

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-22966-2016

Date of decision : 03.02.2022

Naresh Kumar

....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. Rakesh Kumar Sharma, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Asst. Advocate General Haryana, and
Ms. Kushaldeep Kaur Manchanda, Advocate.

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, C.J. (ORAL)

1. The controversy involved in the matter at hand revolves around the applicability of Section 24 (2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') onto the facts of the case wherein the award under Section 11 of the Land Acquisition Act, 1894 was announced on 16.07.2007, 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 has been taken by the State nor compensation has been paid/deposited till date. In view of said facts, prayer has been made to declare the acquisition proceedings to have lapsed under Section 24 (2) of the Act of 2013.

2. The interpretation of Section 24 (2) of the Act of 2013 had remained under cloud for long until it finally came to be decided by the Constitution Bench of the Supreme Court in the case of ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496***, whereby the Apex Court has laid down the guiding principles in order to decide whether in given facts and circumstances, the acquisition proceedings can be declared to have been lapsed in view of deeming fiction provided under Section 24 (2) of the Act of 2013. The concluding paragraph 363 of the judgment 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 exposition of the law made by the Apex Court can be summarized in the following manner 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 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.

4. As per the case put forth by the petitioner, he is owner in possession of the plot measuring 150 sq. yds i.e. 5 Marlas comprised in Khasra No. 9//6/2/2, 7/2/2 situated at Mauza Gulabnagar, Tehsil Jagadhari and District Yamuna Nagar. The said land was acquired by the State of Haryana through Urban Estate Department by issuing notifications dated 30.05.2005 and 22.05.2006 under Section 4 and Section 6 of the Land Acquisition Act, 1894 followed by Award dated 16.07.2007 for the public purpose namely, Development and Utilization of land as Residential, Commercial area for Sector 22-23 and 24 Jagadhari. As per the petitioner, the entire land of the petitioner is surrounded by many residential buildings, commercial establishments like showrooms etc. and the land was fully developed as residential area at the time of issuance of notification under Section 4 of the Act of 1894 and yet the State proceeded to acquire the land of the petitioner along with other land owners in collusion with the certain private colonizers. The petitioner has maintained the stand that he is in possession of the plot in question till date and has not received any compensation in lieu of the

acquired land from the Land Acquisition Department, Haryana. In view of the said facts he has claimed that the acquisition proceedings qua his land shall be declared as lapsed under Section 24 (2) of the Act of 2013.

5. In response to the submissions made by the petitioner, Mr. Ankur Mittal, learned Additional Advocate General, appearing for State of Haryana, has contended that the present petition is squarely covered by the principles laid down in *Indore Development Authority (supra)* and thus, has prayed for its dismissal. He has submitted that the contention of the petitioner being in physical possession of the land is merit less as the possession of the land was taken vide rapat Roznamcha No. 1995 dated 16.07.2007. Also, as regards the compensation it is his contention that the amount of compensation was duly tendered to the petitioner along with the other landowners which fact stands substantiated as the petitioner has received the part compensation and had filed reference under Section 18 of the Act of 1894, thereby seeking enhancement in compensation and has received the amount of enhanced compensation with respect to khasra no. 70//10/1 (5-7), 20 (8-0), 21 (8-0), 22min (5-0), 87//1 (7-9), 2/1 (5-4) and 70//1 (7-9). This implies that the petitioner has chosen not to receive the compensation intentionally. In totality of the aforesaid submissions, Mr. Mittal has vehemently contended to dismiss the present writ petition as none of the essential requirements for even invoking Section 24 (2) of the Act of 2013 has been fulfilled. Further, he has supported the order dated 30.11.2017 passed by the respondents as having been and mutation no. 2544 dated 24.07.2014 was entered in favour of beneficiary Department i.e. Haryana Urban Development Authority and accordingly land in question stands vested in the State free from all encumbrances. Also, as regards the compensation it is his

contention that the amount of compensation was duly tendered to the petitioner along with the other landowners which fact stands substantiated from the fact that out of total award amount of entire acquired land i.e. Rs. 20,87,22,222/-, amount of Rs. 17,85,89,081/- stands disbursed to the land owners and further, the petitioner has filed reference under Section 18 of the Act of 1894 seeking enhancement in the compensation. This clearly implies that the amount of compensation was duly tendered to the petitioner, he had chosen not to accept the amount and now he cannot claim that no compensation was paid to him. In totality of the aforesaid submissions, Mr. Mittal has vehemently contended to dismiss the present writ petition as none of the essential requirements for even invoking Section 24 (2) of the Act of 2013 has been fulfilled.

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)*** and the prayer of the petitioner claiming lapsing of acquisition proceedings deserves rejection in view of 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 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 by recording Rapat Roznamcha No. 1995 dated 16.07.2007 pursuant to which Mutation No. 2544 dated 24.07.2014 was sanctioned in favour of the beneficiary department. Thereafter even if the landowner 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. Since possession has been taken by recording Rapat Roznamcha No. 1995 dated 16.07.2007, 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 trespasser and not as owner. As a consequence thereof one of the essentials for claiming lapsing 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 same reference has been made to the fact that majority amount out of the total compensation amount was disbursed to the land owners coupled with the fact that the petitioner had filed reference under Section 18 of the Act of 1894 seeking enhancement in the amount of compensation. 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 the Act of 2013 also goes and thus, as none of the contingencies prescribed in Section 24 (2) of the Act of 2013 is fulfilled, the deeming 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 lapsing of acquisition proceedings can be made in the case at hand.

7. Before parting we feel it appropriate to refer to the contention of Mr. Mittal that the State acquired the land for the public namely for development and utilization of land as Residential and Commercial Sector 22-23 and 24 Jagadhari. 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 housing board 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.

8. 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, requisite period of five years is not completed, acquisition proceedings stand upheld, possession stands 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 present petition merits dismissal and hence, the instant petition is dismissed.

9. 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