

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6185 of 2016
Date of decision: 03.02.2022

Chote Lal

.... Petitioner

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. Ram Bilas Gupta, Advocate, for the petitioner.

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

Mr. Amar Vivek Aggarwal, Advocate, and
Mr. Shiva Parashar, Advocate, for the respondent-HUDA.

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

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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 onto the facts of the case wherein the award under section 11 of the Land Acquisition Act 1894 was announced on 07.10.1991 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioner, 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 Supreme Court has further clarified that once the payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Hon'ble 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 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 be reiterated to hold that once the possession has been taken under section 16 of the Act of 1894, the land vest in the State and there cannot be any divesting or lapsing.
- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of section 24(2) cannot be invoked.
- (g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of section 24(2) of the Act of 2013 cannot be invoke as it does not revive stale and time barred claims.
- (h) In para 337, the 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 petitioner, he is owner in possession of the land comprised in Khasra no. 49//13/1 (1-11) situated within the revenue estate of Village Mewla Maharajpur, District Faridabad. The petitioner has claimed to have constructed residential house on the land in question. The land of the petitioner along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 02.08.1989 and 01.08.1990 issued under section 4 and section 6 of the Land Acquisition Act, 1894, followed by award dated 07.10.1991 for the public purpose namely, Development and Utilization of land as Residential and commercial Sector 45 Faridabad. It is further contended that the petitioner had earlier challenged the acquisition proceedings by filing CWP No.1929 of 1991 which was partly allowed vide order dated 03.08.2010 by giving directions to the respondent authorities to release the structure occupied by the petitioner along with proportionate open area for the beneficial enjoyment of the petitioner. In pursuance to the same the respondents have only release 100 sq. yards and rest of land is still in possession of the petitioner. In view of aforesaid facts, it has been contended that on account of non-taking of possession of the land of the petitioner even after announcement of award, and non-payment of compensation to the petitioner qua the acquired land, the acquisition proceedings shall be declared to have been lapsed in view of section 24(2) of Act of 2013.

5. In response to the submissions made by the petitioner, Mr. Ankur Mittal learned Additional Advocate General appearing for State of Haryana, has contended that the present petition is squarely covered by the principles laid

down in Indore Development Authority's case (Supra) and thus, has prayed for its dismissal. It is his contention that foremost requirement for invoking section 24(2) of Act of 2013 is that the award must have been announced 5 years or more prior to the enactment of Act of 2013 i.e., as on 01.01.2014. The Apex Court has held that while determining such period of 5 years, the period during which stay was in operation shall be excluded. Likewise, in the case at hand the petitioner had challenged the acquisition proceedings by filing CWP No.1929 of 1991 wherein dispossession of the petitioner from land in question was stayed by this Court vide order dated 05.02.1991. The said stay remained operative till the disposal of the writ petition on 03.08.2010. If such period is excluded while determining 5 years under section 24(2) of Act of 2013, the period of 5 years prior to 01.01.2014 is not fulfilled and thus, on this ground alone section 24(2) of Act of 2013 cannot be invoked by the petitioner. Further, he has contended that since except 100 sq. yards released area, the acquisition qua rest of the land was upheld, therefore, in view of law laid down in para 359 of the judgment in Indore Development Authority (Supra), 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. 135 dated 13.11.2014 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 the amount of compensation was duly tendered to the petitioner 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 petitioner has 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 even invoking section 24(2) of Act of 2013 has not been 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 petitioner claiming lapsing of acquisition proceedings deserves dismissal in view of the following reasons:-

- a) It is an admitted fact that the petitioner had challenged the acquisition proceedings by filing CWP no. 1929 of 1991. This court has stayed the dispossession of the petitioner from the land in question vide order dated 05.02.1991 and the said petition finally came to be decided vide order dated 03.08.2010 wherein the directions were given to release the constructed portion of land occupied by the petitioner and acquisition proceedings qua rest of the land was upheld. Since for the period starting from 05.02.1991 till 03.08.2010 interim order was in operation, 5 years period prior to 01.01.2014 is not completed after excluding such period, hence, in view of the categoric observation of the Apex Court for excluding such period during which stay was in subsistence, we are of the considered opinion that the pre-requisite 5 years period prior to 01.01.2014 is not fulfilled and

thus, petitioner cannot invoke provisions of section 24(2) of Act of 2013.

b) In addition to the aforesaid, the Apex Court in Indore Development Authority's case (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 petitioner had challenged the acquisition proceedings by filing CWP no. 1929 of 1991, which was allowed by this Court vide order dated 03.08.2010 and the directions were issued to the respondent authorities to release the land of the petitioner from acquisition proceedings to the extent occupied by the structures which were used for residential purpose only. In compliance of the aforesaid judgment, the respondents released land measuring 100 sq. yards and acquired rest of the land. It is fact that since 2010 petitioner never agitated and released land is not sufficient and thus, accepted the order of release as passed by the respondent authorities. This implies that the petitioner accepted the fate of the acquisition proceedings and thus, now the petitioner cannot be allowed to reopen the concluded proceedings in view of section 24(2) of Act of 2013.

c) Though the present petition is not maintainable in view of the fact that the requisite five years period prior to 01.01.2014 is not completed and that the acquisition proceedings have attained finality, yet we deem it appropriate with to refer to the status of

possession as well as compensation. The possession in the case at hand is said to have been taken by recording Rapat no. 135 dated 13.11.2014, 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 Section 24(2) and the word 'deposited' used in proviso to Section 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 facts, thus, goes on to show that compensation amount was duly tendered to the petitioner 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. As the requisite period of five years required for invoking Section 24(2) of Act of 2013 is not completed after exclusion of period of stay, coupled with the fact that acquisition proceedings qua the acquired land except the released

structure stands upheld by this Court and that compensation amount stands tendered, invocation of section 24(2) of Act of 2013 is not possible at the instance of the petitioner and thus, present writ petition is hereby dismissed.

8. Before parting, we feel it appropriate to refer to here to the contention of Mr. Mittal that the State acquired the land for the public purpose public namely for development and utilization of land as Residential and Commercial Sector 45 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 5 nos. of plot of 1 Kanal category, 9 mtr. wide 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.

9. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority's case (supra), specifically after having recorded that in the case in hand, requisite period of five years is not completed, acquisition proceedings stands 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.

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

03.02.2022
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO