

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

CWP-285-2018 (O&M)
Reserved on : 29.03.2022
Date of decision : 31.08.2022

Shyam Lal and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Shilak Ram Hooda, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana,
with Mr. Saurabh Mago, Assistant Advocate General, Haryana,
and Ms. Kushaldeep K Manchanda, Advocate,
for the respondents.

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RAVI SHANKER JHA, C.J.

1. The instant petition has been filed by claiming that the acquisition proceedings carried out vide the notifications issued under Sections 4 & 6 of the Land Acquisition Act, 1894 dated 22.06.2006 and 20.06.2007 respectively; followed by the award dated 28.11.2008, thereby acquiring the land for a public purpose, namely, for development of Industrial Sector 38 Sonipat; qua the land of the petitioners comprised in Khasra nos. 29//8/1 (1-0) and 8/3 (1-0) measuring 2 kanal situated in Village Jatheri, Tehsil and District Sonipat, have lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act 2013. They have further challenged the speaking order dated 24.12.2016 on the ground that same is illegal, arbitrary and discriminatory in view of the provisions of Section 24(2) of the Act of 2013.

2. Owing to the controversy erupted as regards the interpretation of the provision of Section 24(2) of the Act of 2013, like many other writ petitions, the proceedings in the instant petition were kept in abeyance awaiting the decision of the Supreme Court. The controversy was finally put at rest by the Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496***

penultimate paragraph of which is reproduced here-in-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 sum and substance of the interpretation of Section 24(2) of the Act of 2013 by the Supreme Court is that to seek lapsing, both the contingencies provided i.e. about the physical possession and the payment of compensation are to be fulfilled, meaning thereby, if either of the conditions is not satisfied, there would be no lapsing. As far as the obligation to make the payment in lieu of the land acquired is concerned, it has been clarified that such obligation to pay is complete by tendering the compensation which would mean that the compensation amount was made available to the land owner and if he has not accepted the same, it will not be available for the land owner to claim that the compensation has not been paid. Similarly, word "deposit" has been interpreted to mean depositing with the LAC or the treasury or the reference Court. Drawing of panchnama has been considered to be a valid proof of taking physical possession and once the land stands vested in the State, there is no divesting provided under Section 24(2) of the Act of 2013. The Supreme Court has further clarified that the period for which any interim order was in operation, will be excluded while computing the gap period of five years. Similarly, it has been clarified that Section 24(2) of the Act of 2013 does not give rise to new cause of action to

question legality of concluded proceedings of land acquisition as it applies to only those cases wherein the proceedings were pending on the date of enforcement of the Act of 2013.

4. As per the case put forth by the petitioners, they are owners in possession of the land measuring 2 kanal comprised in Khasra nos. 29//8/1 (1-0) and 8/3 (1-0) situated within the revenue estate of Village Jatheri, Tehsil and District Sonipat. The land is in contiguity to the old Abadi of Village Jatheri and the petitioners had built up their residential houses, shops and other commercial establishment over the said land in the year 1998-99. It was notified under Section 4 of the Act of 1894 vide notification dated 22.06.2006, pursuant to which the petitioners filed objections under Section 5-A of the Act of 1894 for exclusion of land from acquisition on the ground that the residential structures are existing on the land in question. However, ignoring the objections filed by the petitioners, the State Government issued declaration under Section 6 of the Act of 1894 on 20.06.2007 and eventually acquired the land vide award dated 28.11.2008.

5. It is the case of the petitioners that despite having announced the award on 28.11.2008, the respondents have failed to take the possession of the land in question and till date they are in the possession of the house/shops constructed thereon and have further pleaded that even the amount of compensation has neither been paid nor deposited with the reference Court. Therefore, the acquisition proceedings qua the land in question stands lapsed in view of Section 24(2) of the Act of 2013. The petitioners have further averred that the respondents have discriminated between similarly situated persons by excluding the constructed portions of other land owners and acquiring the construction existing on the land of the petitioners, thus, similar treatment shall also be given to the petitioners. As on date, the land of the petitioners is surrounded by released land all around. They approached this Court earlier by filing writ petition bearing CWP No. 11375 of 2014 thereby seeking similar relief i.e., lapsing of acquisition proceedings and the said petition was disposed of vide order dated 02.07.2015 in order to decide the representation filed by the petitioners. Accordingly, the representation was decided and claim was rejected by passing a speaking order dated 24.12.2016 which as per the petitioners is non-speaking and cryptic.

6. Before advertizing to the contentions raised by the respondents, it is important to be noticed here, that the prayer clause of the petition was styled in the manner as in below i.e.:-

“(i) A writ in the nature of certiorari to quash the impugned notifications issued under Section 4 and 6 of the Land Acquisition Act, 1894, Annexure P/4 and P/5 dated 22.06.2016 and 20.06.2007 respectively and impugned non-speaking and cryptic order dated 24.12.2016 Annexure P/10, vide which, the land of the petitioner stands acquired, being arbitrary, unlawful, unconstitutional, discriminatory being lapsed in view of the provisions under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, violative of Sections 4, 5, 6, 7, 8, 9, 11, 12(2), 16, 45 & 48 of The Land Acquisition Act, 1894 and being violative of Sections 2(g), 2(f), 2(j), 10, 12(1), 19, 27, 28 & 29 of NCR Act and Regional Plan, 2001 and being violative of Haryana government Policies dated 26.10.2007 and 24.01.2011 Annexure P/6 and P/7 as actual physical possession of the land of the Petitioners has not been taken till date by the respondent Government Authorities, being violative of principles of natural justice equity and good conscience and being violative of Articles 14, 16, 19, 21, 31 & 300A of Constitution of India, in the interest of justice;

(ii) A writ in the nature of prohibition prohibiting the respondent government authorities respondent no. 1 to 4 from taking possession of acquired land of petitioner mentioned in the body of the writ petition as the acquisition proceedings initiated by the respondent authorities stand lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and violative of Section 11 of the Land Acquisition Act, 1894 in the interest of justice;

7. Thus, essentially the relief has been claimed only with respect to the applicability of Section 24 (2) of the Act of 2013 though, it appears that under the umbrella of Section 24(2) of the Act of 2013, the plea of discrimination in releasing the land of the other land owners has also been sought to be raised.

8. Per contra, Mr. Ankur Mittal, learned counsel appearing for the respondent HSIIDC submitted that the instant petition deserves to be dismissed in view of the laws laid down by the Supreme Court in the case of Indore Development Authority (supra) as none of the contingencies prescribed in Section 24(2) of the Act of 2013 are fulfilled. He submits that the petitioners have very conveniently concealed the fact of release of their land and have wrongly averred that objection under Section 5-A of the Act of 1894 were not considered, as after considering the objections and also the

recommendations pertaining to Khasra no. 29//8, the State Government released 2 kanal land comprised in Khasra no. 29//8 at the time of issuance of declaration under Section 6 of the Act of 1894.

9. He further submits that the first and foremost requirement to claim lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioners have failed to prove as the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 200 dated 28.11.2008, which has been held as a valid mode of taking possession. Further, mutation has also been entered in favour of the beneficiary department on 20.12.2010. Once such possession is taken, the land vests absolutely in the State and whosoever retains or remains in the possession of the land, he is a trespasser. He further submits that the obligation of the State to pay the compensation stands duly discharged as the entire compensation amount i.e. Rs. 198.20 crores was tendered at the time of announcement of award and was made available to the land owners. Out of the said amount, Rs. 184 crores has already been disbursed to the land owners. As regards the land in question, he submits that the compensation is available for disbursement and petitioners are at liberty to receive the same. He submits that in terms of the exposition of law made in Indore Development Authority (supra) the obligation of the State to pay the compensation is discharged once such amount is tendered i.e., made available to the land owners, whereas in the case at hand the amount has also been deposited in the Court. Thus, in view thereof he has contended that since none of the contingencies provided under Section 24(2) of the Act of 2013 are fulfilled, no declaration as regards the lapsing of acquisition proceedings can be made in the given facts and circumstances. He further submits that the speaking order impugned in the petition was passed considering the aforesaid facts, thus, is valid and legal.

10. As regards the plea of discrimination raised by the petitioners, Mr. Mittal has submitted that same is not maintainable as the petitioners are themselves beneficiary of the release of land, which fact they have not disclosed in the petition as 2 kanal land in Khasra no. 29//8 was released from the acquisition proceedings. Further, he has submitted that the petitioners are precluded from raising any plea of discrimination as the same is barred by delay and laches in view of the fact that the petitioners have approached this Court after 7 years of announcement of that award, that too essentially invoking the provisions of Section 24(2) of the Act of 2013.

Therefore, the petitioners cannot be allowed to rake up all the pleas for reviving the dead and stale cause of action.

11. Having heard the respective arguments, going through the respective pleadings and above all the exposition of Indore Development Authority (*supra*), we are of the considered opinion that the instant petition is liable to be dismissed for more than one reason.

I. **Physical possession of the land in question stands taken**

12. The petitioners in the instant petition have claimed to be in the physical possession of the land in question. Positive case set up by the petitioners is that even though the award was passed on 28.11.2008 and they did not challenge the acquisition proceedings but yet the physical possession has not been taken from them. In this regard, the respondents have filed the written statement submitting that possession was taken by drawing panchnama in the form of Rapat Roznamcha No. 200 dated 28.11.2008 which has been held as a valid mode of taking possession of the land. Section 16 of the Act of 1894 provides that after taking the possession of the land, it vests in the State free from all encumbrances. The reference in this regard is made to the following paragraphs from the judgment:-

“...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.

13. Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and, thus, the plea being raised by the petitioners of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. **Compensation amount for the land in question was tendered.**

14. The respondents have categorically pleaded in the written statement that the amount of compensation for the entire acquired land was made available to all the land owners. It is the stand of the State that the amount of compensation as regards the land in question was duly tendered, which is substantiated from the fact that majority of compensation has already been disbursed to the landowners. Therefore, in view of the exposition in Indore Development Authority (supra) the contention of the petitioners that no compensation amount has been received by them is meritless and, thus, is hereby rejected.

III. **None of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled.**

15. The Supreme Court in Indore Development Authority (supra) has clearly observed that for deemed lapsing of acquisition proceedings under Section 24(2) of the Act of 2013, both the conditions i.e. payment of compensation and taking of possession must not be fulfilled i.e. if either of the condition is fulfilled, the lapsing cannot happen. The Supreme Court has observed that word “or” occurring in Section 24(2) of the Act of 2013 must be read as “and/nor”. Relevant paras from the judgment are reproduced here-in-below:-

“...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. Ranchhoddas Atmaram and Anr. v. 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 an 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 then 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...

16. In the case at hand as reflected from the reply filed, it is evident that after the award was announced on 28.11.2008, the physical possession was taken by recording Rapat Roznamcha No. 200 dated 28.11.2008 and the compensation amount was duly tendered. Therefore, since, none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled, therefore, the said provision cannot be relied upon by the petitioners to claim lapsing of the acquisition proceedings.

IV. **Essentiality of the land in question**

17. Mr. Ankur Mittal, on the strength of the facts pleaded in the written statement, has vehemently contended that the State acquired the land for the public purpose, namely, for setting up of Industrial Sector 38, Sonipat. The land in question is very much essential to achieve the public purpose as it is to be developed in accordance with 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.

18. As regards the plea of discrimination raised by the petitioners, we are not inclined to accept the same as the same is barred by delay and laches and is being raised after almost 7 years of vesting of the land in the State. Further, the averments in the petition are highly vague and the release of construction is essentially being sought on the ground that the house/constructions of other landowners was released from the acquisition proceedings. Contrary to the same it is specific stand of the State that the land measuring 2 kanal was released from Khasra no. 29//8. Even otherwise, there is no impediment for the State authorities to acquire the constructions and the petitioners have no locus to approach this Court laying challenge to the acquisition proceedings as the land stands vested in the State free from all encumbrances and the status of the petitioners is nothing much than a trespasser who has retained the land owned by the State/HSIIDC. Accordingly, the plea of discrimination is hereby rejected.

19. 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, 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 2013 Act and it being so, the instant petition is dismissed.

20. Having dismissed the main writ petition, all pending applications, if any, also meet the same fate.

21. Status quo, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2022
Amodh Sharma

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