

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6418-2017
Date of decision : 03.02.2022

Sampat Ram 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

Present:- Mr. Navneet Singh, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana, and
Ms. Kushaldeep Kaur Manchanda, Advocate.

Mr. Lokesh Sinhal, Advocate,
for respondents No. 3 and 4.

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

RAVI SHANKER JHA, C.J. (ORAL)

1. The petitioners have filed instant writ petition seeking issuance of writ in the nature of Certiorari for quashing the notification dated 17.09.2004 and 27.10.2004 issued under Section 4 and Section 6 of the Land Acquisition Act 1894 in view 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').

2. The controversy cropped up around interpretation of Section 24 (2) of the Act of 2013 was put at rest by the Constitution Bench of the Supreme Court in the case of *Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496* thereby laying down principles for declaring the acquisition

deemed to have been lapsed under Section 24 (2) of the Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting Section 24 (2) of the Act of 2013, and in this regard the reference is being made to the concluding paragraph of the judgment which 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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. That the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court is that the first and foremost condition to seek lapsing is that 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, the 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 a new cause of action to question the 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 co-owners in possession of the land bearing Rectangle No. 29//15/2 (2K-4M), 16(8K-0M) total measuring 10 Kanal 4 marla in equal share situated in Village Naharpur, Tehsil Manesar, District Gurgaon. The said land was acquired by the State of Haryana through Industries Department vide notifications dated 17.09.2004 and 27.10.2004 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, respectively followed by Award dated 09.03.2006 for the public purpose, namely for setting up of Chaudhary Devi Lal Model Township, Phase-V, Manesar, to be planned and developed as an integrated complex for Industrial, Institutional, Commercial, Recreational and other public utilities on

land measuring 956 acres 5 kanal 18 marla of villages Nabada Fatehpur, Naurangpur, Manesar, Lakhnoula, Naharpur Kasan and Shikopur, Tehsil and District Gurugram. The petitioners have contended that till date they are in physical possession of the land in question, though they have received the compensation amount, however same was inadvertent mistake and they are ready to deposit back the compensation amount. Thus, they have prayed for declaring the acquisition proceedings to have been lapsed under Section 24 (2) of the Act of 2013 on account of non-taking of possession of the land.

5. Pursuant to issuance of notice of motion, the respondents have filed an affidavit of Deputy Secretary to Government of Haryana, Industries and Commerce Department to controvert the pleas raised by the petitioners wherein while referring to the interpretation made by the Supreme Court, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, has pleaded that the possession of the land in question is taken by District Revenue Officer-cum-Land Acquisition Collector, Gurugram vide Rapat Roznamcha No. 654 dated 09.03.2006 and mutation was entered in favour of HSIIDC vide mutation No. 1660 dated 27.06.2013. Thus, the plea of the petitioners of being in possession of the land is devoid of merits. As regards the compensation, Mr. Mittal contents that it is an admitted fact that the petitioners have already received the compensation amount. In view of the aforesaid, he has prayed for dismissal of the instant writ petition as none of the contingencies provided in Section 24 (2) of the Act of 2013 is fulfilled. He has further submitted that after acquisition, the construction of peripheral boundary wall has already started and as such the land affects the planning of 25 plots provided under R&R policy, park, 12 meter wide road.

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

- a) Though the petitioners have contended that they are in actual physical possession of the land in question, however, the said averment is not tenable 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 the 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. 654 dated 09.03.2006, 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 for his benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha No. 654 dated 09.03.2006, therefore, physical possession of the land stands duly taken by the State. The plea of the petitioners that they are in physical possession of the land is, thus, hereby rejected. If at all possession has been retained by them, it is only as trespassers and not as owners. As a

consequence, thereof one of the essentials for claiming lapsing of acquisition proceedings goes.

- b) As far as aspect of compensation is concerned, admittedly compensation has been received by the petitioners which itself shows that the compensation amount was tendered and there has been no inaction on part of the State authorities in discharging its obligation as regards payment of compensation. Once it is so, the second contingency prescribed in Section 24 (2) of the Act of 2013 also goes and thus, as none of the contingencies prescribed in Section 24 (2) of the Act of 2013 is fulfilled, the deeming fiction of lapsing provided under Section 24 (2) of the Act of 2013 cannot be invoked. As far as the plea of the petitioners to deposit back the compensation amount is concerned, we are in agreement with the contention of the learned counsel for the State that there is no provision in the acquisition Act, to deposit back the compensation and hence, the said plea is also rejected.

7. 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 Chaudhary Devi Lal Model Township, Phase V Manesar. The public purpose is achieved by drawing/approving the lay out plan. The land in question, as per approved layout plan, affects the planning of 25 plots provided under the R&R Policy, park, 12 meter wide road etc. We have considered this part of the 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

8. 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.

9. 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

February 03, 2022
ndj

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