

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 94 of 2016
Date of decision : 08.09.2022

The Ithad Motors Transport Pvt. Ltd.

.... Petitioner

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. B.S. Bedi, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Asst. 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 the 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 07.05.1992 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 that the acquisition proceedings have lapsed under Section 24 (2) of the Act of 2013.

2. The interpretation of Section 24 (2) of the Act of 2013 had remained under cloud for long until it finally came to be decided by the

Constitution Bench of the Supreme Court in the case of ***Indore Development Authority v. Manoharlal and others SLP (C) 9036-9038 of 2016***, 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 the Act of 2013. The concluding paragraph 363 of the judgment 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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 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 lapsing. 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*** to mean that the amount is made available to the landowner and that it would be a discharge of the obligation to make the payment and in such event, the State 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 pari 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. 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 penalized for non-payment as the amount has remained unpaid due to refusal to accept by the landowner. To clarify it further, the Supreme Court has 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 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 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 has 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, period of any subsisting interim order is to be excluded which means that if after excluding the period of 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 petitioner, it is owner in possession of the land comprised in Khasra No. 735(1-7), 737 (0-6), 5773/738 (3-18), 5774/738(1-1) measuring 3 Bigha 6 Biswa i.e. half share in 6 Bigha 12 Biswa situated in Village Taraf Insar, Tehsil & District Panipat. The petitioner is using the land in question for workshop and for parking of its buses and has raised construction of boundary wall, workshop, labour room, watchman room, store, toilets and bathroom for running the business of transport. The said land of the petitioner along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 10.05.1989 and 09.05.1990 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, followed by award dated 07.05.1992 for the public purpose namely, the development and utilization of land as Industrial, Institutional, Residential and Commercial area for Sector 6, 7 & 8, Panipat. It is case of the petitioner that it is in actual physical possession of the land in question and has not received the compensation amount till date, therefore, the acquisition proceedings qua the land in question has lapsed in terms of Section 24 (2) of the Act of 2013.

5. The petitioner also challenged the acquisition proceedings earlier by filing CWP No. 3011 of 1996 which was withdrawn by the petitioner to seek benefit of the policy of the State Government issued on 24.01.2011 regarding release of land under acquisition on 18.05.2011, pursuant to which a representation was filed, which is still pending consideration as per the petition.

6. In response to the submissions made by the petitioner, Mr. Ankur Mittal, learned counsel appearing for respondents, 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. His preliminary objection is as regards the maintainability of the instant petition at the instance of the petitioner as it had earlier challenged the acquisition proceeding by filing CWP No. 3011 of 1996 which was withdrawn on 18.05.2011 with only liberty to pursue its representation, which implies that as far as challenge to the acquisition proceedings was concerned, same was given up and consequently, it had attained finality. Thus, in view of categorical observations of the Supreme Court in Para 359 of Indore Development Authority (supra), Section 24 (2) of the Act of 2013 cannot be used as a tool to reopen the concluded proceedings. He has further contended that in the case at hand, both the contingencies under Section 24 (2) of the Act of 2013 remain unfulfilled as the possession of the land was taken at the time of announcement of award itself by recording Rapat Roznamcha No. 349 dated 07.05.1992 and same was handed over to the beneficiary department i.e. HSVP. He submits that the drawing of Panchnama, which in the present case is recording of Rapat Roznamcha, is a valid mode of taking possession of the land and once it is taken, the land vests in the State free from all encumbrances.

7. Further, he submits that the compensation for land in question was duly tendered i.e. was made available to the petitioner and other land owners which is substantiated from the fact that out of total amount of compensation i.e. Rs. 11,41,92,576/-, an amount of Rs. 8,31,04,049/- has already been disbursed to the landowners, which is sufficient to show that the amount of compensation was duly made available to the land owners.

As regards the land in question, compensation amount is available and the petitioner is at liberty to receive the same. He has placed reliance on the exposition of law made in para 203 of Indore Development Authority (supra), wherein the Hon'ble Court has observed that actual payment of compensation is not necessary, tender of compensation amount is sufficient to discharge the obligation of the State to pay the compensation. Therefore, none of the contingencies of Section 24 (2) of the Act of 2013 have been fulfilled and thus, present petition merits dismissal.

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 petitioner claiming lapsing of acquisition proceedings deserves dismissal for the following reasons:-

- a) The petitioner has invoked the provisions of Section 24 (2) of the Act of 2013 to claim lapsing of the land acquisition proceedings qua the land in question. The Supreme Court in **Indore Development Authority (supra)** has categorically held that the plea of Section 24 (2) is available to only those land owners, in respect of whom the acquisition proceedings were pending on the date of coming into effect of the Act of 2013 i.e. 01.01.2014. It has been clarified that Section 24 contemplates pending proceedings and not the concluded ones. After making the detailed discussions and placing reliance on the previous judicial pronouncements, the Supreme Court in Para No. 359 has made it clear that

Section 24 (2) cannot be used to revive dead and stale claims and concluded cases as the same cannot be permitted to be canvassed on the pretext of enactment of Section 24. Para 359 is extracted here-in-below:-

‘...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 negatived. 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...’

Since earlier petition filed by the petitioner challenging the acquisition proceedings was withdrawn, implying that the challenge to the acquisition proceedings was given up, the plea of lapsing of the acquisition under Section 24 (2) of the Act of 2013 is not available and thus, the instant petition being not maintainable, deserves to be dismissed.

- b) Though the petitioner has contended that actual physical possession of the land in question is with it, however, the said averment is without any substance, firstly, in view of the interpretation of ‘physical possession’ made 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 Act of 2013. When the State Government acquires the land and

draws memorandum of taking possession, which in the present case is by recording Rapat Roznamcha No.349 dated 07.05.1992, it 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 to the benefit and on behalf of the owner i.e. State. As observed above, the possession of the land in question was taken by recording Rapat Roznamcha No. 349 dated 07.05.1992, therefore, the possession of the land stands duly taken and the same vests in the State free from all encumbrances. Thus, we have no hesitation to hold that the physical possession of the land in question stands taken and thus, it is not available to the petitioner to contend that it is still in possession of the land in question and accordingly, one of the contingencies occurring in Section 24 (2) of the Act of 2013 goes.

- c) As far as the aspect of compensation is concerned, it is important to highlight here that the Apex Court while interpreting the word ‘paid’ occurring in Section 24 (2) and the word ‘deposited’ used in proviso to Section 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 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 State that the compensation amount was duly tendered to the landowners and was made available to the landowners. Once it is so, there does not remain even an iota of doubt that the compensation amount was duly tendered to the petitioner, however, it had chosen not to accept the same and thus, no inaction can be attributed to the State in this regard.

- d) Further it is pertinent to mention that the acquisition proceedings stood concluded way back in the year 1992 and as pointed out by the learned counsel appearing for the State of Haryana, the land in question has been planned and is to be utilized for institutional site, 50 mtr. wide green belt, 12 mtr. wide service road along GT Road, as per the approved development plan, therefore, the land in question is essential for achieving the public purpose for which the land was acquired and cannot be released from the acquisition, more so when the possession of the land stands already taken.

9. As a sequel of the above discussion and in view of the 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 the Act of 2013 and it being so, the instant petition is dismissed.

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

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

September 08, 2022
ndj

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