in physical possession of the land is absolutely wrong as the possession of the land in question was taken by recoding rapat No. 707 dated 22.06.2006 and the mutation of the land was sanctioned in favour of HSIIDC on 27.06.2013. Therefore, in view of the law laid down in Indore Development Authority (Supra) as regards the mode of taking possession of the land, land in question stands vested in the State free from all encumbrances. Thus, the plea of the petitioners of being in possession of the land is devoid of merits. As regards the compensation, Mr. Mittal contends that Rs 122.15 crore was deposited by HSIIDC towards compensation amount and out of the said amount, 80% of the compensation has been disbursed to the land owners, which shows that the amount of compensation was duly tendered and the obligation of State stands discharged in view of the principles laid down by the Supreme Court in the case of Indore Development Authority (supra). In view of the aforesaid, he has prayed for dismissal of the instant writ petition as none of the contingencies provided in Section 24 (2) of the Act of 2013 are fulfilled.

8. Apart from making the afore-noted submissions, Mr. Mittal has further contended that the land in question was acquired for the public purpose, namely, setting up the Chaudhary Devi Lal Industrial Model Township, Phase-V, Manesar and as per the approved layout plan, the land in question is very much essential to complete the development work as per the planning. So much so, it affects the planning of 24 meters wide road, 30 meters wide road, 75 meters wide proposed Sector dividing road, 150 meters wide proposed road along with the 30 meters wide Green Belt on both the sides. Moreover, the land is reserved for commercial use.

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

- a) Though the petitioners have contended that they are in actual physical possession of the land in question, however, the said averment is not tenable in view of the interpretation of '*physical possession*' made by the Apex Court in Indore Development Authority (Supra) wherein the Hon'ble Court has categorically held that the word 'possession' used in the Act of 1894 has the same meaning as that of 'physical possession' used in Section 24 (2) of the Act of 2013. When the State Government acquires the land and draws memorandum of taking possession, which in the present case is by recording Rapat Roznamcha No. 707 dated 22.06.2006, it amounts to taking of the physical possession of the land and once the possession is taken, there is

absolute vesting of the land in the State. Thereafter, even if the landowner retains the possession of the land, he is a trespasser, and such possession of trespasser enures to the benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha No. 707 dated 22.06.2006, therefore, physical possession of the land stands duly taken by the State. The plea of the petitioners that they are in physical possession of the land is, thus, hereby rejected. If at all possession has been retained by them, it is only as trespassers and not as owners. As a consequence thereof, one of the essentials for claiming lapsing of acquisition proceedings goes.

- b) As regards the status of compensation the respondents have categorically pleaded in the reply that the amount of compensation for the entire awarded land was made available to all the landowners which is substantiated from the fact that the majority of compensation amount stands disbursed to the landowners. In this regard Mr. Mittal has asserted that in view of the exposition in Indore Development Authority (supra) the obligation of the State to pay the compensation is discharged if the amount of compensation is tendered which has been interpreted to mean that the amount was made available to the land owners as observed in Para 203 which is reproduced here in below:-

*‘....203. The word “paid” in Section 31(1) to the landowner cannot include in its ambit the expression “deposited” in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. **However, in case***

there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment. In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners' counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15 per cent contemplated under Section 34, which is *pari materia* to Section 80 of Act of 2013. Section 34 is *pari materia* to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. **However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue.** Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit....'

The afore-stated facts clearly reveal that the amount of compensation was duly tendered so much so the majority of the compensation amount stands disbursed and thus, the State has discharged its obligation towards making the compensation for the land acquired and thus the plea being raised by the petitioners that they have not been paid the compensation amount is rejected.

- c) Since none of the contingencies provided in Section 24 (2) of the Act of 2013 are fulfilled as the possession of the land stands duly taken by recording rapat No. 707 dated 22.03.2006 pursuant to which the mutation also stands

sanctioned and further the amount of compensation has been tendered, therefore no declaration can be made to the effect that acquisition proceedings have lapsed under Section 24 (2) of the Act of 2013.

d) Also, there is no point to interfere in the acquisition proceedings when the land in question is essential for development of infrastructure as it is affecting the development of road and thus, cannot be released from the acquisition proceedings at any cost.

10. As a sequel of the above discussion and in view of the 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 stands discharged and also considering that the land in question is very much essential to achieve the public purpose, 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 the Act of 2013 and it being so, the instant petition is dismissed.

11. Having dismissed the main writ petition, pending application, if any, also meets the same fate. Status quo, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2022
ndj

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