

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 23893 of 2017(O&M)
Reserved on: 29.03.2022
Date of Pronouncement: 31.08.2022

Vinod Kumar 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,
Mr. Saurabh Mago, Assistant Advocate General Haryana, and
Ms. Kushaldeep K. Manchanda, Advocate, for the respondents.

RAVI SHANKER JHA, C.J.

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 onto the facts of the case wherein the award under section 11 of The Land Acquisition Act 1894 was announced on 30.04.1998 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 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 the Constitution Bench of

the Hon'ble Supreme Court of India 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 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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 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 the 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. section 71 and 80 of the Act of 2013, the Hon'ble 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 Hon'ble SC 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 Hon'ble SC 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(2) of the Act of 2013, the Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist 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 Hon'ble 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 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 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 petitioners, they are owners in possession of the land comprised in Khasra No. 77//4/1/2 (4-14) situated within the revenue estate of Village Unchagaon, Tehsil Ballabgarh and District

Faridabad. They had taken the permission to run the LPG Gas godown from the competent authority in the year 1986. The land of the petitioners along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 09.05.1995 and 06.05.1996 issued under section 4 and section 6 of the Land Acquisition Act, 1894, followed by award dated 30.04.1998 for the public purpose namely, Development and Utilization of land as Institutional, Residential and Commercial Sector 62, Faridabad. It is further contended that the petitioners had earlier challenged the acquisition proceedings by filing CWP no. 10459 of 2003. The said petition was disposed of vide order dated 01.04.2004 with direction to pass a fresh speaking order on the representation of the petitioners for release of their land from the acquisition proceedings. Accordingly, speaking order dated 13.05.2004 came to be passed thereby declining the relief of release to the petitioners by stating that the gas godown constructed on the land in question cannot be released as same affects the development plan and further, such godown in the area is not in public interest as it is detrimental to the health of the residents of the Sector, since LPG gas is highly inflammable and in case of accident, it can cause wide spread devastation involving many human lives. A perusal of the pleadings would show that said order was not challenged by the petitioners any further, and same has attained finality, which implies that the acquisition proceedings stood concluded for all intents and purposes. Thereafter petitioner no. 1 filed CWP No. 10037 of 2014 thereby seeking lapsing of acquisition proceeding under Section 24(2) of the Act of 2013 and said petition was disposed of vide order dated 07.10.2015 with directions to the respondent authority to decide the representation of the petitioners by passing appropriate speaking order

considering the applicability of Section 24(2) of the Act of 2013. In compliance of the same, speaking order dated 04.05.2017 came to be passed thereby rejecting the representation of the petitioners on the ground that the possession of the land was taken by recording rapat Roznamcha no. 549 dated 30.04.1998. The amount of the compensation was tendered and 99.50% of the total amount of compensation has already been paid to the land owners, as far as the land in question is concerned, the petitioners have not taken the amount of compensation. It was further considered that the land in question affects Sector dividing road and also part of site reserved for group housing allotted to Housing Board Haryana, Faridabad and the boundary wall and the gas godown which was existing on the land was demolished, thus, at present the site is lying vacant. The petitioners have challenged the aforesaid order on the ground that while rejecting the claim, the respondent authorities have failed to consider that the petitioners are in physical possession of the land in question and have not taken any compensation for the acquired land, therefore, same 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 Ld. Additional Advocate General Haryana 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. It is his contention that the acquisition proceedings have attained finality in earlier round of litigation as the writ petition bearing CWP No. 1059 of 2003 filed by the petitioners was disposed of vide order dated 01.04.2004 to pass a speaking order considering the request of the petitioners for release of land, which was accordingly passed on 13.05.2004 and the request of the

petitioners was rejected. The petitioners did not challenge the said speaking order which implies that they had accepted the fate of the acquisition proceedings. Thus, the petitioners cannot be allowed to reopen the concluded proceedings under the guise of Section 24(2) of the Act of 2013, especially in view of law laid down in para 359 of the judgment in Indore Development Authority (Supra), wherein the Hon'ble Court has categorically held that Section 24(2) of Act of 2013 cannot be used as a tool for revival of concluded proceedings and settled claims. Even otherwise the possession of the land stands taken by recording Rapat Roznamcha no. 549 dated 30.04.1998 which amounts to taking of physical possession of the land 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 petitioners along with the other landowners which fact stands substantiated as the majority of compensation out of total award amount stands disbursed. This implies that the petitioners have 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 invoking section 24(2) of Act of 2013 are 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 Hon'ble Supreme Court of India in the case of Indore Development Authority (supra) and the prayer of the petitioners claiming lapsing of acquisition proceedings deserves dismissal in view of the following reasons:-

- a) It is an admitted fact that the petitioners had challenged the acquisition proceedings by filing CWP No. 1059 of 2003 filed by which was disposed of vide order dated 01.04.2004 to pass a speaking order considering the request of the petitioners for release of land, which was accordingly passed on 13.05.2004 and the request of the petitioners was rejected. The petitioners did not challenge the said speaking order which implies that they had accepted the fate of the acquisition proceedings. The Apex Court in Indore Development Authority (Supra) has categorically held that Section 24(2) of Act of 2013 cannot be used as a tool to revive the concluded proceedings which have been already upheld by the Courts of law. In the case at hand as well, the petitioners accepted the fate of the acquisition proceedings and thus, now the petitioners cannot be allowed to reopen the concluded proceedings in view of section 24(2) of Act of 2013.
- b) The possession in the case at hand is said to have been taken by recording Rapat no. 549 dated 30.04.1998, which implies that physical possession of land is with State and land stands vested in the State free from all encumbrances. As regards the compensation, it is important to highlight here that the Hon'ble 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 that the compensation amount was duly tendered to the landowners and same stands substantiated from the fact that majority of compensation has already been disbursed. The aforesaid fact, thus, goes on to show that compensation amount was duly tendered to the petitioners but he has chosen not to accept the same and thus, now he cannot claim that the compensation has not been paid to him.

7. In view of the aforesaid, it is clear that none of the contingencies prescribed in Section 24(2) of the Act of 2013 are fulfilled, accordingly, no declaration as regards the lapsing of acquisition proceedings can be made in the given facts and circumstances.

8. Before parting we feel it appropriate to refer to the contention of Mr. Mittal that the State acquired the land for the public purpose namely for development and utilization of land as Institutional, Residential and Commercial Sector 62, Faridabad. 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 sector dividing road and part of group housing site allotted to Housing Board Haryana 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 the State.

9. 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, 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 2013 Act and it being so, the instant petition is dismissed. The speaking order dated 29.09.2017 passed by the respondent authority is hereby affirmed.

10. Having dismissed the main writ petition, pending application(s), if any, also meets the same fate. Status quo if any stands vacated.

(Ravi Shanker Jha)
Chief Justice

(Arun Palli)
Judge

31.08.2022
Rajan

Whether speaking / reasoned:	YES/NO
Whether Reportable:	YES/NO