

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 22126 of 2015 (O&M)

Reserved on : 07.12.2022

Date of Decision: 20th December, 2022

Hari Kishan

.... 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. Sunil Kumar, Advocate, for the petitioner.

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

RAVI SHANKER JHA, CHIEF JUSTICE

The petitioner has prayed for the following substantive reliefs:-

“A writ of certiorari or any other appropriate writ,
order or direction for quashing the action of the respondents
intimated vide letter No. 1467 dated 18.03.2015 (Annexure
P-10) and other actions as being contrary to the provisions of
Section 24(2) of the Right to Fair Compensation and
Transparency in Land Acquisition, Rehabilitation and
Resettlement Act, 2013, enforced with effect from
01.01.2014 and to declare that the entire acquisition
proceedings qua the property of the petitioner of Khasra
No.109//18/3 min(0-14), which commenced by notification
under Section 4 dated 04.06.1986 (Annexure P-3) and Award
No. 7 dated 10.11.1987 (Annexure P-5) in respect of land of

petitioner situated within the revenue estate of Bhiwani Lohar, Tehsil and District Bhiwani.”

2. Learned counsel for the petitioner submits that the petitioner had purchased 14/82 shares equivalent to 14 marlas of land in Khasra No. 109//18/3 (4-2) vide registered sale deed dated 30.01.1986 in the revenue estate of Village Bhiwani Lohar, Tehsil & District Bhiwani. The said land was acquired by the State of Haryana vide notifications dated 04.06.1986 and 15.04.1987 issued under Sections 4 and 6 of the Land Acquisition Act, 1894, followed by award dated 10.11.1987 for the public purpose, namely, the development and utilization of land as Residential and Commercial area under the Haryana Urban Development Authority Act, 1977. Though the petitioner did not challenge the acquisition proceedings, however some co-sharers in the land in question had challenged the proceedings before this Court by filing a Civil Writ Petition No.3419 of 1987, wherein this Court had stayed the dispossession of the petitioners therein on 25.01.1988. The said petition was disposed of vide order dated 11.03.2011. It is urged that the petitioner is still in actual and physical possession of the land in question. He had constructed a room and four walls where the petitioner used to reside and tether his cattle. Further, despite announcement of award on 10.11.1987, no compensation has been paid to the petitioner and same is lying with the Land Acquisition Collector. Therefore, the acquisition proceedings qua the land in question stands lapsed in view of Section 24(2) of Act of 2013.

3. Per contra, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, appearing for the respondent-State of Haryana submits that the contention of the petitioner of being in possession of the land in question is devoid of merits as the possession of the land was taken by

handed over to the beneficiary department. He submits that the factum of the stay of dispossession from the land in favour of the co-sharers would not imply that such stay was in operation in favour of the petitioner as well. Since the possession of the land stands taken, same stands vested in the State free from all encumbrances.

4. Further, he contends that the compensation for the land in question was duly tendered i.e., was made available to the petitioner, however he has chosen not to receive the same. In order to substantiate the same, a reliance has been placed on the fact that majority of compensation has already been disbursed to the landowners as out of the total compensation for the entire awarded land i.e. Rs. 2,33,59,886/-, an amount of Rs. 2,21,91,872/- i.e. 95% of the total compensation amount stands disbursed to the landowners. He submits that the amount was tendered to the petitioner as well, however, he has himself chosen not to receive the compensation which is still available for disbursement. Therefore, it is submitted that since none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled as possession of the land stands duly taken and the obligation of the State to pay the compensation stands discharged with the tender/payment of compensation; the present petition merits dismissal.

5. We have heard learned counsel for the parties and perused the records.

6. Apparently, the matter in issue revolves around the applicability 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'). It is not in dispute either that the controversy as regards the construction, interpretation and applicability of the Act of 2013 has since been settled by the Hon'ble Supreme Court in *Indore Development*

Authority vs. Manohar Lal and others AIR 2020 SC 1496. And the principles as to under what circumstances the acquisition proceedings would be deemed to have lapsed under Section 24(2) of the Act of 2013 have been spelt out. Albeit, the Apex Court has discussed in detail all the necessary aspects that are relevant for interpreting Section 24(2) of Act of 2013, however, for the purpose of deciding the matter at hand, the reference to the concluding paragraphs of the judgment would suffice:-

‘....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.”

7. However, the exposition of law made in the aforesaid judgment can be further summarized for the sake of clarity on the principles laid down by the Constitution Bench:-

- (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 lapse. *(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 Hon'ble Supreme Court of India 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** mean that the amount is made available to the landowner which would be a discharge of the obligation to make the payment and in that event such a person cannot be penalized for the default in making the payment. While referring to Sections 31(1), 31(2), 34 of the Act of 1894 and comparing them with the para materia provisions i.e. Sections 71 and 80 of the Act of 2013, the Hon'ble 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 Hon'ble Supreme Court has further clarified that once the payment of compensation has been offered/tendered under Section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to the landowner's refusal to accept. To clarify it further, the Apex Court has observed that if a landowner has filed a reference for higher compensation, he cannot claim that he was not paid the amount.

- (d) While reading the proviso to Section 24(2) of the Act of 2013, the Hon'ble 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 of the land, the Apex 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 it 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 invoke as it does not revive stale and time barred claims.
- (h) In para 337, the Hon'ble Supreme 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 so recorded 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.

8. Thus, having perused the pleadings of both the parties and having examined their contentions, we have no hesitation to conclude that the matter at hand is squarely covered by the principles laid down by the Hon'ble Supreme Court in **Indore Development Authority (supra)** and therefore, the petition claiming lapse of acquisition proceedings, deserves dismissal for the

following reasons:-

- a) Though the petitioner has contended that he is 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 Hon'ble 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, that is when the State Government acquires the land and draws memorandum of taking possession which in the present case is by recording Rapat Roznamcha No. 121 dated 10.11.1987. Since, the panchnama was drawn prior to the order of dispossession passed by this Court, therefore, physical possession of the land stands taken 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 for the benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha No. 121 dated 10.11.1987, the plea of the petitioner that he is in physical possession of the land is thus, hereby rejected. If at all possession has been retained by him, it is only as a trespasser and not as an owner. As a consequence thereof, one of the essentials for claiming lapse of acquisition proceedings goes.
- b) As far as aspect of compensation is concerned, it is specific stand of the respondents that the compensation amount was duly tendered and was made available to the landowners including

the petitioner. In order to substantiate the same, a reference has been made to the fact that out of total compensation amount of Rs. 2,33,59,886/-, an amount of Rs. 2,21,91,872/- i.e. majority of the compensation has been disbursed. This fact is sufficient to show that the compensation was duly tendered, and the petitioner has himself chosen not to receive the same, which he is at liberty to receive. Once it is so, the second contingency prescribed in Section 24(2) of Act of 2013 also goes and thus, as none of the contingencies prescribed in Section 24(2) of Act of 2013 is fulfilled, the deemed fiction of lapsing provided under Section 24(2) of the Act of 2013 cannot be invoked. Since none of the contingencies mentioned in Section 24(2) of the Act of 2013 is fulfilled as possession of the land stands taken and the compensation stands duly tendered, therefore, no declaration as regards lapse of acquisition proceedings can be made in the case at hand.

9. Further, Mr. Ankur Mittal, in reference to the facts pleaded in the written statement has vehemently contended that the State acquired the land for the public purpose i.e. for utilization of land for Residential and Commercial Sector 13, Bhiwani. The land in question is very much essential to achieve the public purpose and it affects the planning as per the layout plan. We have considered this part of argument raised 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.

10. 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 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 Act and it being so, the present petition merits dismissal. The petition is accordingly dismissed.

11. For the writ petition has been dismissed, all pending applications, would accordingly stand disposed of. Interim orders, if any, also stand vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

20th December, 2022
ravinder

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