

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 20700 of 2016

Date of decision : 03.02.2022

Mobasi Ram

...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. Vikram Singh, Advocate,
for the petitioner.

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

Mr. Amar Vivek Aggarwal, Advocate, and
Mr. Shiva Parashar, Advocate,
for respondent No.2 – HUDA.

(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. After having chosen not to assail the process of acquisition though completed way back vide the award dated 23.03.1993 announced under Section 11 of the Land Acquisition Act, 1894, the petitioner has invoked the writ jurisdiction of this Court; after coming into effect of Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter referred to as 'the Act of 2013') w.e.f. 01.01.2014, by filing the present petition in the year 2016; thereby claiming that the acquisition of land qua his share falling in Khasra Nos. 34//5/2/2 (0-3), 6/1/1 (0-16), 6/3/1 (0-8), 6/3/2 (0-4) total measuring 1 Kanal 11 marla situated within the revenue estate of Village

Kanhai, Tehsil and District Gurgaon, has lapsed in view of Section 24 (2) of the Act of 2013: by positively contending that he has built a house which is continued to be in his possession and the compensation for the acquired land was neither paid nor deposited in the Reference Court and as such, both the contingencies provided under Section 24 (2) of the Act of 2013 are satisfied.

Pleadings made in the present petition

2. The perusal of the pleadings reveals that the aforementioned land belonging to the father of the present petitioner was acquired vide notifications dated 20.04.1990 and 18.04.1991 issued under Section 4 and 6 of 1894 Act; followed by the award dated 23.03.1993 under Section 11 of 1894 Act, for the public purpose i.e. for utilization of land for residential, commercial, institutional and open space, recreational area in Gurgaon as per the plan prepared under the Haryana Urban Development Authority Act, 1977. It has been contended that over the land in question, a house was built wherein even the electricity connection was got fixed which is still in his possession and he continues to be residing in the said house only. It has further been contended that in spite of the fact that the acquisition proceedings were complete way back in the year 1993 but neither the possession of the land over which the house has also been constructed, is taken nor is the compensation paid to him. An attempt has also been made to project the case of discrimination by contending that the surrounding land of the petitioner has already been released from acquisition, whereas in his case it has neither been released nor he has been compensated for the land as well as the structure. Invoking the provisions of Section 24 (2) of the Act of 2013, it has been contended that the legislature has enacted the said

provisions by providing deeming fiction which provides for deemed lapsing, in case, either of the contingency as provided under Section 24 (2) of the Act of 2013 is satisfied whereas in his case both the contingencies are fulfilled and satisfied and thus, a case is made out for issuance of declaration that the acquisition for his land stands lapsed.

3. To support his claim, the reliance has been placed on the judgment passed by the Supreme Court in case titled as '*Pune Municipal Corporation and Anr v. Harakchand Misrimal Solanki and others, 2014 (3) SCC 183*, to contend that in the similar situation and while holding that the payment made in treasury cannot be held to be equivalent to compensation paid to landowners/persons interested, the Hon'ble court directed the acquisition proceedings to have lapsed.

4. While setting up a positive case that as his house was not released from the acquisition despite filing of the requisite objections, he approached this Court by filing CWP No. 4582 of 2015 which was disposed of vide order dated 18.03.2015 with the directions to submit the representation and also to the authorities to decide the same in accordance with law, whereafter the representation was submitted which came to be rejected vide the impugned order dated 16.08.2016 by contending that his claim has been rejected on the ground that the land in question is planned for residential area and the same will affect developed plots of 4 marla including 1 no. 10 mtr wide road.

Law laid down by the Hon'ble Constitution Bench in Indore Development Authority

5. The writ petition came up for hearing before this Court on 03.10.2016 whereby the notice of motion was issued. During the

pendency of the petition after finding that the Supreme Court is seized of the controversy erupted as regards the interpretation of Section 24 (2) of the Act of 2013, the hearing in the present matter was deferred to await the decision of the Constitution Bench of the Supreme Court which came to be decided in ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496***. The penultimate paragraph from the Constitution Bench judgment laying down the guiding principles 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'*

6. In essence, the Constitution Bench of the Apex Court has cleared the clouds of doubt qua the words “paid” in Section 24 (2), “deposited” occurring in the proviso to Section 24 (2) and read the word “or” used in between the both the contingencies of Section 24 (2) of the Act of 2013 as “nor” or as “and”. Similarly, the expression “physical possession” occurring in the main section has also been clarified to mean “drawing of panchnama”/“Rapat Roznamcha”. It has been crystallized that for seeking lapsing, both the contingencies will have to be satisfied. Broad principles as laid down by the Supreme Court are crystallized as under:-

- (a) In all those cases wherein the acquisition process had been initiated but the award has not been announced under Section 11 of the Act of 1894, on the date of commencement of the Act of 2013 i.e. 01.01.2014, there is no lapse of proceedings and the same will continue, however, with the rider that the compensation has to be determined under the provisions of the Act of 2013. All those cases wherein the award under Section 11 of the Act of 1894 has been announced prior to commencement of the Act of 2013, the provisions of the Act of 2013 would have no bearing or application and the proceedings will continue in respect of those cases, as if the Act of 1894 has not been repealed.
- (b) The word ‘or’ used in between both the contingencies of Section 24 (2) of the Act of 2013 is to be read as ‘***nor***’ or as ‘***and***’ which means that to seek lapsing of the acquisition proceedings both the contingencies must be fulfilled. Meaning thereby, that if the possession had been taken but the

compensation was not received, there would be no lapse. Similarly, if compensation has been accepted but the possession has not been taken, there would be no lapsing.

(reference to para 99 and 363(2) of the judgment)

- (c) As far as the aspect of compensation for the land acquired is concerned, the Supreme Court has categorically observed that 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. What is required to be proved is that the compensation amount was tendered which has been explained in ***para 203*** that the tendering of the amount would mean that the amount is made available to the landowner and 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. While referring to Section 31 (1), 31 (2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. Section 71 and 80 of the Act of 2013, the Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per Section 34 of the Act of 1894. Even the Supreme Court has further clarified that once the payment of compensation has been offered/tendered under Section 31 (1), the acquiring authority cannot be penalised for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Supreme Court has further observed that if a landowner has filed the reference for

higher compensation he cannot claim that he was not paid the amount.

- (d) While reading the proviso to Section 24 of the Act of 2013 to be part of Section 24 (2) of the Act of 2013, the Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsists and if not deposited for 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. Regarding the deposit, it has been clarified in *para 242* of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under Section 34 of the Act of 1894 would be the consequence.
- (e) As regards the mode of taking possession, the Supreme Court had clarified that drawing of inquest report/memorandum would mean that physical possession has been taken. The law with regard to vesting of land has once again been reiterated to hold that once the possession has been taken under Section 16 of the Act of 1894, the land vests in the State and there cannot be any divesting or lapsing.

- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of Section 24 (2) cannot be invoked.
- (g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of Section 24 (2) of the Act of 2013 cannot be invoked as it does not revive stale and time barred claims.
- (h) In para 337, the Hon'ble Court has made it clear that the provision of Section 24 (2) of the Act of 2013 is meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under Section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of Section 24 (2) of the Act of 2013.

7. After having gone into the judgment passed by the Hon'ble Constitution Bench, for whose decision, hearing in the present case was kept pending, we proceed to test the factual matrix of the instant case onto the afore stated principles laid down by the Apex Court. Before we do so, it require necessary mention that in the case at hand, the written statement was filed on behalf of all the respondents way back on 09.05.2017 thereby refuting all the claims put forth by the petitioner and

in turn, prayed for dismissal of the writ petition by specifically contending that the land in question is very much essential to achieve the public purpose for which it was acquired so much so, it affects the plots as well as road. The record reveals that inspite of having received the written statement, the petitioner has chosen not to file any replication and thus the facts stated in the written statement have gone un-rebutted

Written statement filed and arguments by the respondents

8. Mr. Ankur Mittal appearing for the official respondents made a statement that the facts pleaded in the written statement filed way back in the year 2017 are sufficient to demonstrate the requirement as laid down in Indore Development Authority (supra) and would be sufficient to negate the claim put forth by the petitioner, besides he has pointed out the concealment of facts by the petitioner. While referring to the written statement filed, it has been argued that the petitioner has concealed various facts and thus, has not approached this court with clean hands. It has been argued that the possession of the land in question was taken vide rapat roznamcha No. 425 dated 23.03.1993. The total award money for the entire land acquired vide the award in question was Rs. 11,20,50,371.55/- and out of it, approx. 91% amount stands already disbursed which even includes the compensation money as regards the land in question qua the co-sharer of the petitioner. While referring to the fact pleaded in the written statement, it has been argued that in the petition, the petitioner has set up a case of him having a house over the land acquired wherein he is residing but the said house has not been released from the acquisition whereas fact of the matter is that out of the land in question, of which the father of the petitioner who was owner of

land at time of acquisition the constructed area measuring 1K -8 M which was released and it is only the vacant land, which has been acquired, on which account itself the petition is required to be dismissed with exemplary cost for having approached this court based upon misstatement and misrepresentation. It was further argued that the petitioner had sought enhancement of compensation determined by filing reference petition under Section 18 of the 1894 Act qua Khasra No. 34/5/2, 6, 7 whereafter the compensation amount was enhanced but as stated in reply enhanced compensation could not be paid as the petitioner did not provide his bank account and other relevant documents. With regard to the fact that the land in question is very much essential to achieve the public purpose for which it was acquired, it has been stated that as per the planning made, it affects part of 30 m wide sector dividing road, a part of 10 m wide service road, site of primary school, 13 nos. Plot of 4 marla category and 2 plots of 2 marla category.

9. By placing reliance on the principle laid down by the Supreme Court, Mr. Mittal has argued that the petitioner having pleaded wrong facts on affidavit has made an attempt to mislead this Court so as to take undue advantage of the deeming fiction provided under Section 24 (2) of the Act of 2013. The petitioner has deliberately made a wrong statement that on the land acquired, he has a house which has not been released, whereas the entire constructed area measuring 1 kanal 8 Marla in existence at the time of initiation of the acquisition proceedings had been released. The petitioner has further concealed that in the land in question, he is a co-sharer and his other co-sharers have already accepted the compensation. The petitioner has also concealed the factum of him having filed the reference petition seeking enhancement of compensation

for his land acquired. Be it as it may, the possession of the land in question has already been taken by drawing Rapat Roznamcha No. 425 dated 23.03.1993 for the land in question acquired excluding the constructed portion of 01k 08 M which in terms of Indore Development Authority (supra) is sufficient to construe that the physical possession of the land in question have been taken. So far as the question of compensation for the land in question to be paid to the landowner, the Supreme Court has clarified that expression paid in the main part of Section 24 (2) of the Act of 2013 will be deemed to be satisfied if the compensation amount was tendered which has been explained to mean that the amount is made available to the landowner and that would be discharge of the obligation to make the payment. At the end, he argued that the reliance placed by the petitioner on Pune Municipal Corporation (supra) is also of no help to the petitioner as the said judgment has been expressly overruled in Para 362 of Indore Development Authority (Supra).

10. Taking it further, Mr. Mittal has argued that since the word “or” occurring in both the contingencies mentioned in the main Section of 24 (2) of the Act of 2013 has been read as “nor/and”, both the contingencies occurring will have to be mandatorily fulfilled and that too with the prerequisite gap period of 5 years or more between the date of award and coming into effect of the Act of 2013 which means that if the state/authority is required to demonstrate that any time prior of gap period of 5 years, the possession has been taken by drawing the panchnama or even the compensation is tendered, it will negate the claim of the landowner of lapsing u/s 24 (2) of the Act of 2013. He further argued that the land in question is very much essential to achieve the

public purpose so much so even the road is also affected and any release/ declaration of lapsing will adversely affect the planning in terms of layout plan.

Discussion

11. After having bestowed our thoughtful consideration to the rival claims put forth by the competing parties, having gone through the respective pleadings and the judgment passed by the Constitution Bench of the Supreme Court, we are of the considered opinion that the instant petition deserves to be dismissed for more than one reason. In the instant case, it is the categoric pleaded stand of the State that the possession of the land in question has already been taken way back in the year 1993 i.e. by Rapat Roznamcha No. 425 dated 23.03.1993 and thus, the land in question stands vested in the State for all intent and purposes. While interpreting the word “physical possession”, the Supreme Court held that the recording of panchnama is valid mode of taking possession and explained that once the possession of land is taken, the land vests in the State and if thereafter the possession is retained by the erstwhile landowner or any other person, it will be only in the capacity of trespasser and it will not be available for the landowner to claim that the possession hasn’t been taken from him and that he is still owner in possession. In the instance case, though concealed by the petitioner but as stated by the respondents, excluding the constructed portion of 01K 08M land, the possession of the rest/remaining land was taken by Rapat Roznamcha, therefore, we have no hesitation to hold that the physical possession of the land in question stands taken and thus, it is not available to the petitioner to contend that he is still in possession of the

land in question and accordingly, one of the contingency occurring in Section 24 (2) of the Act of 2013 goes.

12. Though in terms of the principle laid down in Indore Development Authority (Supra), after having been recorded that possession of the land in question has been taken, this is the end of the road for the petitioner so far his claim of lapsing being sought u/s 24 (2) but still since, the petitioner has specifically taken the plea that the compensation for the land in question has neither been paid nor deposited before the Reference Court, we would like to test this contention of the petitioner in the light of the principles laid down in Indore Development Authority (Supra). The State in its written statement has categorically contented that the petitioner is the co-sharer in a piece of land to the extent of it being claimed in the writ petition. Though the petitioner has not received the compensation but admittedly, his other co-sharers have already accepted their share of compensation. The petitioner though has filed the reference U/s Section 18 of the 1894 Act. It is important to highlight here that the Apex court while interpreting the word 'paid' occurring in Section 24 (2) and the word 'deposited' used in proviso to Section 24 (2) of the Act of 2013 has very categorically observed the meaning and effect of both by holding that the word 'paid' does not include deposit and in case, the amount has been tendered, the obligation to pay is fulfilled. What would construe to mean "tender of the amount" has been explained in Para 203 to mean that the amount is/was made available to the landowner and that would be a discharge of the obligation to make the payment. Another limb which attracts in the factual matrix of the present case is that can a landowner who filed reference u/s 18 of the 1894 Act claim that he has not been paid the

compensation. Clarifying this aspect, the Supreme Court in Para 224 made it clear that when the landowner does not accept the amount of compensation but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount as determined by the Collector and since, besides the fact that the compensation was duly tendered to the petitioner/his predecessor wherein even his other co sharers have accepted the amount of compensation by the petitioner instead of accepting the same chose to file the reference under section 18 of the 1894 Act, it will not be open for the petitioner to now contend that the compensation has not been paid to him. In view of the above, we have no hesitation to hold that in the case in hand, the compensation was duly tendered but the petitioner chose to not to accept the same and thus, the State has clearly discharged its obligation to make the payment and thus, the second contingency appearing in Section 24 (2) of the Act of 2013 also goes so far as the instance case is concerned.

13. Mr. Ankur Mittal on the strength of the facts pleaded in the written statement has vehemently contended that the State acquired land for the public purpose public purpose or utilization of land for residential, commercial, institutional and open space, recreational area in Gurgaon as per the plan prepared under the Haryana Urban Development Authority Act, 1977. The public purpose is achieved by drawing/approving the lay out plan. As per the lay out plan prepared for the acquisition in question, the land in question is very much essential to achieve the public purpose and it affects the planning of part of 30 m wide sector dividing road, a part of 10 m wide service road, site of primary school, 13 nos. plot of 4 marla category and 2 plots of 2 marla category. We have considered this part of argument raise by the respondents and we are in complete

agreement with the same as this is an important factor to be kept in mind while dealing with the case arising out of the acquisition of land to achieve the public purpose and it is the State/its authority who is in the best position to decide about utilization of the land acquired, after it having been vested in State.

14. In the instant case, from a perusal of the pleadings made in view of the categorical case pleaded by the State, it is unambiguously clear that the petitioner has not only concealed the factum of the constructed portion having been released by the authorities but has positively made wrong statement that his built up house has not been released so much so didn't even disclose about his other co sharers having accepted the compensation (as pleaded in the written statement which went uncontroverted), it is clear that the petitioner has tried to mislead this court which requires to be viewed very seriously. A writ remedy is an equitable one. A person invoking the writ jurisdiction is under an unwritten contract to not only state true facts but complete facts. From the perusal of the pleadings, it is crystal clear that the petitioner has not approached this Court with clean hands and true facts were concealed and rather the misstatement was made to give impression that the built up house constructed has not been released. We clearly deprecate this kind of practice as this fact alone is sufficient to negate the equitable relief being prayed for. However, by recording our anguish, we refrain ourselves in taking up this issue further and imposition of exemplary costs for having concealed and misstated the facts.

Conclusion

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 in hand, the physical possession of the land in question excluding the constructed portion of 01k 08M which was released (though concealed by the petitioner) having been taken, satisfying discharging the liability to make the payment of compensation for the land acquired 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 present petition merits dismissal and hence, the instant petition is dismissed.

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

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

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