IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 25439 of 2016 (O&M)

Reserved on : 29.03.2022

Date of Decision: 31st August, 2022.

Ashish Kishor and others …. Petitioners

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

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RAVI SHANKER JHA, CHIEF JUSTICE

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 onto the facts of the case wherein the award under Section 11 of The Land Acquisition Act, 1894 was announced on 02.03.2006 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioners, neither the possession of the land has been taken by the State nor compensation has been paid/ deposited till date. In view of the said facts, prayer has been made to declare the acquisition proceedings have lapsed under Section 24(2) of Act of 2013.

2. The interpretation of Section 24(2) of Act of 2013 had remained under cloud for long until it finally came to be decided by a Constitution Bench of the Supreme Court of India in case ***Indore Development Authority***

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v. Manoharlal and others AIR 2020 SC 1496, whereby the Apex Court has laid down the guiding principles in order to decide whether in the 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 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.***
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> ***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.***
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> ***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.***
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> ***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.***
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> ***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***

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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 Act

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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 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*** 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.

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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 penalized 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 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.

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(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 be 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, 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 Supreme Court 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 petitioners, they are owners in possession of the land comprised in Khasra No. 13//15/1 (7-8), 14/2(7-0), 16/1 (1-9), 17/1 (1-9), 14//11/2 (0-15), 14//20/2 /(5-10), 13//16/2 (6-11),

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13//17/2 (5-11), 13//3/2 (4-0), 8/1 (4-0), 13/2 (4-0), 17/3 (1-0), 18/1 (5-0), 18//12/2 (3-4), 13 (8-0), 18(8-0), 19(8-0), 20(8-0), 21(8-0), 22(8-0), 23(8-0), 28 (8-0) in the revenue Estate of Village Badhkhalsa Tehsil Rai, District Sonipat. The land of the petitioners along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 17.11.2005 and 07.02.2006 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, followed by award dated 02.03.2006 for the public purpose namely, Development and Utilization of land for Residential, Commercial and Institutional Sector 65, 66, 67 and 68 Sonepat. It is case of the petitioners that they are in actual physical possession of the land in question and have not received the compensation amount till date, therefore, the acquisition proceedings qua the land in question has lapsed in terms of Section 24(2) of the Act of 2013. The petitioners filed Civil Writ Petition No. 10299 of 2014 thereby seeking lapsing of acquisition proceeding under Section 24(2) of the Act of 2013 which was disposed of vide order dated 21.04.2015 with directions to the respondent authority to decide the representation of the petitioners by passing an appropriate speaking order considering the applicability of Section 24(2) of the Act of 2013. In compliance of the same, the speaking order dated 02.03.2016 came to be passed thereby rejecting the representation of the petitioners on the ground that the possession of the land was taken and the amount of the compensation was duly tendered as 80% of the total amount of compensation stands paid to the land owners. As far as the land in question is concerned, it has been recorded therein the petitioners have not taken the amount of compensation. It was further considered that the land in question affects area of plot no. 40 part, 24 mtr. service road, 100mtr. green belt, orbital corridor and the development work in the adjoining area is complete,

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therefore no case is made out under Section 24(2) of Act of 2013. The petitioners have challenged the aforesaid order on the ground that while rejecting the claim, the respondent authorities have failed to consider that they are in physical possession of the land in question and have not taken any compensation for the acquired land till date. Therefore, the order is liable to be set aside and the acquisition proceedings shall be declared to have been lapsed.

5. In response to the submissions made by the petitioners, Mr. Ankur Mittal, learned Additional Advocate General appearing for the respondent-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. It is his contention that in the case at hand, both the contingencies under Section 24(2) of Act of 2013 remain unfulfilled as the possession of the land was taken at the time of announcement of award itself by recording Rapat Roznamcha no. 566 dated 02.03.2006 and same has been handed over to the beneficiary department i.e. HSVP. He submits that the drawing of Panchnama, which in the present case is recording of Rapat Roznamcha, is valid mode of taking possession of the land and once it is taken, the land vests in the State free from all encumbrances. Further he submits that the compensation for land in question was duly tendered i.e., was made available to the petitioner and other land owners which is evident from the fact that out of total award amount i.e. Rs. 3,34,90,10,360/-, an amount of Rs. 2,60,58,18,572/- has been disbursed and remaining amount is available for disbursement. As regards the land in question, compensation amount is available and the petitioners are at liberty to receive the same. He has also pointed out that the petitioners had filed reference under Section 18 of the Act of 1894 which further shows

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that the amount of compensation was duly tendered. Therefore, none of the contingencies of Section 24(2) of Act of 2013 have been fulfilled and thus, 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 of India in case Indore Development Authority (supra) and the prayer of the petitioners claiming lapsing of acquisition proceedings deserves dismissal in view of the following reasons:-

a) Though the petitioners have contended that actual physical possession of the land in question remains with them, however, the said averment does not find substance firstly, 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 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. 566 dated 02.03.2006, which amounts to taking of the physical possession of the land 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 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. 566

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dated 02.02.2006 which implies that the possession of the land stands duly taken and same vests in the State free from all encumbrances. 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 contingencies occurring in Section 24(2) of 2013 Act goes.

b) As far as the aspect of compensation is concerned, it is important to highlight here that the Apex Court while interpreting the word 'paid' occurring in Sec-24(2) and the word 'deposited' used in proviso to Sec 24 (2) of 2013 Act 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. It is the specific stand of the Respondent State that the compensation amount was duly tendered to the landowners and to substantiate the same, attention of this Court has been drawn towards the fact that out of total compensation, majority amount has already been disbursed. Once it is so, there does not remain even an iota of doubt that the compensation amount was duly tendered to the petitioners, however they chose not to accept the same and thus, no inaction can be attributed to the State in this regard.

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c) Further it is pertinent to mention that the acquisition proceedings stood concluded way back in the year 2006 and as pointed out by the learned Counsel appearing for the State of Haryana, the land in question has been planned and it affects the planning of planning of plot no. 40, 24 mtr. service road, 100mtr. green belt and orbital corridor 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 sands 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 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 2013 Act and it being so, 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.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31st August, 2022
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Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√

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