

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5757 of 2018

Date of decision : 03.02.2022

Rajat Aggarwal

...Petitioner

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. Vikram Singh, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana.

Mr. Amar Vivek Aggarwal, Advocate, and
Mr. Shiva Parashar, Advocate,
for respondent No.4 – 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. The short controversy involved in the present writ petition is whether the acquisition proceedings qua the land in question can be deemed to have been 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') or not.

2. The brief facts of the case at hand are that the land measuring 10 biswas comprised in Khasra No. 4365/2 (0-8), 4364/2 (0-1), Panipat; 5 biswa land in Khasra No. 4365 min and also the land measuring 8 biswas in Khasra No. 4364 min and Khasra No. 4366 situated in revenue estate of Taraf Insar, Panipat was acquired by the State of Haryana through Department of Urban Estates by issuing notifications dated 23.02.1989 and 22.02.1990 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 followed by Award dated 17.11.1994 for the public purpose, namely development and utilization of the land for residential and commercial Sector 13 - 17, Panipat. The petitioner moved objections under Section 5-A of the Act of 1894 and out of the total land, the land comprised in Khasra No. 4366 (0-3) and Khasra No. 4365/2 (0-1) was released from acquisition proceedings and rest of the land was acquired. As per petitioner the land in question is liable to be released as there is residential plot of the petitioner having boundary wall prior to Section 4 and till date the physical possession of the land in question is with the petitioner and even the compensation has not been paid by the State. The perusal of pleadings made in writ petition reveals that the petitioner's father had challenged the acquisition proceedings by filing CWP No. 4692 of 1992 which was dismissed vide order dated 14.07.1994, thereby upholding the acquisition proceedings qua the land in question. In view of the facts mentioned above, the petitioner has sought the declaration that the acquisition proceedings qua the land in question stands lapsed in view of Section 24 (2) of the Act of 2013.

3. Mr. Ankur Mittal, learned Additional Advocate General appearing on behalf of State of Haryana, by placing reliance on the short report filed on behalf of respondents, denies the pleadings of the writ petition and submits that the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 124 dated 17.11.1994 and as such the land in question stands vested in the State free from all encumbrances and if at all the petitioner states himself to be in possession of the land in question, he is retaining such possession only as a trespasser but not as owner of the land in question. To support his contention, the reliance has been placed on the principles laid down by the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SCC 1496***. As regards the compensation due for the land in question, he has submitted that the compensation amount was duly tendered and was made available to the petitioner after the announcement of Award and has stated that the same is available for disbursement and is lying deposited with the Land Acquisition Collector. This fact has further been substantiated stating that out of the total amount of award i.e. Rs. 72,26,775/-, Rs. 58,80,426/- stands disbursed to the land owners and as regards the land of the petitioner, the compensation amount though has not been received is available and is lying deposited with the Land Acquisition Collector. Since the Supreme Court in ***Indore Development Authority*** (supra) has categorically held that the Act does not contemplate actual payment of compensation or deposit in the Reference Court, however, tendering the payment is held to be sufficient compliance of the State's obligation to discharge the liability to pay compensation and as such the word 'paid' occurring in

Section 24 (2) of the Act of 2013 is to be incorporated to mean tender compensation, therefore, the contention of the petitioner that compensation has not been paid has no legs to stand and is baseless as such. He has further contended that since admittedly the acquisition proceedings qua the land in question stands upheld in earlier round of challenge to the acquisition proceedings, therefore, the petitioner cannot seek lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, thus, the present writ petition merits dismissal.

4. In order to decide the issue involved, it is necessary to have a bird eye view of the ratio laid down by the Supreme Court in ***Indore Development Authority*** (supra) and for the same reference hereby is made to the concluding paragraph of the judgment 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'

5. In essence, the Constitution Bench has cleared the clouds of doubt qua the words "paid" in Section 24 (2), "deposited" occurring in the proviso to Section 24(2) and read the word "or" used in between both the contingencies of Section 24 (2) of the Act of 2013 as "nor" or as "and". Similarly, the expression "physical possession" occurring in the main Section has also been clarified to mean "drawing of panchnama"/ "Rapat Roznamcha". It has been crystallized that for seeking lapsing, both the contingencies will have to be satisfied. Broad principles as laid down by the Supreme court are crystallized as under:-

- (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*** 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. Sections 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. Even 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 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 be part of 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 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 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 been 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 provision 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 provision of Section 24 (2) of the Act of 2013.

6. In the case at hand, as stated by the learned counsel appearing on behalf of State of Haryana, the possession of the land was taken by recording Rapat Roznamcha No. 124 dated 17.11.994 and as laid down by the Supreme Court that there is no difference between taking possession under the Act of 1894 and the expression 'physical possession' used in Section 24 (2) of the Act of 2013 and thus, when the State Government takes possession of the land by drawing panchnama/memorandum, it amounts to taking physical possession of the land and thereafter if any person retains the possession of the land, he is only a trespasser and cannot claim himself to be owner of the land in question. In view thereof, we have no hesitation to hold that the possession of the land in question stands duly taken by recording Rapat Roznamcha No. 124 dated 17.11.1994 and accordingly, since land stands vested in the State free from all encumbrances, one of the contingencies of lapsing provided in Section 24(2) of Act of 2013 goes.

7. As regards the aspect of compensation, the law laid down by the Supreme Court is very clear that the word 'paid' used in Section 24 (2) of the Act of 2013 only contemplates tender of the compensation amount i.e. to mean the compensation amount was made available to the land owners five years or more prior to commencement of the Act of 2013 and it does not contemplate actual payment of compensation or deposit of the same in the Reference Court, therefore, applying the said principles on the case at hand, it is admitted case that the compensation amount is lying deposited with the Land Acquisition Collector for disbursement and was

made available to the petitioner, therefore, the averment of the petitioner that no compensation had been paid to him has no substance.

8. In view of the aforesaid, none of the contingencies mentioned in Section 24 (2) of the Act of 2013 is fulfilled as the possession of the land stands duly taken and the compensation stands tendered, therefore, there is no lapsing of the acquisition proceedings under Section 24 (2) of the Act of 2013 and the present petition is devoid of any merits. In addition to this, there is yet another ground for dismissing the present writ petition in view of the fact that the acquisition proceedings qua the land in question stands already upheld by this Court in C.W.P. No. 4292 of 1992 and as such Section 24 (2) cannot be used to revive dead and stale claims especially when in earlier round of litigation the rights of the petitioner have been negated. Further, as pointed out by learned counsel for State of Haryana that since the land in question is very much essential for the development purposes and has already been planned for Public-Semi-public Area, therefore, the land in question cannot be released from acquisition proceedings being integral part of planning.

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 stands taken, the liability to make the payment of compensation for the land acquired 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 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

present petition merits dismissal and hence, the instant petition is dismissed.

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.

11. Dismissed accordingly.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

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