

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 7984 of 2017

Reserved on : 29.03.2022

Pronounced on : 31.08.2022

Dharmender

...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. Sandeep Sharma, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Asst. Advocate General Haryana, and
Ms. Kushaldeep K. Manchanda for respondents.

RAVI SHANKER JHA, C.J.

1. The instant petition has been filed claiming that the acquisition proceedings carried out vide the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 dated 03.03.2003 and 02.03.2004 respectively; followed by the award dated 29.12.2005, thereby acquiring the land for a public purpose, namely for the development and utilization of land for Residential and Commercial Sector 49-50 at Gurugram; qua the land of the petitioner has lapsed in view of the provisions 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. Owing to the controversy erupted as regards the interpretation of the provision of Section 24 (2) of the Act of 2013, like many other writ

petitions, the proceedings in the instant petition were kept in abeyance awaiting the decision of the Supreme Court. The controversy was finally put at rest by the Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*** penultimate paragraph of which 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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. 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 petitioner, he is owner of the land comprised in Khasra No. 20//13/3 measuring 1260 square yards situated in Village Adampur, District Gurugram. The said land was acquired by the Government of Haryana by issuing of notifications dated 03.03.2003 and 02.03.2004 under Section 4 & 6 of the Acquisition Act, 1894 respectively, followed by award dated 29.12.2005 for the public purpose

namely, for development and utilization of land for Residential and Commercial Sector 49-50 at Gurugram. It is the case of the petitioner that despite having announced the award on 29.12.2005, the respondents have failed to take the possession of the land in question as they are still in the possession of said land in question. As regards the compensation, it is the stand of the petitioner that neither the compensation has been paid to him nor it has been deposited in the Reference Court till date. Therefore, the acquisition proceedings qua the land in question stands lapsed in view of Section 24 (2) of the Act of 2013 as neither possession of land has been taken by the State till date nor compensation has been paid.

5. Per contra Mr. Ankur Mittal, learned counsel appearing for the respondent State, submitted that the instant petition deserves to be dismissed in view of the law laid down by the Supreme Court in the case of Indore Development Authority (supra) as none of the contingencies prescribed in Section 24 (2) of the Act of 2013 are fulfilled. The first and foremost requirement for claiming lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioner has failed to prove as the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 217 dated 29.12.2005, which has been held as a valid mode of taking possession. Once such possession is taken, the land vests absolutely in the State and whosoever retains or remains in the possession of the land, he is a trespasser. He further submits that the obligation of the State to pay the compensation stands duly discharged as the entire compensation amount was tendered at the time of announcement of award and was made available to the landowners. He submits that the petitioner has not received the amount voluntarily and same is deposited in the Reference

Court vide cheque no. 19663 dated 22.02.2012 under Section 30 of the Land Acquisition Act. It has been further contended that the petitioner is not even the owner of the land in question as his father was recorded as Dholidar in the revenue records. Thus, in view of the law laid down by the Supreme Court in the case of Indore Development Authority (Supra) he has prayed for dismissal of the instant writ petition.

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

I. Physical possession of the land in question stands taken

7. The petitioner in the instant petition has claimed to be in the physical possession of the land in question. Positive case set up by the petitioner is that even though the award was passed on 29.12.2005 but the physical possession has not been taken from him. In this regard, the respondents have filed the written statement submitting that possession was taken by drawing panchnama in the form of Rapat Roznamcha No. 217 dated 29.12.2005 which has been held as a valid mode of taking possession of the land. Section 16 of the Act of 1894 provides that after taking the possession of the land, it vests in the State free from all encumbrances. Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and land is vested in the State. The reference in this regard is made to the following paragraphs from the judgment:-

...244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1).

The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

*245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). **As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired.** The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.*

8. Thus, the plea being raised by the petitioner of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. Compensation amount for the land in question was tendered.

9. The respondents have categorically pleaded in the written statement that the amount of compensation for the entire acquired land was made available to all the landowners. It is the stand of the State that the compensation amount was tendered and was made available to the petitioner and other landowners. Further, the amount of compensation as regards the land in question was also deposited in the Reference Court vide cheque No. 196633 dated 22.02.2012. Therefore, in view of the exposition in Indore Development Authority (supra) the obligation of the State to pay the compensation is discharged if the amount of compensation is tendered which has been interpreted to mean that the amount was made available to the land owners as observed in Para 203 which is reproduced here in below:-

*‘...203. The word “paid” in Section 31(1) to the landowner cannot include in its ambit the expression “deposited” in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. **However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment.** In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners’ counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make*

*the payment due to exigencies provided in Section 31(2), interest to be paid. **However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue.** Even assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit....'*

10. Therefore, the contention of the petitioner that no compensation amount has been received by him is meritless and thus, is hereby rejected especially when the compensation amount has been deposited in the Reference Court. Accordingly, second contingency required for seeking lapsing of acquisition under Section 24 (2) of the Act of 2013 is also not fulfilled.

III. None of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled.

11. The Supreme Court in Indore Development Authority (supra) has clearly observed that for deemed lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, both the conditions i.e. payment of compensation and taking of possession must not be fulfilled i.e. if either of the condition is fulfilled, the lapsing cannot happen. The Supreme Court has observed that the word “or” occurring in Section 24 (2) of the Act of 2013 must be read as “and/nor”. Relevant paras from the judgment are reproduced here in below:-

‘...99. In this Court’s considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by “or” is used, then “or” should be read as “nor” or “and”.

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101. In *M/s. Ranchhoddas Atmaram and Anr. v. The Union of India and Ors.*⁷⁷, a Constitution Bench of this Court observed that if there are two negative conditions, the expression “or” has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

“(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, “or” really means “either” “or.” In the *Shorter Oxford Dictionary* one of the meanings of the word “or” is given as “A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative.” It is also there stated, “The alternative expressed by “or” is emphasised by prefixing the first member or adding after the last, the associated adv. *EITHER*.” So, even without “either,” “or” alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word “or” between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.’

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import.”

(emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse...

12. In the case at hand as reflected from the reply filed, it is evident that after the award was announced on 29.12.2005, the physical

possession was taken by recording Rapat Roznamcha No. 217 dated 29.12.2005 and the compensation amount was duly tendered and also deposited in the Reference Court. Since none of the conditions prescribed in Section 24 (2) of the Act of 2013 are fulfilled, therefore, said provision cannot be relied upon by the petitioner to claim lapsing of the acquisition proceedings.

IV. Essentiality of the land in question

13. 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 for development and utilization of land for Residential and Commercial Sector 49-50 Gurugram. The land in question is very much essential to achieve the public purpose as it has to be planned as green belt in accordance with the layout plan. 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. As far as averment of the petitioner with respect to the fact that the land in question is surrounded by the land of private builders is concerned, neither we are inclined to accept such submission nor are willing to adjudicate upon the same, because the land stood vested in the State way back in the year 2005 and the title of the landowner ceased from that very date. If the petitioner had any grievance with respect to the acquisition proceedings, he should have availed the remedy at the relevant time. At this stage, all other pleas challenging the

acquisition proceedings are time barred and petitioner cannot be allowed to reopen the entire proceedings once again.

14. 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 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.

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

(RAVI SHANKER JHA)
JUDGE

(ARUN PALLI)
JUDGE

31.08.2022

ndj

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