

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 28753 of 2019

Date of Decision: 03.02.2022

Karambir Singh 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:- Ms. Divya Arora, Advocate for
Mr. Rahul Deswal, Advocate, for the petitioners.
Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana and
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 controversy involved in the matter at hand revolves around the applicability of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 onto the facts of the case wherein the award under section 11 of The Land Acquisition Act 1894 was announced on 22.01.1992 i.e. more than five years prior to the commencement of the Act of 2013 on 01.01.2014 and as contended by the petitioners, the possession of the land in question is not taken by the State. The amount of compensation has been received by the petitioners. Therefore, only ground based on which the lapsing of acquisition proceedings has been claimed is inaction on the part of the State to take physical possession of the land in question.

2. The controversy cropped up around interpretation of Section 24(2) of Act of 2013 was put at rest by the Constitution Bench of the Hon'ble Supreme Court of India in case ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*** thereby laying down principles for declaring the acquisition deemed to have been lapsed under section 24(2) of Act of 2013. The Apex Court has discussed in detail all the aspects necessary and relevant for interpreting section 24(2) of Act of 2013, however for the purpose of deciding the matter at hand, the reference to the concluding paragraph of the judgment would be suffice and same 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'.

3. The exposition made in the aforesaid judgment can be summarized in the following manner for more clarity on the principles laid down by the Constitution Bench:-

- (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 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 the 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 Hon'ble Supreme Court of India 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 Hon'ble 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 Hon'ble Supreme Court has further clarified that once the payment of compensation has been offered/tendered under section 31(1), the acquiring authority cannot be penalized for non-payment as the amount has remain unpaid due to refusal to accept by the landowner. To clarify it further, the Hon'ble SC 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 Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist 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 Hon'ble 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 be reiterated to hold that once the possession has been taken under section 16 of the Act of 1894, the land vest in the State and there cannot be any divesting or lapsing.
- (f) While computing the gap period of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the 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 invoke 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.

4. As per the case put forth by the petitioners, they are owners in possession of the land comprising in Khewat/Khata No. 349/367, Mustil/Killa No. 6//24/1/1 (1-14), Mustil/Killa No. 11//4/1/1 (0-4), 4/1/1/3 (1-16), 7/2/2/1 (1-16) as well as Khewat No. 326/312, Khatoni No. 344 and Khasra No. 6//24/1/1, 11//4/1/1, 4/1/3, 7/2/2/1 situated in the Revenue Estate of Naharpur Rupa, Tehsil and District Gurugram. The petitioners have inherited the land in question from their father Nafe Singh. It is the case of the petitioner that they have constructed their houses and even religious places on the land in question and same forms part of Shiv colony which is fully developed. The said land was acquired by the State of Haryana vide notifications dated 30.01.1989 and 25.01.1990 issued under section 4 and section 6 of the Land Acquisition Act, 1894, followed by award dated 22.01.1992 for the public purpose namely, for development and utilization of land as Commercial, Industrial Area Sector 33-34 at Gurugram. It is the case of the petitioners that despite having acquired the land in question, the State has failed to take possession of the land and till date they are in actual physical possession of the land in question. Further it has been contended that the petitioners have received compensation amount which they are ready to deposit back and are thus, seeking lapsing of acquisition proceedings on the ground of non-taking of physical possession of the land in question. The reliance has also been placed on the letter dated 29.03.2013 written by Administrator HUDA to point out towards the facts that the land of the petitioners cannot be utilized for the acquisition purpose and therefore, same may be released. He has placed reliance on the judgment

dated 14.08.2013 passed by this Court in CWP Nos. 2903, 2253, 3589, 3748 of 1990, wherein the instant acquisition proceedings were challenged by the other land owners except the petitioners. In the aforesaid decision, this Court after noticing the facts that the land for which the acquisition proceedings were challenged constituted a thickly built-up area and that even though the dispossession of the petitioners was stayed in the year 1990, the State machinery failed to prevent unauthorized constructions during the pendency of the writ petitions and all the basic amenities like electricity, water supply, roads were extended by the authorities themselves, therefore, taking legal and equitable considerations the directions were made to release the structures of the petitioners in those writ petitions from the acquisition proceedings. Hence, the petitioners have sought similar relief in the case at hand as well.

5. Refuting the contentions raised by the petitioners, Mr. Ankur Mittal, Ld. Additional Advocate General Haryana appearing for the State of Haryana submits that the contention of the petitioners of being in the possession of the land in question is devoid of merit as the possession of the land was taken by recording Rapat Roznamcha no. 309 dated 26.01.1992 and same was handed over to the beneficiary department. Further, he contends that the compensation for land in question was duly tendered i.e., was made available to the petitioners and same admittedly stands received by the petitioners. Therefore, it is submitted that since none of the contingencies mentioned in Section 24 (2) of the Act of 2013 are fulfilled as possession of the land stands duly taken and the obligation of the State to pay the compensation stands discharged with the tender/payment of compensation; the present petition merits dismissal.

6. As far as the plea of the petitioners seeking parity with the order dated 14.08.2013 passed by this Court in CWP No. 2903 of 1990 and other connected writ petition is concerned, Mr. Mittal has contended that it is settled law that the relief granted to the persons who had chosen to approach the Court of law within reasonable time, cannot be extended to such persons who accepted the fate and chosen not assail the proceedings at relevant point of time. The reliance has been placed on the judgment passed in the case of ***V. Chandrasekaran and Anr v. Administrative Officer and others 2012(12) SCC 133***, wherein the Hon'ble Apex Court has categorically observed that relief obtained by some persons, by approaching the Court immediately after the cause of action has arisen, cannot be the basis for other persons who have belatedly filed their petition, to take the benefit of earlier relief provided, for the reason that, such persons cannot be permitted to take impetus of an order passed by the court, at the behest of another more diligent person. Similar observations were made by the Hon'ble Supreme Court of India in case ***Shanti Sports Club and Another v. Union of India and others 2009(15) SCC 705***. Hence, it has been submitted that the claim of the petitioners is barred by delay and laches and no benefit can be granted to them based on the judgment passed in favour of such land owners who had approached this Court way back in 1990 whereas the petitioner has for the first time assailed the acquisition proceedings in 2019 i.e. after 30 years of announcement of the award.

8. In order to seek lapsing of acquisition proceedings under Section 24(2) of Act of 2013, it is incumbent on the petitioners to show that both the contingencies prescribed in Section 24(2) of Act of 2013 are fulfilled i.e. neither the possession of the land is taken by the State nor the compensation is paid the land owner(s) which means even if one of the contingencies is

fulfilled, there would be no lapse of acquisition proceedings. As regards the possession of the land in question, though the petitioners have contended that they are in actual physical possession of the land in question, however, the said averment is not tenable in view of the interpretation of '*physical possession*' made by the Hon'ble Apex Court in Indore Development Authority (Supra) wherein the Hon'ble Court has categorically held that the word possession used in the Act of 1894 has same meaning as that of physical possession used in Section 24 (2) of Act of 2013. When the State Government acquires the land and draws memorandum of taking possession which in the present case is by recording Rapat Roznamcha no. 309 dated 26.01.1992, that amounts to taking of the physical possession of the land and once the possession is taken, there is absolute vesting of the land in the State. Thereafter even if the landowner retains the possession of the land, he is a trespasser, and such possession of trespasser enures for his benefit and on behalf of the owner i.e. State. Since possession has been taken by recording Rapat Roznamcha no. 309 dated 26.01.1992, therefore, the physical possession of the land stands duly taken by the State. The plea of the petitioners that they are in physical possession of the land is thus, hereby rejected. If at all possession has been retained by them, it is only as trespassers and not as owners. As a consequence, thereof one of the essentials for claiming lapsing of acquisition proceedings goes.

8. Coming on to the aspect of compensation, admittedly compensation has been received by the father of petitioners which itself shows that the compensation amount was tendered and there has been no inaction on part of the State authorities in discharging its obligation as regards payment of compensation. Once it is so, the second contingency prescribed in section 24(2) of Act of 2013 also goes and thus, as none of the contingencies

prescribed in section 24(2) of Act of 2013 is fulfilled, the deeming fiction of lapsing provided under section 24(2) of Act of 2013 cannot be invoked. As far as the plea of the petitioners to deposit back the compensation amount is concerned, we are in agreement with the contention of the Ld. Counsel for the State that there is no provision in the acquisition Act, to deposit back the compensation and hence, the said plea is also rejected.

9. Besides, seeking lapsing of the acquisition proceedings under Section 24(2) of the Act of 2013 the petitioners have placed reliance on the judgment dated 14.08.2013 passed by this Court in CWP No. 2903 of 1990 arising out of the instant acquisition proceedings only to content that since the religious place was constructed prior to Section 4 and the area in question is surrounded by thickly populated area qua which the acquisition proceedings were quashed by this Court, their land also deserves to be released from the acquisition. We are afraid that the reliance sought to be placed on to the aforesaid judgments would be of any help to the petitioners as the law is well settled as regards the acquisition cases i.e. judgment passed in favour of another does not give cause of action to others who did not approach the Court in time. This issue came up for consideration before the Hon'ble Supreme Court of India in case *V. Chandrasekaran and another Vs. Administrative Officer and others 2012(12) SCC 133* wherein while referring to catena of judgments the Hon'ble Supreme Court went on to hold that the relief obtained by some persons, by approaching the Court immediately after the case of action has arisen, cannot be the basis for other persons who have belatedly filed their petition, to take the benefit of earlier relief provided, for the reason that, such persons cannot be permitted to take impetus of an order passed by the Court, at the behest of another more diligent person. Applying the ratio of the said judgment passed on to the

factual matrix of the instant case especially in the light of the reliefs being sought, we have no hesitation to hold that the provisions of Section 24(2) of the Act of 2013 does not give a fresh cause of action to the land owner to agitate something on merits or as regards the procedural irregularities viz. to assail the acquisition on merits. Even if some land owners from the same acquisition proceedings had challenged the acquisition prior to announcing the award which finally came to be decided in the year 2013, the petitioner cannot agitate anything other than seeking lapsing as admittedly the petition had been filed in view of the deeming fiction of lapsing provided by the act of 2013. Thus, this plea being raised being without any substance is liable to be rejected and the same is accordingly rejected.

10. Further, since, the acquisition proceedings qua the land in question concluded way back in the year 1992 and as contended by Mr. Ankur Mittal, the land in question is very much essential to achieve the public purpose as per the development plan, it cannot be released from the acquisition proceedings.

11. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority (supra), specifically after having recorded that in the case in hand, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, we have no hesitation to hold that in the instant case, the state has fully discharged its obligation qua both the contingencies occurring in section 24 (2) of 2013 Act and it being so, the present petition merits dismissal and hence, the instant petition is dismissed.

12. Having dismissed the main writ petition, all pending applications, if any also meet the same fate. The writ petition is dismissed. Status quo if any stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
ravinder

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