

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2477-2018

Date of decision : 03.02.2022

Sanjay Singh 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

Present:- Mr. Ranjit Saini, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

RAVI SHANKER JHA, C.J. (ORAL)

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 (for short 'the Act of 2013') onto the facts of the case wherein the award under section 11 of the Land Acquisition Act, 1894 was announced on 31.03.1972, i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014, and as contended by the counsel for petitioners neither possession of the land in question has been taken by the State nor compensation amount has been paid/deposited. Therefore, it has been claimed that both of the

contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled, the acquisition proceedings stand lapsed.

2. 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 of India 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 been 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'.*

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 the 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 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 Supreme Court 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 penalised 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 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 penalised 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 24 of the Act of 2013 to 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.

- (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 been reiterated to hold that once the possession has been taken under Section 16 of the Act of 1894, the land vests 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 of the land measuring 3 Bigha comprised in Khasra Nos. 137/2 (1-6), 138/2 (1-9), 139/1 (0-5) situated within the revenue estate of Village Khanpur, Tehsil Jagadhari, District Yamuna Nagar. The aforesaid land along with other land situated in the revenue estate of Village Khanpur, Malakmajra, Khanrikhurd, Gadauli, Gari Gosian and Sukhdaspur was acquired by the State of Haryana through Public Works Department vide notifications dated 20.03.1970 and 31.03.1970 issued under Section 4 & 6 of the Land Acquisition Act, 1894, followed by the Award dated 31.03.1972 for the public purpose namely, for Canalizing Chautang Nalla from RDO to RD 21000 in Villages Malak Majra, Khaari Khurd, Gadhauli, Garhi Cosian, Khanpur and Sukhdaspur in Tehsil Jagadhri, District Ambala. It is the case of the petitioners that despite having acquired the land in question, the State has failed to take possession of the land so much so that even though the mutation for the land in dispute was entered and sanctioned in favour of State Government by virtue of mutation No. 489 dated

12.08.2011, yet the possession of the land in dispute is continuing with the petitioners. It is further contended that despite announcement of award on 31.03.1972, the compensation amount has neither been paid nor deposited in the Reference Court and the land in question is still lying unutilized as the nalla for which the land was acquired has not been constructed till date. In view of the said facts, it is contended on behalf of the petitioners that the acquisition proceedings have lapsed under Section 24 (2) of the Act of 2013.

5. In addition to the aforesaid, the petitioners have placed reliance on judgment passed by Civil Court below in case of one of the land owners who filed suit for declaration to the effect that he along with his brothers is in possession of the land measuring 7 bigha 13 biswa which form part of the notifications under Section 4 and 6 of the Act of 1894. The suit was decreed vide judgment and decree dated 19.08.2011 which was upheld by the Additional District Judge vide judgment and decree dated 20.03.2013 and this Court vide judgment dated 19.09.2013 passed in RSA No. 3682 of 2013. The reliance on the aforesaid facts is placed by the petitioners to aver that they are in physical possession of the land in question and till date neither any compensation for the land in dispute has been given to the petitioners nor the Chautang nalla for which the land was acquired has been constructed and canalized till date. In view of the said facts, the petitioners have sought lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013.

6. Refuting the averments made by the petitioners, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, appearing for the State of Haryana submits that the contention of the petitioners of being in

possession of the land in question is meritless as the possession of the land was taken at the time of announcement of award which stands substantiated from the fact that mutation No. 489 of land in question along with other land has been sanctioned in favour of the department on 12.08.2011. Further, he contends that the compensation for land in question was duly tendered, i.e. was made available to the petitioners and other land owners, and same is evident from the fact that majority of compensation amount, i.e. more than 50% out of total award amount, has been disbursed and rest of the amount including the amount due to the petitioners is available which the petitioners are at liberty to receive. He has further submitted that the present petition is not maintainable at the instance of the petitioners because the acquisition for the land in question stood concluded way back in the year 1972, yet forefathers of the petitioners never challenged the acquisition proceeding and accepted its fate. Denying the contention of the petitioners that the land has not been utilized, he submits that the nalla is running over the land since time immemorial and the canalizing of the Chautung nalla is complete and as such the land stands utilized. Therefore, in view of the principles laid down in the case of ***Indore Development Authority Vs. Manohar Lal and others (supra)*** he has prayed for dismissal of the instant writ petition.

7. As regards the reliance placed on the judgment and decree passed by the Civil Courts is concerned, Mr. Mittal has contended that such reliance is absolutely misplaced because the case before the Civil Court below was that the land of the plaintiffs therein was never acquired by the State/Government and therefore, it was decreed in the favour of the plaintiffs therein. However, as far as the case in hand is concerned, it is

the admitted stand of the petitioners that the land in question was duly acquired by the State and the said fact is so evident because had there been no acquisition, there was no occasion for the petitioners to file instant petition seeking lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013. Thus, he vehemently contents that the petitioners cannot draw benefit from the judgment and decree passed by the Civil Court below in favour of the other land owners.

8. 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 in the case of ***Indore Development Authority (supra)*** and the prayer of the petitioners claiming lapsing of acquisition proceedings deserves rejection for more than one reason, enumerated herein below:-

- a) Though the petitioners have contended that they are in actual physical possession of the land in question, however, the said averment does not find substance in view of the interpretation of 'physical possession' given 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 the Act of 2013. When the State Government acquires the land and draws memorandum of taking possession that 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. In the instant case since acquisition is of the year 1972, no reference has been made in the written statement as regards drawing of panchnama, however, the sanction of mutation in favour of the State reveals that State is the owner of the land in question and because it is specific stand of the State that the land in question stands utilized, which has not been rebutted by the petitioners as though the written statement was filed way back on 22.01.2019, however, no replication was filed by the petitioners till date. Thus, we have no hesitation to conclude that the possession of the land was duly taken and the land is vested in the State free from all encumbrances. Accordingly, the plea of the petitioners of them being in physical possession of the land is hereby rejected.

b) Even otherwise the Supreme Court in paragraph 242 of ***Indore Development Authority (supra)*** has categorically held that the Act of 2013 applies only to the pending proceedings wherein, either possession has not been taken or compensation has not been paid. It is not a tool to revive those proceedings which stands concluded in 1960s, 1970s, 1980s by taking possession of the land. The land owners in such acquisitions cannot question the proceedings of taking possession or mode of depositing the compensation with the treasury under the garb of Section 24 (2) of the Act of 2013 when in fact they failed to raise such claims at a relevant

point of time. In this regard, the relevant paragraph, i.e. paragraph 42, of ***Indore Development Authority (supra)*** is reproduced herein below:-

The Act of 2013 applies only to the pending proceedings in which possession has not been taken or compensation has not paid and not to a case where proceedings have been concluded long back, Section 24(2) is not a tool to revive those proceedings and to question the validity of taking acquisition proceedings due to which possession in 1960s, 1970s, 1980s were taken, or to question the manner to deposit of amount in the treasury. The Act of 2013 never intended revival such claims. In case such landowners were interested in questioning the proceedings of taking possession or mode of deposit with the treasury, such a challenge was permissible within the time available with them to do so. They cannot wake from deep slumber and raise such claims in order to defeat the acquisition validly made. In our opinion, the law never contemplates -nor permits- misuse much less gross abuse of its provisions to reopen all the acquisitions made after 1984, and it is the duty of the court to examine the details of such claims. There are several litigations before us where landowners. Having lost the challenge to the validity of acquisition proceedings and after having sought enhancement of the amount in the reference succeeding in it nevertheless are seeking relief arguing about lapse of acquisition after several round of litigation.

In view of the aforesaid, since, the acquisition proceedings were concluded way back in the year 1972 and admittedly for all these years it was not challenged either by the predecessor in interest of the petitioners or petitioners themselves, therefore, the instant writ petition seeking lapsing of the acquisition proceedings is not maintainable at the instance of the petitioners.

c) As far as the aspect of compensation is concerned, it is important to highlight here that the Hon'ble Apex court while interpreting the word 'paid' occurring in Section 24

(2) and the word 'deposited' used in proviso to Sec 24 (2) of the Act of 2013 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 paragraph 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 for substantiating same, attention of this Court has been drawn towards the fact that out of total compensation more than 50% 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 had chosen not to accept the same and thus, no inaction can be attributed to the State in this regard.

Since, due possession of the land stands taken and the compensation stands duly tendered, none of the contingencies prescribed in Section 24 (2) of the Act of 2013 are fulfilled and thus, there is no lapsing of acquisition proceedings in the case at hand.

9. We are in complete agreement with the submissions of Mr. Mittal so far as the reliance placed on the decree of civil court is concerned, as the said matter related to entirely different facts and issue. Further, it is

also not the case of the petitioners that the land in question was not acquired by valid proceedings, once it is so, the reliance placed on the judgment and decree passed by Civil Court is not applicable on the case at hand.

10. As a sequel of the above discussion and in view of law summarized in paragraph 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 merits dismissal and hence, the instant petition is dismissed.

11. Having dismissed the main writ petition, pending application, if any, also meet the same fate. Status quo if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

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