

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

CWP No. 4276 of 2017 (O&M)

Date of Decision:03.02.2022

Raj Kumar and others

.... 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. Navneet Singh, Advocate,
for the petitioners.**

**Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General, Haryana,
for the respondents.**

**(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. The instant petition has been preferred seeking declaration that the acquisition proceedings qua their land has lapsed in view of the provisions of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as "Act of 2013"). It has been contended that they are co-sharers in 5 Kanal 16 Marla to the extent 4/5th share comprised in Mustil No. 28 Killa no. 20/1 situated within the revenue estate of Village Jatheri, Tehsil and District Sonipat. The said land was acquired vide the notifications dated 22.06.2006 and 20.06.2007 issued under section 4 and 6 of the Land Acquisition Act, 1894 respectively; followed by the award dated 28.11.2008 for the public purpose

namely, for the development of Industrial Sector-38 in the revenue estate of Village Budh Malik, Budh Khalsa, Jatheri, livan, Pitampura and Rai of Tehsil and District Sonipat. This has further been contended that their land measuring 1 Kanal 16 Marla was released and remaining land measuring 4 Kanal was acquired. The lapsing of acquisition has been sought on the ground that physical possession of the land in question has not been taken. This has further been maintained in para 11 (b) of the petition that they have not received the compensation for the constructed portion and has further, positively pleaded in para 11 (c) of the petition that in the case in hand, both the contingencies as provided in section 24(2) of Act of 2013 are fulfilled.

2. As far as the claim made by the petitioner for issuance of declaration of the acquisition proceedings having been lapsed under section 24(2) of Act of 2013, it needs necessary mention that the applicability/ interpretation of Section 24(2) of Act of 2013 after having seen a huge number of litigations, was finally put at rest by the Constitution Bench judgment of the Hon'ble Supreme Court of India in the case titled as Indore Development Authority and others v. Manoharlal and others SLP (C) 9036-9038 of 2016 thereby laying down principles for declaring the acquisition deemed to have been lapsed under section 24(2) of Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting section 24(2) of Act of 2013, however for the purposes of deciding the matter at hand, the reference to the concluding paragraph of the judgment would be suffice and same 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 sum and substance of the judgment 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 SC 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 SC 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. Resisting the claim made by the petitioners and while referring to the exposition in Indore Development Authority (Supra), Mr. Ankur Mittal, Ld. Advocate appearing for the HSIIDC as well as the State submits that the contention of the petitioners of being in the possession of the land in question is meritless as the possession of the land was taken at the time of announcement of award itself by recording Rapat Roznamcha no. 200 dated 28.11.2008 and even the mutation stands sanctioned/ entered in favour of

HSIIDC. He has further submitted that all the petitioners are co-sharers in Khasra no. 28//20/1. Only petitioner no. 4 filed the objection under section 5-A of Act of 1894, remaining petitioners did not file any such objection under section 5-A of the Act. He further submitted that based upon the consideration made into the objection filed by petitioner no. 4, the constructed portion measuring 1 Kanal 16 marla was released from the acquisition and remaining 4 Kanal land was acquired. He has further submitted that as regards the compensation status of the land in question of the petitioners, all the four petitioners received their respective share of compensation vide the cheques dated 05.12.2008 which fact has not only been concealed in the petition but deliberately wrong submission has been made to say that compensation has not been received. He has further argued that earlier, the petitioners approached this Court by filing CWP no. 6822 of 2015 which was disposed of vide order dated 10.04.2015 by granting liberty to the petitioners to file a detailed and comprehensive representation. Accordingly, the case put forth by the petitioners was considered and rejected vide order dated 31.07.2017 which has also been assailed in the present petition. While supporting the rejection, he has drawn out attention to the facts recorded for rejection i.e., the compensation amount having already been received and the physical possession having been taken by way of Rapat Roznamcha. As a conspectus of the above submissions, he has submitted that in terms of the interpretation made by the Hon'ble Supreme Court of India in the case of Indore Development Authority (Supra), none of the contingencies as required under section 24(2) of Act of 2013 is fulfilled in the case in hand and thus, the petition filed by the petitioners deserves dismissal. Adding to his submissions he has assertively

argued for dismissal of the petition with exemplary cost owing to the fact that the petitioners deliberately concealed the factum of receipt of compensation and rather, positively contended about them having not received the compensation. Taking his argument further, he has submitted that a litigant who does not have any respect for the law is required to be dealt with strong hands so as to desist any such unscrupulous litigant to even dare to think about misleading the court so as to obtain a favourable order.

5. After having given our thoughtful consideration to the contentions raised by both the counsels' representing petitioners as well as the Respondent - State, we are not inclined to grant relief as prayed for in the present writ petition. As regards the prayer of the petitioners with respect to declaration to the effect that the acquisition proceedings have been lapsed is concerned, the said prayer is liable to be rejected in view of the principles laid down by the Apex Court in the Indore Development Authority (Supra).
6. The petitioners have contended that actual physical possession of the land in question is still with him and there is a running industry on the said land. However, said averment is without any 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 no. 200 dated 28.11.2008, that 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 for his benefit and on behalf of the owner i.e. State. As the possession of the land was taken by recording Rapat no. 200 dated 28.11.2008, in view of law laid down by the Apex Court we hereby hold that physical possession of the land in question is with the State and if at all the petitioners have retained possession, it is only as a trespasser and not as owners of land because land stood vested in the State free from all encumbrances. Therefore, one of the essentials of invoking section 24(2) of Act of 2013 goes, making it infeasible for petitioners to seek lapsing of acquisition proceedings.

7. As far as the argument raised by Mr. Mittal of concealment and mis-statement of the petitioners, we have perused the pleadings made in the petition wherein the petitioners have chosen to contend that compensation has not been taken by them and such, both the contingencies as provided under section 24(2) of Act of 2013 are fulfilled. This statement has been made even though factum of receipt of compensation is noticed in the speaking order dated 31.01.2017 thereby rejecting the claim of the petitioners. This makes it abundantly clear that the petitioners have deliberately chosen to make a wrong statement for the reasons best known with the intent to mislead this Court. The most surprising part is even though speaking order is appended as Annexure P-7 in the petition but yet this kind of wrong statement has been made. There is no quarrel with the submissions made by Mr. Mittal that this kind of practice must be dealt with heavy hands and rather, we are in agreement with him that this kind of

conduct shown, requires imposition of exemplary costs so as to desist any such or similar person to approach the Courts of law with such mala fide intent, however, while recording our displeasure, we refrain ourselves from taking this issue any further but to dismiss the petition not only on the ground of concealment/ mis-statement on the part of the petitioners but also considering the fact that the factual matrix of the case in hand is squarely covered against the petitioners with the exposition in Indore Development Authority (supra) as discussed above.

8. 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 development of Industrial Sector-38. The public purpose is achieved by drawing/approving the lay out plan. As regards the land acquired for Sector 38 Phase II, the planning has already been approved, the development work is in progress. The development work of Food Park over approximately 95 acres stands completed. More than 150 industrial plots have already been allotted and approx.. 25 out of them are in operation. As regards the land in question, as per approved layout plan, same falls under the area proposed for Creche. 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 (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. Since the speaking order impugned by the petitioners has been passed after considering the entire facts as narrated above, we do not find any illegality in the order and accordingly, same is affirmed

10. Having dismissed the main writ petition, all pending applications, if any also meet 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