

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No. 2069 of 2018 (O&M)

Reserved on : 29.03.2022

Date of Decision: 31.08.2022

Mahipal and another

...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. Sandeep Sharma, 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.

RAVI SHANKER JHA, CHIEF JUSTICE

The instant petition has been filed by claiming that the acquisition proceedings carried out vide the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 dated 02.08.1989 and 01.08.1990 respectively; followed by the award dated 07.10.1991, thereby acquiring the land for a public purpose, namely, for the development and utilization of land as Residential and Commercial Sector 45, Faridabad; qua the land of the petitioners comprised in Khasra No. 49//14/2/2 (1-13) at Village Mewala, Maharajpur, Tehsil & District Faridabad, has lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

2. Owing to the controversy erupted as regards the interpretation of the provision of Section 24 (2) of the Act of 2013, like many other writ

petitions, the proceedings in the instant petition were kept in abeyance awaiting the decision of Hon'ble Supreme Court of India. The controversy was finally put at rest by a Constitution Bench of the Supreme Court of India in *Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*, the penultimate paragraphs of the same are reproduced here in 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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. That the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court of India 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 conditions is not satisfied, there would 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, 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 of India 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 new cause of action to question 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 Act of 2013.

4. As per the case put forth by the petitioners, they are owners of Khasra No. 49//14/2/2 (1-13) situated in Village Mewala, Maharajpur, Tehsil and District Faridabad, whereupon they have constructed rooms and are in physical possession of the of the land in question. The said land was acquired by the Government of Haryana by issuing notifications dated 02.08.1989 and 01.08.1990 under Section 4 & 6 of the Acquisition Act, 1894, followed by award dated 07.10.1991 for the public purpose namely, for development and utilization of land for residential and commercial Sector 45, Faridabad. It is the case of the petitioners that despite having announced the award on 07.10.1991, the respondents have failed to take the possession of the land in question. Further, they have contended that till date neither the compensation of the acquired land was paid to the petitioners nor was deposited with the Reference Court in accordance with law. Therefore, the acquisition proceedings qua the land in question stand lapsed in view of

Section 24(2) of the Act of 2013. In addition to the aforesaid, the petitioners have contended that the land adjacent to the petitioners that has already been released from the acquisition proceedings. Taking all the pleas, petitioners earlier approached this Court by filing Civil Writ Petition No. 23025 of 2014, which was disposed of vide order dated 23.04.2015 thereby directing the respondent authorities to decide the representations moved by the petitioners, considering all the grounds as raised in the petition. The representation moved by the petitioners was decided and their claim was rejected by passing a speaking order dated 11.01.2018. While rejecting the claim of the petitioners, it was noticed that possession of the acquired land was taken and handed to beneficiary department vide Rapat No. 66 dated 07.10.1991. As regards the status of compensation, it was noticed that the compensation as regards the land in question was sent to the Court of Additional District Judge on 22.05.1992 under Section 30 of the Land Acquisition Act, 1894. The petitioners in the instant petition have challenged both the acquisition proceedings as well as the speaking order and have thus, sought lapsing of the acquisition proceedings on the ground that neither the possession of the land has been taken nor the compensation has been paid to the petitioners.

5. Though in the pleadings, the petitioners have raised the plea of discrimination by contending that all the adjacent land of the petitioners has been released in favour of the influential persons, however, at the time of the issuance of notice of motion the only contention raised by the petitioners was on the premise of Section 24(2) of the Act of 2013 alone and thus, the claim as regards the discrimination stands virtually given up and even otherwise had no merits as the plea being raised is highly vague and is in fact hit by delay and laches, since the acquisition proceedings stood

concluded way back in the year 1991 and as transpires from the pleadings itself, at no point of time the petitioners had challenged the acquisition proceedings, therefore, considering the scope of the instant writ petition, we would be considering only the plea of applicability of Section 24(2) of the Act of 2013 on the acquisition proceedings for the land in question.

6. Per contra, Mr. Ankur Mittal, learned Additional Advocate General appearing for the respondent-State submitted that the instant petition deserves to be dismissed in view of the law laid down by the Supreme Court of India in the case of *Indore Development Authority (supra)* as none of the contingencies prescribed in Section 24(2) of the Act of 2013 are fulfilled. The first and foremost requirement to claim lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioners have failed to prove as the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 66 dated 07.10.1991, which has been held as a valid mode of taking possession. Once such possession is taken, the land vests absolutely in the State and whosoever retains or remains in the possession of the land, he is a trespasser. Further, the averment of the petitioners that they have constructed rooms on the site is false as the land in question was vacant at the time of notification under Section 4 of the Act of 1894, therefore, if any construction has been raised post the acquisition proceedings were initiated, same is illegal and unauthorized. He further submits that the obligation of the State to pay the compensation stands duly discharged as the entire compensation amount was tendered and the compensation amount due towards the land in question was sent to the Court of Additional District Judge, Faridabad on 22.05.1992 under Section 30 of the Act of 1894. Despite this fact which finds mention in the speaking order itself, the petitioners at the time of

issuance of notice of motion had wrongly stated that the compensation amount was neither paid nor deposited in the Reference Court in accordance with law, therefore, learned counsel has prayed for dismissal of the instant petition with costs. As a sequel of the aforementioned fact, a prayer has been made for dismissal of the instant petition as none of the contingencies provided in Section 24 (2) of the Act of 2013 are fulfilled, which are essential for claiming lapsing of the acquisition proceedings.

7. Having heard the respective arguments, going through the respective pleadings and above all the exposition of Indore Development Authority (supra), we are of the considered opinion that the instant petition is liable to be dismissed for more than one reason:-

I. Physical possession of the land in question stands taken

8. The petitioners in the instant petition have claimed to be in the physical possession of the land in question. Positive case set up by the petitioners is that even though the award was passed on 07.10.1991 and they did not make challenge to the acquisition proceedings yet the physical possession has not been taken from them. In this regard, the respondents have filed the written statement submitting that the possession was taken by drawing a panchnama in the form of Rapat Roznamcha No. 66 dated 07.10.1991 which has been held as a valid mode of taking possession of the land. Section 16 of the Act of 1894 provides that after taking the possession of the land, it vests in the State free from all encumbrances. Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and the land vests in the State. Thus, the plea being raised by the petitioners of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. Compensation amount for the land in question was tendered and received.

9. The respondents have categorically pleaded in the written statement that the amount of compensation for the entire acquired land was made available to all the landowners and as regards the compensation for land in question, same was deposited in the Reference Court on 22.05.1992 under Section 30 of the Act of 1894, therefore, the obligation of the State to pay the compensation amount stands duly discharged. 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 hereinbelow:-

*‘...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....'

The afore-stated facts clearly reveal that the observations made hereinabove did not leave any scope for doubt that the State has discharged its obligation towards making the compensation for the land acquired. Therefore, the contention of the petitioners that no compensation amount has been received by them is meritless and thus, is hereby rejected.

III. None of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled.

10. The Supreme Court of India in *Indore Development Authority (supra)* has clearly observed that for deemed lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, both the conditions i.e. payment of compensation and taking of possession must not be fulfilled i.e. if either of the condition is fulfilled, the lapsing cannot happen. The Apex Court has observed that the word “or” occurring in Section 24 (2) of the Act of 2013 must be read as “and/nor”. Relevant paras from the judgment are reproduced hereinbelow:-

‘...99. In this Court’s considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by “or” is used, then “or” should be read as “nor” or “and”.

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101. In M/s. Ranchhoddas Atmaram and Anr. v. The Union of India and Ors.77, a Constitution Bench of this Court observed that if there are two negative conditions, the expression “or” has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

“(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the

Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.'

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import." (emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse..."

11. In the case at hand, as reflected from the speaking order as well as reply filed, it is evident that after the award was announced on 07.10.1991, the physical possession was taken by recording Rapat Roznamcha No. 66 dated 07.10.1991 and the compensation amount was duly tendered and deposited in the Reference Court as well. Therefore, since none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled, therefore, the said provision cannot be relied upon by the petitioners to claim lapsing of the acquisition proceedings.

IV. Essentiality of the land in question

12. Mr. Ankur Mittal, on the strength of the facts pleaded in the written statement, has vehemently contended that the State acquired the land for the public purpose i.e. for development and utilization of land as Residential and Commercial Sector 45, Faridabad. The land in question is very much essential to achieve the public purpose as it affects the development of 30 mtr. wide Sector dividing road 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.

13. As a sequel of the above discussion and in view of the 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 present petition merits dismissal. The speaking order passed by the respondent authorities thereby rejecting the claim of the petitioners is accordingly, affirmed and upheld.

14. 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

31.08. 2022
ravinder

(ARUN PALLI)
JUDGE

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