

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 3671 of 2014

Date of decision 22.03.2022

The Sunnyvilla Co-op Housing Building Society Ltd. ...Petitioner

Vs.

State of Haryana and ors. ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Ms. Perna Chandna, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl.A.G, Haryana and
Mr. Saurabh Mago, AAG, Haryana.

Mr. Rajesh Lamba, Advocate
for proposed respondent Nos. 5 to 7.

Ritu Bahri, J.

Petitioner is seeking setting aside of impugned awards dated 06.09.2000 (P-10 and P-11) and 22.02.2007 (Annexures P-15 and P-16).

Petitioner is a Co-op Society duly registered and incorporated under the provisions of Haryana Cooperative Societies Act, 1984. A certificate dated 21.01.1986 was also issued to this effect by Assistant Registrar, Cooperative Societies, Gurgaon (P-1). The petitioner-Society has 428 members and is a welfare society. It intends to serve its members on cooperative basis on the principle of "No profit No loss". The petitioner-Society has framed its own By-Laws, which are duly approved by the competent authority under the law. The petitioner-society got 105 acres of land situated in the revenue estate of Village Wazirabad, District Gurgaon.

Out of the aforesaid land, the land measuring 19.2 acres were acquired by the

petitioner-society by virtue of registered sale deeds after complying with all the requisite formalities for purchase of the land with prior approval of the Registrar, Cooperative Societies, Gurgaon and mutation of the same was also got sanctioned in the name of the petitioner-society. The total land in the name of the petitioner-society has been mentioned in para No. 9 of the petition.

For the development of the land into residential colony, a license is required to be obtained from respondent No. 3 under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975. The petitioner-society submitted an application dated 17.06.1990 on requisite proforma, as required under Section 3 of the Act, 1975 read with Rule 3 of the Rules through its then President for issuance of license. However, respondent No. 3 informed the petitioner-society vide letter dated 21.12.1990 (P-4) that its application for grant of license is incomplete and the society has no ownership rights over the land and returned the application. In pursuance to the said letter, the District Town and Planner, Gurgaon informed the petitioner-society, vide letter dated 06.03.1991 that in the light of the order passed by respondent No. 3, the application of the petitioner-society was being sent back. The petitioner-society after complying with the formalities, re-submitted its application along with requisite documents and requisite fee of Rs.10,000/-, for grant of license, vide letter dated 14.03.1991 (P-5). However, on 08.09.1997 (P-6) respondent No. 1 issued notification under Section 4 of the Land Acquisition Act, 1894 wherein it was proposed to acquire 313.36 acres of land of village Wazirabad for residential, commercial, institutional and open space area under the HUDA Act, 1997. The petitioner-society filed objections dated 24.09.1997 (P-7) under Section 5-A of the Act and requested

petitioner-society. However, without giving any opportunity of hearing, respondent No. 1 issued notification dated 07.09.1998 under Section 6 of the Act whereby against an area of 313.36 acres proposed to be acquired vide notification under Section 4 of the Act, the total area of 267.11 acres was declared to be acquired after hearing the objections filed under Section 5-A of the Act. Thus, the area of 46.0 acres has been exempted from the acquisition proceedings.

Feeling aggrieved against the notification under Section 4 and 6 of the Act, the petitioner-society filed CWP No. 11332-2000. However, on 20.06.2005, respondent No. 1 issued another notification under Section 4 of the Act proposing to acquire the land for public purpose namely for the development and utilization of the land for residential, commercial, institutional and open space for Sectors 52-A, 53 and 54 at Gurgaon under the Haryana Urban Development Authority, 1977 by the HUDA in the area of village Wazirabad, H.B. No. 75, Haiderpur Viran, H.B. No. 76, Tehsil and District Gurgaon. Thereafter, respondent issued another notification on 19.06.2006 under Section 6 of the 1894 Act whereby respondent No. 1 released 57.63 acres of land which was initially included in the notification issued under Section 4 of the Act.

The petitioner-society then filed another CWP No. 18805-2006 challenging the above notifications. In the meantime, the awards No. 45 and 46 dated 22.02.2007 (Annexures P-15 and P-16 respectively) were passed whereby the land of the petitioner was sought to be acquired. Then the petitioner filed representation dated 06.08.2007 (P-17) before respondent No. 3 for grant of license for setting up a group housing scheme but the said respondent vide letter dated 17.10.2007 raised certain objections(P-18). The

petitioner was asked to appear before respondent No. 3 vide letter dated 16.11.2007 (P-19) and the petitioner duly appeared before the respondent and provided all the details and information. Thereafter, the petitioner received letter dated 10.12.2007 (P-20) whereby respondent refused to grant a license to the petitioner-society on the ground that the subject land has already been acquired by the respondents. The petitioner then filed an appeal before the Secretary, Town and Country Planning department, which was dismissed on 11.04.2012 (P-21) on the ground that the matter was subjudiced before this Court in CWP No. 11332/2000.

The petitioner-society has paid an amount of Rs.37,20,628/- towards the license fee as well as security fee to respondent No. 2.

It is not in disputed that CWP No. 11332/2000 and CWP No. 18805-2006 has been decided by this Court with bunch of petitions, vide order dated 31.10.2013 (P22 colly).

The grievance of the petitioner-society before this Court is that till date no compensation has been offered. Further w.e.f January, 2014, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. 2013 has come into force and as per Section 24 of the said Act, if in an acquisition proceedings the compensation qua the acquisition has not been paid to the beneficiary, then the said proceedings would be deemed to have lapsed.

The present case was adjourned sine die to await the decision of SLP (C) No. 10742-2008-Yogesh Neema and others vs. State of M.P and others.

On 12.03.2020, this Court passed the following order:-

“Learned State counsel submits that in view of reference

answered by the Constitution Bench, present petition is liable to be dismissed on three counts: (i) that the stay period remained operative till 31.10.2013, if the said period is excluded, five year gap between the announcement of the award and commencement of new Act could not be there; (ii) the rapat roznamcha has to be relied upon to draw conclusion that possession has been taken by the State Government; (iii) the acquisition having been upheld by the Supreme Court, the land owner would not be entitled to claim the benefit of Section 24(2) as the same would apply only in the pending cases. Petitioner, however, remains unrepresented.

To come up on 18.03.2020.

To be shown in the urgent cause list.”

Learned State counsel further submits that petitioner has already challenged the above notifications and his petitions were dismissed by this Court by passing a detailed order on 31.10.2013. This judgment has attained finality. In this judgment, it has further been mentioned that some of the similarly placed landowners challenged notifications dated 20.06.2005 and 19.06.2006 in CWP No. 2779-2007 (Om Parkash Yadav and others vs. State of Haryana and others) alleging indiscriminatory treatment, which was dismissed on 10.09.2007 and SLP (Civil) No. 21275-2007 against the above order was also dismissed on 01.10.2010 observing that since the acquired land was to be utilized for public library, no interference was called for though it was directed that the land shall be used for that very purpose only.

Heard learned counsel for the parties at length.

The writ petition is liable to be dismissed in terms of the judgment of the Hon'ble Constitution Bench in ***Indore Development Authority v. Manoharlal and others, AIR 2020 SC 1496.***

Further in the reply, it has been stated that the possession of the

land was taken vide Rapat no. 25 dated 06.09.2000. The compensation of the acquired land was not paid to the petitioner, as the petitioner did not provide their consent in writing to receive the compensation and other relevant documents to prove their ownership and undisbursed amount is lying deposited in the account of the LAC.

As regards applicability of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, the same has now been decided by the Hon'ble 5-Judge Bench of the Hon'ble Supreme Court in SLP (C) 9036-9038 of 2016 titled as ***Indore Development Authority v, Manoharlal and ors.*** The concluding paragraph of the said judgment is reproduced herein below for kind consideration:-

“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 NO 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 paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if the compensation has been paid, possession has not been taken then there is no lapse.

4. *The expression 'paid' in the main part of 24 (2) the Act 2013 does not include 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 the Act 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) Act of 2013 is 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, ie., 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'.*

In the reply, it has been stated that in view of the categorical ratio laid down by the Hon'ble Supreme Court in ***Indore Development Authority (Supra)*** in para 359 of the judgment that once the acquisition qua the land has already been upheld in the earlier round of litigation, the petitioners cannot invoke section 24(2) of the Act of 2013 claiming lapse of acquisition proceedings. The same is reproduced herein below for the kind consideration of this Hon'ble Court:

"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."

It is further submitted that in view of the judgment passed in ***Indore Development Authority (Supra)*** the period during which interim order was in operation needs to be excluded while determining the 5 year period under section 24(2) of the Act of 2013, therefore accordingly the period of five year is not completed as the stay was in operation till 31.10.2013.

Hon'ble the Supreme Court vide judgment dated 06.03.2020 passed in the SLP (C) 9036-9038 of 2016 titled as ***Indore Development Authority v, Manoharlal and ors.*** has categorically observed that the possession taken through mode of Panchnama and Rapat Roznamcha is a valid possession and once the possession is taken, the land vests absolutely with the State and cannot be given back. Since the possession in the present case has been duly taken vide Rapat no. 25 dated 06.09.2000, therefore, the possession is of the beneficiary department only. The relevant para of the said judgment reads as under:-

“...244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of property. Thereafter there is no control of the landowner

over the property. He cannot have any animus to take the property and control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of the trespasser ensures for his benefit and on behalf of the owner.”

Further the Hon'ble Supreme Court has observed that for the deemed lapse of acquisition under section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, both the conditions i.e. non-payment of compensation and non-taking of possession must be fulfilled. The Hon'ble Court has observed that the word 'or' in the section 24(2) of the Act of 2013 must be read as 'and' therefore since the possession has already been taken, there can be no lapse of acquisition qua the land of the petitioner. The relevant paras of the judgment are reproduced hereinunder:

“...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. RanchhoddasAtmaram and Anr. 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 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 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...

Learned State counsel states that in terms of the judgment cited above, the present petition deserves to be dismissed as the possession has already been taken by mode of Rapat Roznamcha and the compensation has been deposited in the LAC, thus no lapse can be sought under the provisions of section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Keeping in view the above factual position, the present petition is

dismissed, as the acquisition proceedings do not lapse as per section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as explained in *Indore Development Authority (supra)*.

(RITU BAHRI)
JUDGE

22.03.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

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