

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 20704 of 2017
Date of decision : 08.09.2022

Krishan Singh

.... Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Mani Ram Verma, Advocate, and
Mr. Hoshiar Singh, 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.

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RAVI SHANKER JHA, C.J.

1. The petitioner has approached this Court through this petition praying for quashing the notifications dated 04.06.1986 and 15.04.1987 qua the land falling under Killa No. 83//16 (8-0), 17/1 (7-6), 22 (7-11), 25 (7-11) situated within the revenue estate of Village Bhiwani Lohar, on the ground that acquisition proceedings have lapsed under 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. In order to adjudicate upon the case at hand, it is necessary to notice certain elemental facts as pointed out by Mr. Ankur Mittal, learned Additional Advocate General, Haryana, related to the acquisition proceedings vide which the land of the petitioner was acquired. The State of Haryana issued notification under Section 4 of the Act of 1894 on

04.06.1986 thereby, declaring its intention to acquire 364.39 acres of land situated in Village Bhiwani Lohar and Palwas for the public purpose, namely, Development of Residential and Commercial Sector in Bhiwani. As prescribed in the Act, the land owners and other interested persons filed objections under Section 5A of the Act of 1894, which were duly heard and the Land Acquisition Collector prepared a report on individual objections, which was sent to the Government for the final decision.

3. As per the order of the Government, 3.17 acres land was left out from acquisition comprised in Khasra No. 82//16, 25, 109//5, 7, 9, 14, 15, 18/3, 23/1 of Village Bhiwani Lohar. Accordingly, the Government issued declaration under Section 6 of the Act of 1894 on 15.04.1987 for acquiring land measuring 361.22 acres of Village Bhiwani Lohar and Palwas. Ultimately, award No. 7 was announced on 10.11.1987 for acquiring land measuring 277.13 acres for development of Sector 13, Bhiwani and award No. 17 dated 31.03.1988 was announced for acquiring land measuring 84.23 acres for development of Sector 23, Bhiwani.

4. As per the case put forth by the petitioner, his father along with Rajender Singh and Sushil Kumar were owners in possession of the land measuring 10 Kanal 8 marla in Khasra No. 83//16 (8-0), 17/1 (7-6), 22 (7-11), 25 (7-11) situated within the revenue estate of village Bhiwani Lohar. The petitioner has become owner of the land by way of inheritance. The land in question along with other land was acquired by the State of Haryana vide aforesaid notifications. The acquisition proceedings were challenged by the predecessor-in-interest of the petitioner along with other owners by filing CWP No. 3418 of 1987 titled

as Capt Bhanwar Singh and other v. State of Haryana and others. The dispossession was stayed vide order dated 05.08.1987 i.e. before announcement of the award. The said petition was dismissed by the Court vide order dated 08.04.2011 qua the predecessor of the petitioner as the land in question affected the alignment of road. The said order was challenged before the Supreme Court by filing SLP which was dismissed as withdrawn vide order dated 19.08.2011 with liberty to approach the Government for deciding the representation, in terms of the liberty granted by this Court vide order dated 11.03.2011 to the petitioners in another writ petition arising out of same acquisition proceedings. Thereafter, representation was filed by the petitioner, which is yet not decided. Now the petitioner has approached this Court seeking declaration to the effect that the acquisition proceedings have lapsed under Section 24 (2) of the Act of 2013 as neither the possession of the land has been taken nor the compensation has been paid.

5. Mr. Ankur Mittal, learned Additional Advocate General, appearing for State of Haryana, refuted the contentions being raised by the petitioner and submitted that the instant petition is not maintainable at the instance of the petitioner because the petitioner has already lost in earlier round of litigation wherein the acquisition proceedings were upheld by specifically observing that the land in question affects the alignment of road. Thus, the claim of the petitioner is stale and cannot be revived under the guise of Section 24 (2) of the Act of 2013. He further submits that the interim order was in operation from 05.08.1987 till 08.04.2011. After excluding such period, the requisite period of 5 years as required

under Section 24 (2) of the Act of 2013 is not fulfilled, thus, Section 24 (2) of the Act of 2013 cannot be invoked.

6. He submits that Section 4 notification dated 04.06.1986 was issued for acquiring the land measuring 364.39 acres of Village Bhiwani Lohar and Palwas. After hearing objections under Section 5A of the Act of 1894, an area measuring 3.17 acres was left from acquisition comprised in Khasra No. 82//16, 25, 109//5, 7, 9, 14, 15, 18/3, 23/1 of Village Bhiwani Lohar and ultimately, notification under Section 6 dated 15.04.1987 was issued for acquiring 361.22 acres of land situated in village Bhiwani Lohar and Palwas. Pursuant thereto, an award was announced under Section 11 of the Act of 1894 on 10.11.1987 for the land measuring 277.13 acre for development of Sector 13 Bhiwani and award dated 31.03.1988 was announced for land measuring 84.23 acres for development of Sector 23 Bhiwani. The land in question was forming part of the award announced on 10.11.1987 and the possession of the land in question was taken after the order of stay was vacated by recording rapat No. 141 dated 04.01.2013. Thereafter, mutation has also been sanctioned in favour of HSVP vide mutation No. 30667 dated 31.07.2014.

7. The entire compensation amount for the awarded land (award dated 10.11.1987) i.e. Rs. 2,33,59,886/- was tendered and was made available to the landowners, out of which an amount of Rs. 2,21,91,872/- i.e. 95% has already been disbursed to the landowners and balance amount is still available for disbursement. Therefore, in view of the aforesaid, none of the contingencies prescribed under Section 24 (2) of the Act of 2013 are fulfilled as requisite period of 5 years is not

completed, possession of land stands taken by recording rapat roznmacha, which has been held as a valid mode of taking possession of the land and further the amount of compensation was duly tendered; thus, no declaration as regards the lapsing of acquisition proceedings can be made. He further submits that the land in question is necessary for development purposes as it affects the alignment of road which was specifically taken note of by this Court while dismissing earlier writ petition.

8. Before proceeding ahead, it is imperative to ponder upon the existing legal position. The controversy cropped up 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 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’.

9. The sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court is that to seek lapsing 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 condition 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, the 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.

10. Having heard the respective arguments, going 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.

11. The Supreme Court in **Indore Development Authority (supra)** has categorically held that the plea of Section 24 (2) of the Act of 2013 is available to only those land owners, in respect of whom the acquisition proceedings were pending on the date of coming into effect the Act of 2013 w.e.f. 01.01.2014. It has been clarified that Section 24 of the Act of 2013 contemplates pending proceedings and not the concluded one. After making the detailed discussions and placing reliance on the previous judicial pronouncements, the Supreme Court in Para No. 359 has made it clear that Section 24 (2) cannot be used to revive dead and stale claims and concluded cases as the same cannot be permitted to be canvassed on the pretext of enactment of Section 24. Para 359 is extracted herein below:-

‘...359. We are of the considered opinion that Section 24 cannot be used to revive dead and stale claims and concluded cases. They cannot be inquired into within the purview of Section 24 of the Act of 2013. The provisions of Section 24 do not invalidate the judgments and orders of the

Court, where rights and claims have been lost and negated. There is no revival of the barred claims by operation of law. Thus, stale and dead claims cannot be permitted to be canvassed on the pretext of enactment of Section 24. In exceptional cases, when in fact, the payment has not been made, but possession has been taken, the remedy lies elsewhere if the case is not covered by the proviso. It is the Court to consider it independently not under section 24(2) of the Act of 2013...'

12. It is admitted that the predecessor-in-interest of the petitioner had challenged the acquisition proceedings by filing CWP No. 3418 of 1987. The said writ petition was dismissed qua the predecessor-in-interest of the petitioner vide order dated 08.04.2011 by specifically observing that the land in question is affecting the alignment of road. Thereafter, SLP filed against said order was withdrawn to file representation which implies that the acquisition proceedings had attained finality as a result of which the claim of petitioner is a dead claim and cannot be revived under the guise of Section 24 (2) of the Act of 2013 in terms of the aforesaid proposition of law.

13. The petitioner cannot seek any relief in terms of the provision of Section 24 (2) of the Act of 2013 as requisite period of five years is not completed as the dispossession of the petitioner from the land in question was stayed on 22.04.2003 i.e., prior to announcement of award which order continued till 29.10.2013. It being so, said period is required to be excluded while computing the window period of 5 years between the announcement of the award and coming into the effect of the Act of 2013

i.e. 01.01.2014 in terms of the principles laid down in **Indore Development Authority (supra)**. In this regard reference is made to para 331 of the judgment which is reproduced herein below:-

‘...331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curae neminem gravabit would result in injustice...’

14. In terms of aforesaid, we have no hesitation to hold that after excluding such period when interim order was in operation, the requisite period of 5 years is not completed and thus, Section 24 (2) of the Act of 2013 cannot be made applicable to the acquisition proceedings qua the land in question.

15. Even on aspect of contingencies provided in Section 24 (2) of the Act of 2013, we do not find any merit in the submissions made on behalf of the petitioner. The possession of the land could not have been taken due to the operation of stay order on dispossession and later on it was taken by recording rapat No. 141 dated 04.01.2013, pursuant to which even mutation has also been sanctioned. As far as compensation of

acquired land is concerned, it is categorically pleaded in the reply that the amount of compensation for the entire acquired 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....'

16. The afore-stated facts clearly reveal that the amount of compensation was duly tendered so much so that 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 petitioner that he has not been paid the compensation amount is rejected.

17. In view of law laid down by the Hon'ble Court, in order to claim lapsing of acquisition proceedings, both the contingencies must be fulfilled. Section 24 (2) of the Act of 2013 prescribed two contingencies i.e. non-taking of possession and non-payment of compensation; if possession is taken but compensation is not paid or if possession is not taken but compensation is paid, there can be no lapsing of acquisition. Since none of the contingencies provided in Section 24 (2) of the Act of 2013 are fulfilled, no declaration can be made that acquisition proceedings have lapsed under Section 24 (2) of the Act of 2013.

18. 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 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 present petition is dismissed.

19. 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

September 08, 2022
ndj

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