

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 3909 of 2018

Reserved on : 29.03.2022

Pronounced on : 31.08.2022

Sunil 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. Naresh Kaushik, Advocate,
for the petitioners.

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 02.03.2006 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioners, 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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 petitioners, they are owners in possession of the land comprised in Khasra No. 11//1 (8-0), 10(8-0), 25//2(8-0), 3(7-9) to the extent of their share situated within the Revenue Estate of Village Patla, Tehsil and District Sonapat. The said land of the petitioners along with land of other land owners came to be acquired by the State of Haryana vide notifications dated 17.11.2005 and 07.02.2006 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894, followed by award dated 02.03.2006 for the public purpose, namely, the development and utilization of land as Residential, Commercial and institutional Sectors 65, 66, 67 and 68, Sonapat. It is the case of petitioners that they are in actual physical possession of the land in question and have 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. In addition to the aforesaid, the petitioners have also contended that they are entitled to the compensation of the acquired land as per Section 24 (1) of the Act of 2013.

5. In response to the submissions made by the petitioners, 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. It is his contention 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. 70 dated 02.03.2006 and same has been 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.

6. Further he submits that the compensation for land in question was duly tendered i.e. was made available to the petitioners and other land owners which is substantiated from the fact that out of total amount of compensation i.e. Rs.3,34,90,10,360/-, an amount of Rs. 2,60,58,18,572/- 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 petitioners are 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.

7. As regards the averment of the petitioners with respect to compensation under new Act, Mr. Mittal submits that same is baseless as Section 24 (1) of the Act of 2013 has no applicability on the case at hand as the award was announced before commencement of New Act,

therefore, Section 24 (1) (a) of the Act of 2013 cannot be made applicable on the facts of the instant case.

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

- a) Though the petitioners have contended that actual physical possession of the land in question is with them, 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 the 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. 70 dated 02.03.2006, 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 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. 70 dated 02.03.2006,

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 petitioners to contend that they are 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.

- b) 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 petitioners, however they had chosen not to accept the same and thus, no inaction can be attributed to the State in this regard.

- c) Further it is pertinent to mention that the acquisition proceedings stood concluded way back in the year 2006 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 development of road and ESS area as per approved layout 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.
- d) Also, we find no merit in the contention of the petitioners that they are entitled to compensation under the New Act because as per Section 24 (1) (a) of the Act of 2013 the compensation is to be determined in terms of the New Act only when award under Section 11 of the Act of 1894 is announced after commencement of the Act of 2013, whereas in the case at hand the award was announced way back on 02.03.2006, thus, no benefit under Section 24 (1) (a) of the Act of 2013 can accrue to the petitioners.

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

31.08.2022
ndj

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