

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CWP-9596-2014 (O&M)

Date of decision:- 06.12.2022

Brij Bhushan and others

.... Petitioners

Vs.

Union Territory, Chandigarh and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Aman Joon, Advocate for
Mr. Rajiv Kataria, Advocate for the petitioners.

Ms. Aashna Gill, Advocate for the respondents.

Ritu Bahri, J. (Oral)

In the present petition, petitioners are seeking direction to the effect that acquisition of the land made by the respondents vide Annexure P-1, notification dated 15.06.1989 under Section 4 of the Land Acquisition Act, 1894 has lapsed and be set aside for having not been put to the use as it was acquired by virtue of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

After notice of motion, reply dated 30.05.2015 has been filed by the respondents No.1 and 2. Land, Acquisition Collector, Estate Office, Sector 17, Chandigarh. They have placed on record Annexure R-1, whereby after acquisition proceedings attained finality, the possession of the land was handed over to Municipal Corporation, Chandigarh on 23.07.2007 as per the possession proceedings, Annexure R-1. A mutation has also been sanctioned in favour of the Municipal Corporation,

Chandigarh vide Annexure R-2.

In paragraph 2 of the preliminary objections, it is further stated that Award No.416, dated 05.02.1990, an amount of Rs.85,50,537/- was assessed as compensation and out of which an amount of Rs.84,53,776/- stands disbursed to all/majority of the land owners except the present petitioners who have failed to claim compensation. The petitioners had also filed a reference on 27.07.2007, which stands dismissed on 09.12.2013, as per the records of the respondents. On 25.08.2014, the differential amount of Rs.96,761/- have also been deposited with the Reference Court under Section 31 of the Land Acquisition Act, 1894.

Since the land now vest with the State, the petitioners cannot seek any benefit of elapsing of the compensation as acquisition proceedings under Section 24(2) as per the notification Annexure P-1 and P-2, the land has been transferred in favour of the beneficiary department, Municipal Corporation, Chandigarh.

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.***

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 para 359 of **Indore Development Authority (Supra)**, it has been observed that once the acquisition qua the land has already been upheld in the earlier round of litigation, the petitioner 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.”

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.

Learned State counsel states that in terms of the judgment cited above, the present petition deserves to be dismissed as the acquisition proceedings have attained finality after passing of the award on 05.02.1990. The petitioners at this stage cannot seek release of land being a trespasser.

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

(MANISHA BATRA)
JUDGE

06.12.2022

pooja saini

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No