

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 94 of 2018 (O&M)

Date of Decision: 03.02.2022

Sant Pal 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, JUDGE.**

Present:- Mr. Adarsh Jain, Advocate, for the petitioners.

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

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

RAVI SHANKER JHA, CHIEF JUSTICE

The prayer of the petitioners as has been made in the writ petition is to quash the award dated 07.10.1991 made by the Land Acquisition Collector in pursuance to the notification dated 02.08.1989 and 01.08.1990 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 and further to quash the award dated 08.02.1995 announced by the Land Acquisition Collector in pursuance to the notification dated 07.09.1992 and 17.09.1993 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 on the ground that the acquisition proceedings qua land of the petitioners acquired vide aforesaid proceedings have lapsed in view of the provisions of Section 24 (2) of Act of 2013.

2. Before entering into the respective pleadings by the parties, it needs necessary mention that owing to the pendency of interpretation of the provisions of Section 24 (2) of the Act of 2013 before the Hon'ble Supreme Court of India, the petition including the present one wherein the writ jurisdiction of this Court under Article 226 of the Constitution of India was sought to be invoked, were kept pending; awaiting the outcome of the issue at hand by the Hon'ble Supreme Court of India. After seeing various interpretations, the controversy erupted was finally set at rest by a Constitution Bench of the Hon'ble Supreme Court of India in the case title as ***Indore Development Authority Vs. Manohar Lal cited as AIR 2020 SC 1496***. The penultimate para 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. That the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court of India 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, 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 Hon’ble Supreme Court of India 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 new cause of action to question 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 Act of 2013.

4. Having perused the judgment passed by the Supreme Court of India in Indore Development Authority (supra) and the principles laid down, now we proceed to test the factual matrix of the case in hand pleaded before us on to the afore reproduced laid down principles by the Hon’ble Supreme Court of India.

5. Since learned Counsel for the State had pointed out discrepancies in the facts narrated in the writ petition and has taken objection that the petitioners have failed to challenge the actual notifications and award vide which their land was acquired by the State, it is first important to refer to the facts narrated in the writ petition by the petitioners.

6. As per the case put forth by the petitioners, they are co-sharers and co-owners in possession of the land comprised in Khasra No. 50//15/2 (7-0), 42//16/2 (2-3), 24 (8-0), 25/1 (2-17), 96//4/2 (2-7), 5 (8-0) and Khasra No. 95//1 (8-0), 2/1 (4-16) situated in revenue estate of Village Mewla Maharajpur, Tehsil and District Faridabad. The land comprised in Khasra No. 50//15/2 was purchased by the petitioners from its previous owner namely Abdul Wahid Khan and the remaining land was previously owned by one Rumali who had executed will in favour of Chandri and after Chandri, the petitioners became owner in possession of the land. The petitioner no. 1 i.e. Sant Pal is stated to have raised construction of residential house before 1985 which continues to exist till date and similarly petitioner no. 2 & petitioner no. 3 have also stated to have raised construction of a separate residential house which are existing before 1985 and 1995 respectively.

7. As pleaded by the petitioners in para 10 of the writ petition, aforesaid land except the land comprised in Khasra No. 96//4/2 (2-7) was acquired by State of Haryana vide notifications dated 02.08.1989 and 01.08.1990 issued under Section 4 and Section 6 of the Act of 1894, followed by award dated 07.10.1991 for the public purpose namely for development and utilization of land as residential and commercial sector 45, Faridabad – Ballabgarh controlled area. As regards the land comprised in

Khasra No. 96//4/2 (2-7) it is stated in para 13 of the writ petition that it was acquired by the State of Haryana vide notification dated 07.09.1992 and 17.09.1993 issued under Section 4 and Section 6 of Land Acquisition Act, 1894, followed by award dated 08.02.1995. Despite having acquired the aforesaid land, it is the case of the petitioners that the possession of the land has not been taken by the State and though the compensation for the land in dispute has been received by the petitioners which they are ready to deposit back, however, neither any award has been announced for the super structure/houses standing on the acquired land nor any compensation for the same has been paid to the petitioners till date. Therefore, the petitioners while relying upon the judgment passed by the Hon'ble Supreme Court of India in the case of ***Pune Municipal Corporation and others Vs. Harak Chand Misrimal Solanki and others*** cited as 2014(3) SCC 183 have contended that the acquisition proceedings qua the land in question have lapsed in view of Section 24 (2) of the Act of 2013. On the same cause of action, the petitioners had earlier filed Civil Writ Petition No. 14222 of 2015 which was disposed of vide order dated 17.07.2015 with the directions to the respondent authorities to decide the representation of the petitioners by passing a speaking order, however, as per the petitioners that till date no speaking order has been passed in compliance of the order passed by this Court on 17.07.2015. Hence, the instant petition has been filed by them.

8. Refuting the contentions raised by the petitioners, a short reply by way of affidavit on behalf of respondent nos. 1 & 2 was filed, on the strength of which Mr. Ankur Mittal, Ld. Additional Advocate General, Haryana has vehemently contended that the writ petition is full of incorrect statement of facts as the petitioners have failed to disclose the entire factual

background while presenting their case. He submits the land in question was in fact acquired vide three different set of acquisition proceedings whereas the petitioners have sought lapsing of only two sets of acquisitions. As per the record the land comprised in Khasra No. 50//15/2, 42//16/2, 42//24 and 42//25/1 was acquired vide notifications dated 02.08.1989 and 01.08.1990 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 followed by award dated 07.10.1991 for the public purpose namely for development and utilization of land as residential and commercial area in Sector – 45, Faridabad and Ballabgarh Controlled Area. The possession of the said land was taken vide rapat No. 66 dated 07.10.1991 and was handed over to the beneficiary department. It is specifically pleaded by the respondent-State that the land involved in the petitioner was vacant at the time of issuance of notification under Section 4 of Act of 1894 and further it has been submitted that as far as khasra No. 50//15/2 (7-0) is concerned, the petitioners were not recorded as owners for the said land and infact same was purchased by petitioners after the issuance of notification under Section 4 of the Act of 1894 on 02.08.1989. Therefore, as regards the land comprised in Khasra No. 50//15/2 (7-0), the petitioners are subsequent purchasers and thus, have no right to question the validity of the acquisition proceedings on any ground what so ever in view of the judgment passed by the Hon'ble Supreme Court of India in the case of ***Shiv Kumar Vs. Union of India and others 2019 (10) SCC 299.***

9. He further submits that the land comprised in Khasra No. 96//4/2 (2-7) and 5 (8-0) situated in revenue estate of Village Mewla Maharajpur Tehsil and District Faridabad was acquired vide notification dated 07.09.1992 and 07.09.1993 issued under Section 4 and Section 6 of

the Land Acquisition Act, 1894 respectively, followed by award dated 08.02.1995 for the public purpose namely development and utilization of land as residential and commercial Sector 44-47 Faridabad. The possession of the said land was taken by recording rapat No. 237 dated 08.02.1995 and at the time of acquisition, the land in question was vacant.

10. He submits that as far as the land comprised in Khasra No. 95//1 (8-0) and 95//2/1 (4-16) situated at Mewla Maharajpur, Tehsil and District Faridabad is concerned, the said land was acquired vide notification dated 22.08.1988 and 07.07.1989 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 respectively; followed by award dated 30.03.1990 for the public purpose namely for development and utilization of land as residential and commercial Sector 46, Part 2, Faridabad. However, it is suffice to mention that the petitioners have not challenged the aforesaid notifications and the award rather has claimed the lapsing of acquisition proceedings with respect to the aforesaid land wherein the aforesaid land does not forms part of such notification. Irrespective of the said fact, he submits that even the possession of the said land has been taken by the State by recording rapat No. 448 dated 30.03.1990 and the said land was also vacant at the time of issuance of notification under Section 4. Thus, actual factual position contrary to what has been pleaded by the petitioners is as follows:-

Khasra No.	Acquisition Notification impugned by the petitioner	Actual notification vide which the land was acquired
Khasra No. 50//15/2 (7-0),	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991
Khasra No. 42//16/2 (2-3), 24 (8-0), 25/1 (2-17),	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991
Khasra no. 96//4/2 (2-7)	Section 4 - 07.09.1992 Section 6 - 17.09.1993	Section 4 - 07.09.1992 Section 6 - 17.09.1993

	Award - 08.02.1995	Award - 08.02.1995
Khasra No. 96//5 (8-0)	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991	Section 4 - 07.09.1992 Section 6 - 17.09.1993 Award - 08.02.1995
Khasra No. 95//1 (8-0), 2/1 (4-16)	Section 4 - 02.08.1989 Section 6- 01.08.1990 Award – 07.10.1991	Section 4 - 22.08.1988 Section 6 - 07.07.1989 Award - 30.03.1990

11. We highly deprecate the way pleadings in the instant case have been made in the writ petition. Despite the notifications being self-speaking and indicating the details of the land being acquired, wrong notifications are being challenged and the entire development process is being held up for years altogether. Such a practice reflects how the diligence required while drafting the petitions is diminishing and the constitutional courts are being treated nothing more than a post office. In view of the aforesaid, there is no point and in fact scope in the petition to entertain the challenge to the acquisition proceedings which has not been specifically impugned in the petition as mere mentioning of the details of the land, without there being supporting notifications is not sufficient to even entertain much less to grant any relief. This is de hors the fact that even if such notifications would have been impugned, in view of the facts as noticed below and the settled law in this regards, petitioners are not entitled to any relief.

12. As regards the status of compensation, he submits that admittedly the compensation for the land in question i.e., entire land claimed in the petition, stands received by the petitioners as mentioned in Para No. 17 of the writ petition which shows that the compensation amount was not only duly tendered by the State but was also duly received by the petitioners and now after the conclusion of the acquisition proceedings in all aspects i.e. in terms of taking of possession as well as payment of compensation, the present petition seeking lapsing of the acquisition

proceedings is not maintainable at all. By placing reliance on Indore Development Authority (supra) he submits that the case in hand is squarely covered by the said decision and as such the present petition merits dismissal.

13. As regards the non-announcement of award for the superstructures, he has contended that same would have no bearing on the acquisition proceedings and it cannot be pleaded as a ground for declaring the acquisition proceedings to have been lapsed as the appropriate remedy for the same is to file reference under section 18 of the Act of 1894 and for substantiating the same he has placed reliance on the judgment passed by the Hon'ble Supreme Court of India in the case of *Mohanji and Anr vs. State of U.P and others 1995(8) JT 599* and various other judgments passed by the various High Courts wherein the dictum laid down in the case of Mohanji (Supra) has been followed.

14. 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

15. 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 announced way back but yet the physical possession of the land has not been taken from them. In this regard, the respondents have filed the reply submitting therein that after the announcement of the award, possession of land comprised in Khasra No. 50//15/2, 42//16/2, 42//24 and 42//25/1 was taken vide rapat No. 66 dated

07.10.1991; possession of Khasra no. Khasra No. 96//4/2 (2-7) and 5 (8-0) was taken vide rapat No. 237 dated 08.02.1995 and possession of Khasra no. Khasra No. 95//1 (8-0) and 95//2/1 (4-16) was taken vide rapat No. 448 dated 30.03.1990. The Hon'ble Supreme Court of India in Indore Development Authority (Supra) has categorically held that the recording of panchnama is the valid mode of taking possession of the land and amounts to taking of physical possession of the land. Once the possession of the land is taken, it vests in the State free from all encumbrances and any person who retains the possession of the land thereafter is a trespasser. 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 is 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....”*

Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and thus, the plea being raised by the petitioners of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. Whether the compensation amount for the land in question was tendered or not.

16. The respondents have categorically pleaded in the reply that the amount of compensation for the entire awarded land was made available to all the landowners. Further admittedly the compensation amounts have been received by the petitioners. As observed by the Supreme Court of India in Indore Development Authority (Supra) that there is no provision for depositing back the amount of compensation and thus, the contention of the petitioners that they are ready to deposit back the same would not change the fact that the land stands vested in the State free from all encumbrances and the petitioners have accepted the fate of the acquisition proceedings.

III. None of the contingencies as given under section 24(2) of Act of 2013 are fulfilled?

17. The Supreme Court of India 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 Hon'ble Supreme Court of India has observed that 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...’

18. In the case in hand as reflected from the reply filed, it is evident that after the award the physical possession was taken by recording the Rapat and as far as the compensation part is concerned, it stands duly admitted in the petition that the amount has been received. In view thereof, both the contingencies as provided in Section 24 (2) of the Act of 2013 are not fulfilled.

IV. Reliance placed upon the judgment passed by the Hon’ble Supreme Court of India in the case titled as Pune Municipal Corporation and another Vs. Harak Chand Misri Mal Solanki and others cited as 2014 (3) SCC 183.

19. In this regard, it is required to be noticed that the aforesaid judgment was over-ruled by the Hon’ble Supreme Court of India in Indore Development Authority (supra) in Para No. 362 which is extracted here in below:-

‘...362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24(2) and whether ‘or’ has to be read as ‘nor’ or as ‘and’ was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment...

20. As far as the reliance being placed on the other judgments passed by the Hon'ble Supreme Court of India are concerned, we have gone through those judgments as well. Since all the judgments being relied have been passed prior to the exposition in Indore Development Authority (supra), same are of no help to the petitioners as their case is squarely covered by Indore Development Authority (supra) against them.

V. **Essentiality of the land in question**

21. Mr. Ankur Mittal on the strength of the facts recorded in the reply submits that the land in question as acquired for the public purpose namely, Residential and Commercial sector and has been planned as per the development plan of the sector duly approved by the competent authority. The land is therefore, necessary for achieving the public purpose. We have considered this part of arguments raised by the respondents and are in complete agreement with the same as it is an essential factor to be kept in mind while dealing with the case arisen out of the acquisition of the land.

VI. **Plea reading non-announcement of award for superstructures**

22. As regards the plea of the petitioner with respect to non-announcement of award for superstructures is concerned, the issue is no more res integra that it cannot be a ground to claim lapsing of the acquisition proceedings and at best it would be case of non-assessment of proper compensation for which the appropriate remedy is filing application for reference under section 18 of the Act of 1894. Mr. Mittal in this regard has drawn our attention towards various cases, of which the leading one is the judgment passed by the Hon'ble Supreme Court of India in the case of

Mohanji and Another vs. State of U.P 1995(8) JT 599, wherein while adjudicating upon the issue as to whether announcement of award of superstructure after 2 years from the date of issuance of declaration under section 6 of Act of 1894 would result in lapsing of acquisition proceedings or not, the Hon'ble Court held as under:

“5. It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceeding? In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acres. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.9.1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acres with no compensation awarded for the building. The Appellants, therefore, had the right to claim compensation for the building by seeking a reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein. The Appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is, however, a different matter and it does not require any further consideration in this context. It is sufficient to say that the award dated 23.9.1986 made within the period specified in Section 11A of the Act must be construed as an award under Section 11 in the proceedings for acquisition of the Appellants' land bearing Plot No. 1311 having a total area of 0.99 acres. The contention that the entire proceeding for acquisition of the land has lapsed by virtue of Section 11A cannot, therefore, be accepted”.

23. The aforesaid view was re-iterated by the Supreme Court of India in the case of **State of Punjab and others v. Sharan Pal Singh and others (1996) 11 SCC 683**. The issue was also considered by the Full Bench of the High Court of Gujarat in the case of **Kanchanbhai Jhaverbhai Desai and Ors v. (The) State of Gujarat and Ors. (1995) 1 GLH 641 (FB)**, wherein the court while dealing with the concept of supplementary award

observed that scheme of the act is to announce only one award, if certain aspects have not been considered while announcing award, the remedy is not to announce the supplementary award but to file reference under section 18 of Act of 1894. The relevant paragraphs from the judgment are reproduced herein below:-

‘....11. By virtue of the definition of the word ‘land’ under Section 3(a) of the Act, the benefits which arise out of the land, and things attached to the earth or permanently fastened thereto are included in the said expression. It has been held by the Supreme Court in Chaturbhai Pande v. Collector, Raigarh, A.I.R., 1969 S.C. 255 that the value of the trees standing on the land at the time when Section 4-notification is issued has to be taken into consideration when the market value of the land is being determined under the clause firstly of Section 23(1) of the Act. The standing crops or trees which are mentioned in the clause secondly of Section 23(1) thereof can only be those which come into existence after the notification under Section 4 is issued. There is always a timelag between issuance of the notification under Section 4 of the Act and the completion of the acquisition proceedings with the making of the award by the Collector under Section 11. Till the possession is taken under Section 16, or earlier under Section 17, the owner of the land is at liberty to cultivate the same. The owner may not know as to when the possession will be taken. Obviously, with a view to compensating him for the loss which may be suffered, if standing crops or trees; planted subsequent to Section 4 notification, are taken away, he is entitled to compensation under the clause secondly of Section 23(1) of the Act. But for this provision the claimants would not have been entitled to claim any compensation because of the clause seventhly of Section 24 of the Act which provides that the court shall not take into consideration any outlay or improvements a on the land which is made or effected after the notification under Section 4 of the Act. To give an example, if any immovable structure is erected on the land after Section 4 notification is issued and 4 before the possession is taken, no compensation would be payable. But if any crop is cultivated then by virtue of the clause secondly of Section 23(1) of the Act, compensation will be paid by reason of that crop having been taken away at the time when the possession is handed over. Therefore, while right to claim compensation exists at the time when possession is taken, the claim in respect thereof must arise and be made at the time or before the award is made. When an award is made under Section 11 of the Act, if possession had been taken earlier and there was a standing crop, then the Collector will have to take into consideration the damage sustained by the claimant in respect of the standing crop whose possession was

taken before the award. If possession is not taken before the award, but if standing crop exists when the award is made even then, possibly the value of the standing crop will have to be taken into consideration (by the court on a reference under Section 18 of the Act) because after making of the award the Collector becomes entitled to take possession of the land. In other words, the quantum of damage sustained or likely to be sustained in respect of the crop which exists at the time of taking of the possession can be ascertained by the Collector. Where, however, no crop exists and the land is cultivated after the award has been made by the Collector, it is quite obvious that the Collector cannot take that factor into consideration which did not exist at the time when the award was made. When the award is made, the claimant knows that he can be divested of the possession any time thereafter. If he chooses to cultivate the land after the award, he obviously runs the risk of being deprived of the benefits of the crop, if the possession is taken before the crop can be harvested. If he, nevertheless, chooses to cultivate the land and he still wants to secure himself or desires that compensation should be paid to him, in the event of the standing crops being taken away when the possession is taken, then it is open to him to seek a reference under Section 18 of the Act. If such a reference is sought then the Court while determining the amount of compensation payable shall take such a damage into consideration which may have occurred even with regard to the crop cultivated after the Collector's award. That damage must occur at or before the time when the court makes its award. The court cannot award damages which cannot be quantified which will only be in those cases where the crops have not been cultivated when the award is made

12. The reading of the Act in general and Sections 11, 12 and 18 of the Act in particular further shows that in respect of the same parcel of land only one award is contemplated. When the Collector makes his award under Section 11 of the Act, the same is with regard to the area of the land, the compensation and the apportionment thereof. With regard to that area of land for which award is made the same is final under Section 12 of the Act. This being so, the question of any supplementary award being given in respect of the same area or pail thereof does not arise. In arriving at the amount of compensation all the factors mentioned in Section 23 of the Act have to be taken into consideration. If some of the factors are not taken into consideration it cannot be that in respect of those factors which are omitted supplementary awards can be made. If the contention of the petitioners is right, then it can be conceivable that in respect of the same parcel of land there can be six different awards, each dealing with one aspect. If the award of the Collector does not deal with one or more aspects contained in Section 23 of the Act, the remedy is not to ask for a supplementary award, but the only recourse which is open to a claimant is to

file an application under Section 18 of the Act for a reference. As directed, if it is only one award in respect of a parcel of land by the Collector, it would ipso facto follow that the court can also make only one award on the reference being made to it....'

24. The court proceeded to hold as above on the threshold that the definition of land includes anything fastened to it and if the award of land is announced under section 11 of Act of 1894 it will automatically include the assessment of all those things which are fastened to the land and if some components are not taken into consideration, there lies no supplementary award for the same, however, filing of reference under section 18 of Act of 1894 is the appropriate remedy.

25. This aspect was also considered by the Full Bench of this Court in ***CWP no. 16745 of 1991 titled as Mohd. Nazir v. State of Punjab and others decided on 04.07.1996*** thereby holding that the award of the land can be announced with respect to the land keeping back the decision with regard to the super-structures. Such award can be given at a later stage as well and the award evaluating the land only will be a complete award for the purposes of section 11-A of the Act of 1894.

26. Recently, the Delhi High Court in ***Purshotam Behl v. Union of India and Others (2020) 275 DLT 16*** has also considered this aspect in detail. The court had also dealt with the contention raised by the counsel for the petitioners that the ratio in the case of Mohanji's (supra) was doubted by the Hon'ble Supreme Court of India and the reference was sent to the Three judges in the case of ***Harbans Lal Malhotra & Sons Ltd. v. Union of India, JT (2002) 10 SC 129***. However, said contention was repelled as the Hon'ble Supreme Court of India disposed of the said petition without dealing with

the reference. Thus, as on date the Mohanji's (supra) is law governing the filed. The relevant paragraphs are reproduced herein below:-

“57. That brings us to Mohanji supra cited by the counsels for the petitioners as well as the counsels for the respondents. The said judgment came in the wake of amendment to the Land Acquisition Act which required an award to be made in all pending cases of land acquisition within a period of two years from the insertion of Section 11A and it further provided that all proceedings for acquisition of land in which no award is made within the specified period, would lapse on expiry of that period. The said period of two years expired on 23 September, 1986. Supreme Court in the said judgment was concerned with an award made on the last date i.e. 23 September, 1986 but only in respect of vacant land but not for buildings constructed over a portion thereof. It was the contention of the petitioners that since the part award was no award, the acquisition proceedings lapsed. It was held that it could not be said that no award had been made for the land acquired, because admittedly award had been made for the entire land acquired and since no piecemeal award by making a subsequent award after the expiry of the period of two years was contemplated in law, the award dated 23 September, 1986 must be considered as the whole award made under Section 11, awarding compensation for the entire area of land with no compensation awarded for the building. It was further held that it was open to the petitioners to seek reference, if dissatisfied with the award. The said judgment was also followed in Sharan Pal Singh supra. Supreme Court, thereafter in Harbans Lal Malhotra & Sons Ltd. v. Union of India, JT (2002) 10 SC 129 was concerned with an award for land only, recording that with respect to superstructures, there will be a separate valuation; however without making the said separate valuation, possession of the land was sought to be taken. The three Judge Bench was constituted on a doubt being expressed with respect to the correctness of Mohanji and Sharan Pal Singh supra. However the matter was disposed of, directing compensation as claimed, for the superstructures, to be paid with interest for the delay. Mention may lastly be made of a dicta of the Division Bench of the High Court of Gauhati in Fortuna Agro Plantation Ltd. v. Union of India. It was held that an award even if made by ignoring some of the factors which in the light of Section 23(1) of the Land Acquisition Act are required to be taken into account, is still an award rendered under Section 11 and the person aggrieved by such an award has the remedy of applying to the Collector to make a reference in terms of Section 18.

58. Thus the law with respect to the provisions of the Land Acquisition Act is, that only one award is envisaged and even if is not with respect to one of the factors to be taken into consideration, the award made is to be deemed to be denying

any compensation therefor and the only remedy is of seeking reference under Section 18. One award only has been advocated, only to avoid inconsistencies in determination of valuation of different parcels of land vide the same notification. For this reason it has been held that even where there are more than one award, inconsistencies should be avoided. There is no absolute bar to more than one award.”

27. Therefore, in view of the settled proposition of law the arguments being raised by the petitioners with respect to the announcement of award for superstructures are untenable.

28. As a conspectus of what all has been discussed here in above especially the fact that after the announcement of the award, the possession was taken by recording rapat Roznamcha and the obligation to pay the compensation stands discharged and also that the land in question is very much essential to achieve the public purpose, for which it is acquired; we are of the considered opinion that no ground is made out in the petition to interfere in the acquisition proceedings much less holding that the acquisition proceedings are deemed to have lapsed and thus, the claim made by the petitioners is rejected and the petition filed is hereby dismissed. Since the main petition has been dismissed, all the pending applications, if any, stand disposed of. Status quo order, if any, is hereby vacated.

Dismissed accordingly.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
ravinder

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