

CWP No. 9449 of 2016 (O&M)

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

CWP No. 9449 of 2016 (O&M)

Date of Decision:03.02.2022

Shakuntla and another

...Petitioners

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. Ranjit Saini, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for respondents No.1 and 2.

Mr. Shiva Prashar, Advocate for HUDA.

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

RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)

1. By way of filing present writ petition, the petitioners have approached this Court seeking writ in the nature of Mandamus thereby directing the respondents to not to act upon notifications issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 as the acquisition qua the land of the petitioners stands lapsed in view of Section 24 (2) of Act of 2013.

2. Since the principles laid down in the case of *Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496* are the guiding principles for adjudicating as to whether in given case the acquisition proceedings can be said to have been lapsed or not. The penultimate paragraph

CWP No. 9449 of 2016 (O&M)

of the judgment recording therein all the principles necessary for understanding the applicability of Section 24(2) of Act of 2013 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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

CWP No. 9449 of 2016 (O&M)

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 case put forth by the petitioners is that they purchased 1 kanal 13 marla of land comprised in Khasra No. 46//11-12/2 vide sale deed dated 28.08.1974 for constructing the residential house. The said land was thereafter notified by the State of Haryana for acquisition vide notification dated 30.01.1989 issued under Section 4 of the Land Acquisition Act, 1894 for the public purpose namely development and utilization of land for residential/commercial area Sector 30, Gurugram. The said notification was followed by declaration under Section 6 of the Land Acquisition Act, 1894

CWP No. 9449 of 2016 (O&M)

published on 25.01.1990. The petitioners challenged the aforesaid proceedings by filing CWP No. 3418 of 1990 which was dismissed by this Court on 23.08.1993. Thereafter, the award qua the land of the petitioners came to be announced on 14.12.1993, thereby acquiring the land in question. It is the case of the petitioners that even after announcement of the award on 14.12.1993, the physical possession of the land was never taken and in order to prove, the reliance has been placed by the petitioners on the jamabandi for the year 2007-2008 wherein the petitioners are shown in the column of owners. The petitioners have further contended that the acquisition proceedings around the land of the petitioners have also been quashed and as such the land in question is sandwiched between lands of the other land owners where notifications undertaken under Section 4 & 6 have been quashed. Since admittedly the petitioners have received the compensation and has also file reference under section 18 of Act of 1894, they have sought declaration as to lapsing of acquisition proceedings in view of Section 24 (2) of the Act of 2013 only on the ground that the physical possession of the land in question has not been taken by the State till date.

4. Dispelling the averments made by the petitioners, Mr. Ankur Mittal, Ld. Additional Advocate General appearing on behalf of State of Haryana submits that at the very outset, the present petition deserved to be dismissed in view of the admitted position that in earlier round of litigation initiated at the instance of the petitioners thereby laying challenge to the acquisition proceedings, the claim of the petitioners for quashing the acquisition

CWP No. 9449 of 2016 (O&M)

qua their land was rejected by this Court in C.W.P. No. 3418 of 1990 as the said writ petition was dismissed vide order dated 23.08.1993. Thus, in view of the law laid down by the Hon'ble Supreme Court of India in ***Indore Development Authority (supra)***, 24 (2) of Act of 2013 cannot be invoked at the instance of such land owners who have already lost challenge to the acquisition proceedings. He further submits that the possession of the land stands duly taken by recording Rapat Roznamcha No. 219 dated 14.12.1993 and thus, since the Hon'ble Apex Court has already it to be a valid mode of taking possession, due possession of the land stands taken and consequently the land in question stands vest in the State free from all encumbrances. Therefore, the contention of the petitioners that they are in physical possession of the land in question is absolutely baseless and if at all they have retained the possession it is only in the capacity of trespasser and not as owners. As regards the compensation, Mr. Mittal submits that the petitioners admittedly have received the compensation amount and have also received enhanced amount of compensation awarded by the Court of Ld. Additional District Judge, therefore, the liability of the State to pay the compensation stands duly discharged. As a sequel of the aforesaid submissions, where the possession of the land stands taken and compensation stands paid to the petitioners, it has been contended that no case for lapsing under Section 24 (2) of the Act of 2013 is made out as none of the contingencies mentioned therein i.e. in Section 24 (2) of the Act of 2013 is fulfilled. Further much stress has been laid down on the fact that the land in question is very much

CWP No. 9449 of 2016 (O&M)

essential to complete the development work as per the planning in accordance with the approved development plan.

5. We have considered the submissions made by both the parties and have perused the averments made in the plaint as well as reply filed on behalf of the respondents and have no hesitation to hold that the case in hand is squarely covered with the principles laid down by the Hon'ble Supreme Court of India in the case of Indore Development Authority (supra). The discussions in this regard is here in below:-

- a) Though the petitioners has contended that actual physical possession of the land in question remains with the petitioners, however, the said averment does not find substance in view of the interpretation of physical possession made by the Hon'ble 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 no219 dated 14.12.1993, that amounts to taking 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 landowners retain 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. Therefore, as observed

CWP No. 9449 of 2016 (O&M)

above the possession of the land in question was taken by recording Rapat Roznamcha no. 219 dated 14.12.1993, therefore, the possession of the land stands duly taken and same vests in the State free from all encumbrances. Therefore, 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 petitioners to contend that he is still in possession of the land in question and accordingly, one of the contingencies occurring in section 24(2) of 2013 Act goes.

- b) As far as the aspect of compensation is concerned, the compensation has been admittedly received by the petitioners along with the compensation for the enhanced compensation. Therefore, the obligation of the State to pay compensation stands discharged and hence since none of the contingencies provided in section 24(2) of Act of 2013 are fulfilled, there can be no declaration as regards the lapsing of acquisition proceedings.
- c) Further it is pertinent to mention that the acquisition proceedings have already been upheld by this Court in an earlier round of litigation as C.W.P. No. 3418 of 1990 filed by the petitioners challenging the acquisition proceedings was dismissed by this Court vide order dated 23.08.1993. Thus in view of principle laid down in para 363 (9) of the judgment, Section 24(2) of Act of 2013 cannot be used as a tool to revive the concluded proceedings wherein acquisition proceedings have already been upheld by the Courts.

CWP No. 9449 of 2016 (O&M)

Even otherwise the land in question is essential for achieving the public purpose for which it was acquired and cannot be released from the acquisition, more so when the possession of the land sands already taken.

6. 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 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 2013 Act and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.

7. Having dismissed the main writ petition, all pending applications, if any also meets the same fate. The writ petition is dismissed. Status quo if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
Manoj Bhutani

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