

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28255 of 2019

Date of decision : 03.02.2022

Pawan Kumar and another

...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. Vikram Singh, Advocate,
for the petitioners.

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.2 – 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 petitioners have invoked the writ jurisdiction of this Court thereby challenging the notifications dated 18.12.1991 and 27.11.1992 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 and have further sought directions to release the constructed area of their land comprised in Khasra No. 1739 (0-2-0), 1741 (0-2-10) situated within the revenue estate of Village Wazirabad, Tehsil and District Gurugram on the ground that the acquisition proceedings qua the aforesaid land stands lapsed in view of Section 24 (2) of Right to Fair Compensation and

Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013'), by contending that the petitioners continued to be in the possession of the land though the compensation amount has already been received by them after the announcement of the award on 04.01.1994.

2. It is the case of the petitioners that despite having acquired the land, State has failed to take the possession of the land and the petitioners who have built their shops/rooms on the land in question are in continuous possession of land in question. Though admittedly the petitioners have received compensation awarded qua the land in question, however, the claim under Section 24 (2) of the Act of 2013 has been maintained on the ground of failure on the part of the State to take the possession of the land in question.

3. In order to support the claim, the petitioners have placed reliance on the judgment passed by the Supreme Court in the case titled as ***Pune Municipal Corporation and another Vs. Harak Chand Misri Mal Solanki and others 2014 (3) SCC 183*** to contend that the deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to the compensation paid to the land owners/persons interested. Prima facie the reliance placed is contrary to the pleadings of the petitioners as they have sought lapsing only on the ground of non-taking of possession and not on account of non-payment of compensation. Be it as it may law has now seen a sea change after the pronouncement of the judgment by the Constitution Bench of the Supreme Court in the case of ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SCC 1496*** which is the guiding light

for deciding the case at hand and suffice to mention that the judgment on which the reliance has been placed i.e. ***Pune Municipal Corporation (supra)*** has been expressly over ruled by the Constitution Bench in case of ***Indore Development Authority (supra)***. The concluding paragraph summarizing the principles for interpretation and applicability of Section 24 (2) of the Act of 2013 is reproduced herein 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'*

4. In essence, the Constitution Bench of the Apex Court 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 lapse. 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. section 71 and 80 of the Act of 2013, the Apex Court has clarified that the only consequence of non-payment of compensation is to make the payment of interest as per Section 34 of the Act of 1894. 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 penalised for non-payment as the amount has remain 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 24 of the Act of 2013 to 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 vests in the State and there cannot be any divesting or lapsing.
- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, 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 provisions of Section 24 (2) cannot be invoked.

(g) The Hon'ble Court has further clarified that if the acquisition of land had earlier been challenged and the acquisition was upheld, which means the proceeding stood concluded, the umbrella protection of Section 24 (2) of the Act of 2013 cannot be invoked as it does not revive stale and time barred claims.

(h) In para 337, the Hon'ble Court has made it clear that the provision of Section 24 (2) of the Act of 2013 is meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under Section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of Section 24 (2) of the Act of 2013.

5. In response to the assertions made by the petitioners for seeking lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, the respondents have filed a short reply by way of an affidavit in light of the law laid down by the Supreme Court in the case of ***Indore Development Authority Vs. Manohar Lal and others (supra)***. Mr. Ankur Mittal, learned Additional Advocate General, Haryana appearing on behalf of the State contends that the possession of the land in question was taken by recording Rapat Roznamcha No. 262 dated 04.01.1994 and stated that the compensation amount with respect to land in question has already been received by the petitioners, so much so that they have also

filed references under Section 18 of the Land Acquisition Act, 1894 seeking enhancement in the compensation. It is his contention that in view of the aforesaid none of the contingencies mentioned in Section 24 (2) of the Act of 2013 is fulfilled as the petitioners have failed to point out any inaction on the part of the State either for taking possession of the land or for payment of compensation which in essence is the touch stone/object of Section 24 (2) of the Act of 2013. He further submits that the land in question is very much essential to achieve the public purpose for which it was acquired as it affects the planning of 10 meter wide service road alongwith 60 meters wide sector dividing road of Sector 53 and 54, 12 meter wide service road and 60 meter wide internal road as per the approved development plan and thus cannot be released from acquisition proceedings.

6. By placing reliance on the principles laid down by the Supreme Court it has been contended that the recording of Rapat Roznamcha is a valid mode of taking possession of the land and such possession would construe physical possession under Section 24 (2) of the Act of 2013. Further since the word “or” used between the contingencies mentioned in Section 24 (2) of the Act of 2013 has been read as nor/and both the contingencies under Section 24 (2) of the Act of 2013 shall be fulfilled simultaneously within the prerequisite gap period of five years or more between the date of award and coming into effect of the Act of 2013. As far as the case at hand is concerned, none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled as the possession of the land stands taken and the compensation stands paid to the petitioners.

7. After having bestowed our thoughtful consideration to the rival claims put forth by the contesting parties and assessing them against the touchstone of the principles laid down by the Supreme Court in ***Indore Development Authority (supra)***, we are of the considered opinion that the instant petition deserves to be dismissed in view of the categorical pleaded stand of the State that the possession of the land in question has already been taken by recording Rapat Roznamcha No. 262 dated 04.01.1994 and thus the land in question stands vested in the State for all intents and purposes. In this regard the law laid down by the Supreme Court is categorical that once possession of land is taken, it vests in the State free from all encumbrances and whoever retains the possession of the land thereafter, has to be treated as trespasser and has no right to possess such land. Further, since one of the contingencies goes, the lapsing of acquisition cannot be claimed. Yet we proceed to examine the aspect of compensation, which admittedly has been received by the petitioners. Therefore, second contingency also goes and we accordingly hold that in the case at hand none of the contingencies provided in Section 24 (2) of the Act of 2013 is fulfilled and thus there is no lapse of acquisition proceedings in the case at hand.

8. In conspectus of what has been discussed here in above and in view of the principles laid down by the Supreme Court in the case of ***Indore Development Authority (supra)*** we have no hesitation to hold that in the instant case none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled, coupled with the fact that the land in question is very much essential for achieving the public purpose as it affects the construction of roads, therefore, the instant writ petition is

hereby dismissed and pending application, if any, also meet the same fate. Interim order, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

February 03, 2022
ndj

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