

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 5843 of 2018
Reserved on : 29.03.2022
Pronounced on : 31.08.2022

Vijender 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. Sandeep Sharma, Advocate,
for the petitioners.

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 24.08.2000 and 22.08.2001 respectively; followed by the award dated 21.07.2003, thereby acquiring the land for a public purpose, namely for the development and utilization of land for Residential, Commercial and Institutional area, Sector 57, Gurugram; qua the land of the petitioners comprised in Khasra No. 22//17/2 (5-2), 18 (5-0) situated within the Revenue Estate of Village Tigra, Tehsil and District Gurugram; 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'). Though the prayer in the petition is only limited to

lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, however, in the petition the petitioners have placed reliance on order dated 30.10.2006 and 21.02.2014 of the respondent-authorities to demonstrate that the respondents are discriminating with the petitioners as they have released the land of the other land owners after passing of the award.

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. 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 owners of Khasra No. 22//17/2 (5-2), 18 (5-0) situated within the Revenue Estate of Village Tigra, Tehsil and District Gurugram. The said land was acquired by the Government of Haryana by issuing of notifications dated

24.08.2000 and 22.08.2001 under Section 4 & 6 of the Acquisition Act, 1894, respectively, followed by award dated 21.07.2003 for the public purpose namely, for development and utilization of land for residential, commercial and institutional area, Sector 57, Gurugram. It is the case of the petitioners that despite having announced the award on 21.07.2003, the respondents have failed to take the possession of the land in question. Further, they have contended that till date neither the compensation of the acquired land has been paid to the petitioners nor has been deposited with the Reference Court in accordance with law. Therefore, the acquisition proceedings qua the land in question stands lapsed in view of Section 24 (2) of the Act of 2013. In addition to the aforesaid, the petitioners have contended that the land of the other land owners acquired vide aforesaid acquisition proceedings has been released from the acquisition, for which reliance has been placed on two orders dated 30.10.2006 and 21.02.2014 of the respondent-authorities, however, the case of the petitioners for release of their land has not been considered in its right perspective by the respondent-authorities.

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 to claim lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioners have failed to prove as the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 583 dated 21.07.2003, 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 out of total amount of compensation i.e. Rs. 73,06,74,448.60/-, an amount of Rs. 52,15,17,447.60/- has been disbursed to the land owners and rest of the amount is available for disbursement. Even co-sharers of the petitioners have received the amount of compensation qua their share in the land claimed in the petition. It is pertinent to note that out of the total compensation amount of Rs. 12,19,350/- qua killa no. 22//17/2 (5-2), 18 (5-0), for the area of 10K-2M, the brothers of petitioners i.e. Sh. Fannu Ram S/o Umrao has received compensation vide cheque No. 196415 dated 17.11.2003, Jag Ram S/o Umrao has received compensation vide cheque no. 196419 dated 19.11.2003 and Nand Ram S/o Umrao has received compensation vide cheque No. 196420 dated 19.11.2003 to the extent of Rs.2,03,225/-, while the rest of the petitioners have not taken the compensation which is available for disbursement and they are at liberty to receive the same. As regards the plea of discrimination having been raised by the petitioners, Mr. Mittal submits that the petitioners are neither similarly situated to such persons whose land has been released from the acquisition proceedings nor the petitioners have pleaded even a single word showing as to how they are similarly situated to the persons whose land has been released from the acquisition proceedings. He has vehemently contended that the petitioners are precluded from raising the plea of discrimination by relying upon the orders dated 30.10.2006 and

21.02.2014 as firstly, such plea is barred by delay and laches and secondly, the land was released from the acquisition proceedings vide order dated 21.02.2014 pursuant to the direction issued by this Court in CWP No. 11572 of 2008 wherein, vide order dated 25.07.2013 the respondents were directed to carry out fresh survey at the site and to release the land if it is found that no public purpose can be achieved from the said land. Accordingly, the Joint Site Inspection Committee was constituted as per whose recommendations decision was taken to release the land in compliance of the order passed by the Court. Therefore, the petitioners cannot claim any parity with the persons whose land was released in terms of the order passed by this Court. It has been further contended by Mr. Mittal that at no power under Section 48 of the Act of 1894 for release of land can be exercised after the possession of the land stands taken and same is vested in the State free from all encumbrances. In view of the law laid down by the Supreme Court in the case of Indore Development Authority (Supra) drawing of panchanama is a valid mode of taking possession of the land and as a consequence thereof land vests in the State; no divesting is permissible thereafter as far as the scheme of the Land Acquisition Act 1894 is concerned. Therefore, the plea of discrimination cannot be entertained today when the law regarding taking possession of the land has been well settled and if at this stage the Court allows divesting of the land on this ground, such direction would be in teeth of the law settled by the Constitution Bench of the Apex Court in the case of Indore Development Authority (supra). In wake of aforesaid submissions, 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 petitioners in the instant petition have claimed to be in the physical possession of the land in question. Positive case set up by the petitioners is that even though the award was passed on 21.07.2003 and they did not make challenge to the acquisition proceedings but the physical possession has not been taken from them. 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. 583 dated 21.07.2003 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. Thus, the plea of the petitioners 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 and received.

8. The respondents have categorically pleaded in the written statement that the amount of compensation for the entire awarded land was made available to all the landowners. It is the stand of the State that out of total amount of compensation i.e. Rs. 73,06,74,448.60/-, an amount of Rs. 52,15,17,447.60/- has been disbursed to the land owners and rest of the amount is available for disbursement. The factum of tender of the compensation amount is established through the fact that the

co-sharers of the petitioners have received the amount of compensation qua their share in the land claimed in the petition. It is pertinent to note that out of the total compensation amount of Rs. 12,19,350/- qua killa no. 22//17/2 (5-2), 18 (5-0), in which brothers of the petitioners i.e. Sh. Fannu Ram S/o Umrao has share of 10K-2M has received compensation vide cheque No. 196415 dated 17.11.2003, Jag Ram S/o Umrao has received compensation vide cheque no. 196419 dated 19.11.2003 and Nand Ram S/o Umrao has received compensation vide cheque No. 196420 dated 19.11.2003 received amount of Rs. 2,03,225/- and the petitioners have not taken the compensation which is available for disbursement. In this regard, Mr. Mittal has asserted that 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....’*

The aforestated facts clearly reveal that the observations made here in above do not leave any scope for doubt that the State has discharged its obligation towards making the compensation for the land acquired. Therefore, the contention of the petitioners that no compensation amount has been received by them is meritless and thus, is hereby rejected.

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

9. 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. RanchhoddasAtmaram 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...

10. In the case at hand as reflected from the speaking order as well as reply filed, it is evident that after the award was announced on 21.07.2003, the physical possession was taken by recording *Rapat Roznamcha* No. 583 dated 21.07.2003 and the compensation amount was duly tendered and deposited in the Reference Court as well. 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 petitioners to claim lapsing of the acquisition proceedings.

IV. Essentiality of the land in question

11. 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, Commercial and Institutional area, Sector 57, Gurugram. The land in question is very much essential to achieve the public purpose as it affects the development of 18 mtr. wide road as per 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.

12. We have also considered the contention of the petitioners seeking parity with the release of land made by the State vide letter dated 30.10.2006 and 21.02.2014. The plea of the petitioners on the ground of discrimination is rejected firstly on the ground that the petition is highly belated as it has been filed in the year 2018 whereas the acquisition was concluded way back in the year 2003 and further even the letter on which reliance has been placed was issued in 2006 and 2014. Therefore, if the petitioners were aggrieved of the action of the State, they ought to have approached the Court at the time when cause of action had arisen. They cannot be allowed to reopen the settled claims under the garb of Section 24 (2) of the Act of 2013. Further the instant plea is liable to be rejected in view of the fact that the petitioners have failed to aver even a single

word as to how they are similarly situated persons in whose favour land was released. It is trite law that finding of discrimination cannot be recorded merely on the basis of vague and bald assertions as has been made by the petitioners in the instant writ petition. The reference in this regard, can be made to the judgment of the Supreme Court in the case of ***Shanti Sports Club Vs. Union of India 2009 (15) SCC 705*** wherein the Apex Court held as under:-

“...The plea of discrimination and violation of Article 14 of the Constitution put forward by the appellants is totally devoid of substance because they did not produce any evidence before the High Court and none has been produced before this Court to show that their land is identically placed qua the lands on which Hamdard Public School, St. Xavier School, Scindia Potteries, etc. exist. In the representations made to different functionaries of the Government and DDA, the appellants did claim that other parcels of the land have been de-notified and before the High Court a copy of notification dated 6.9.1996 issued under Section 48(1) was produced, but the said assertion and notification were not sufficient for recording a finding that their case is identical to those whose land had been denotified. The burden to prove the charge of discrimination and violation of Article 14 was on the appellants. It was for them to produce concrete evidence before the Court to show that their case was identical to other persons whose land had been released from acquisition and the reasons given by the Government for refusing to release their land are irrelevant or extraneous. Vague and bald assertions made in the writ petition cannot be made basis for recording a finding that the appellants have been subjected to invidious or hostile discrimination. That apart, we are prima facie of the view that the Government's decision to withdraw from the acquisition of some parcels of land in favour of some individuals was not in public interest. Such decisions had, to some extent, resulted in defeating the object of planned development of Delhi on which considerable emphasis has been laid by the Full Bench of the High Court and this Court. This being the position, Article 14 cannot be invoked by the appellants for seeking a direction to the respondents to withdraw from the acquisition of the land in question. Article 14 of the Constitution declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals,

others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities....”

13. The aforesaid judgment is a leading precedent as far as the aspect of discrimination is concerned. The perusal of the aforesaid observation clearly reveals that it is incumbent on the petitioner/landowner alleging discrimination to show that in what manner he has been discriminated and how he is identically placed to such persons in whose favour the order of release of land has been passed. Suffice to mention that if the order relied upon is itself illegal and against the provisions of law, the land owner/petitioner(s) cannot claim parity even if he is identically placed because Article 14 of the Constitution of India does not envisage the concept of negative equality and thus cannot be used as tool to perpetuate illegality time and again. Applying the aforesaid principles onto the case at hand, the only conclusion which can be drawn is that the petitioners have miserably failed to set up a plea of discrimination. Also, we are in complete agreement with Mr. Mittal that in view of the law settled by the Apex Court in Indore Development Authority (supra) once possession of the land has been taken, which in the case at hand was taken by recording rapat Roznamcha and the land stands vested in the State, no order of divesting can be passed and any such order would be against the provisions of the Act and the position of law.

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 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 instant petition is dismissed. The speaking order passed by the respondent authorities thereby rejecting the claim of the petitioners is accordingly, affirmed and upheld.

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)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2022
ndj

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