

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23085 of 2019
Date of decision : 03.02.2022

Krishan Gopal Bharadwaj

....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.3 – 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. The controversy involved in the matter at hand 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') onto the facts of the case wherein the Award under Section 11 of the Land Acquisition Act, 1894 was announced on 29.12.2005, i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014, and as contended by the petitioner neither the possession of the land in question was taken by the State nor the compensation was paid to the petitioner in lieu of acquired land.

2. The much cropped controversy around interpretation of Section 24 (2) of the Act of 2013 was put at 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 deemed to have been 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, however for the purposes of deciding the matter at hand, the reference to the concluding paragraph of the judgment would be suffice and same 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 aforesaid judgment is summarized herein below for more 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 lapsing. 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 penalized 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. Sections 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 penalized for non-payment as the amount has remained 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 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 vest 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, if the pre-requisite gap period of 5 years is not there, the provision 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.

4. As per the case put forth by the petitioner, he is a Dholdhar on half share of the land bearing Khasra No. 1//25/2 (6-12) situated in Village Badshahpur, Tehsil and District Gurugram. The said land was acquired by the State of Haryana vide notifications dated 03.03.2003 and 02.03.2004 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, followed by Award dated 29.12.2005 for the public purpose namely, development and utilization of land for Residential and Commercial Sector 49-50 Gurugram. Despite having acquired the land in question, the State failed to take possession of the land and till date the land is being used for Nursery by the petitioner and he is in actual possession of the land in question. It is further contended that neither the State has paid the compensation to the petitioner nor it has been deposited in the Reference Court by the State. In view thereof, it is submitted that both the contingencies prescribed in Section 24 (2) of the Act of 2013 are fulfilled and as such the acquisition proceedings stand lapsed.

5. Per contra, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, appearing for the State of Haryana, submits that at the outset present petition deserves to be dismissed being not maintainable at the instance of the petitioner as he is not the owner of the land in question as admittedly his father is recorded as a dholdhar in the revenue record. He further submits that the contention of the petitioner of him being in possession of the land in question is fallacious as the possession of the land was taken away back in the year 2005 by recording Rapat Roznamcha No. 558 dated 29.12.2005 and same was handed over to the beneficiary department i.e. HSVP. Further, he contends that even the contention of the petitioner that no compensation has been paid to him nor

has been deposited in the Reference Court has no legs to stand in view of the categorical interpretation of the word 'paid' made by the Constitution Bench in ***Indore Development Authority*** (supra) to mean that the 'word' paid has to be understood as tender of compensation i.e. the compensation was made available to the petitioner and the actual payment of compensation or deposit of the same in the Reference Court is not required. He submits that in the case at hand as well the compensation amount was made available to the land owners at the time of announcement of Award which is evident from the fact that out of Rs. 4,77,27,830/- for the entire acquired land, amount of Rs. 58,98,772/- has been disbursed to the land owners and the rest of the amount is available for disbursement. In view of the aforesaid factual position, none of the contingencies mentioned in Section 24 (2) of the Act of 2013 is fulfilled as possession of the land stands duly taken and the obligation of the State to pay the compensation stands discharged, hence, the present petition merits dismissal.

6. After having perused the pleadings of both the contesting parties and recording their contentions, we have no hesitation to conclude that the matter at hand is squarely covered by the principles laid down by the Supreme Court in the case of ***Indore Development Authority*** (supra) for the following reasons:-

- a) Though the petitioner has contended that actual physical possession of the land in question remains with him, however, the said averment does not find substance 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 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 recording of Rapat Roznamcha No. 558 dated 29.12.2005, that amounts to taking the physical possession of the land and once the possession is taken, there is absolute vesting of the land in the State even if the land owner retains the possession of the land, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner i.e. State. Therefore, as observed above the, possession of the land in question was taken by recording Rapat Roznamcha No. 558 dated 29.12.2005, therefore, the possession of the land stands duly taken and same vests in the State free from all encumbrances.

- b) As far as the aspect of compensation is concerned, it is the specific stand of the State that the compensation amount was tendered and was made available to the land owners including the petitioner at the time of announcement of Award. 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. In view thereof, the averment of the petitioner with respect to non-payment of compensation is meritless and thus, even the second contingency mentioned in Section 24 (2) of the Act of 2013 is not fulfilled.

- c) In order to declare the acquisition proceedings to have been lapsed under Section 24 (2) of the Act of 2013, both the two negative conditions prescribed therein must be fulfilled simultaneously i.e. even if one of the conditions is unfulfilled, the acquisition proceedings will not lapse. As far as case in hand is concerned, the possession of the land stands taken and the compensation stands paid, therefore, none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled, thus the acquisition proceedings qua the land in question cannot be said to have been lapsed.
- d) Further, it is pertinent to mention that the acquisition proceedings stood concluded way back in the year 2005 and as pointed out by learned counsel appearing for the State of Haryana, the land in question has been planned and it affects the site of convenience shopping centre as per the approved development plan, therefore, it is essential for achieving the public purpose for which the land was acquired and cannot be released from the acquisition, more so when the possession of the land stands already taken.

7. 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 stands taken, the liability to make the payment of compensation for the land acquired 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 2013 Act and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.
8. Having dismissed the main writ petition, all pending applications, if any also meet the same fate. The writ petition is dismissed. Status quo if any stands vacated.
9. Dismissed accordingly.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

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