

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 35992 of 2019 (O&M)

Date of Decision: 03.02.2022

Rajpal Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.****Present:- Mr. Ajay Ghangas, Advocate, for the petitioner.****Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for the respondents.**

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

RAVI SHANKER JHA, C.J. (ORAL)

Shorn of unnecessary details, the issue involved in the instant writ petition is whether the acquisition proceedings qua the land of the petitioner have lapsed under Section 24 (2) of Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 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 case ***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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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 Hon’ble 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 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 Hon’ble 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. As per the case put forth by the petitioner, he has constructed a factory building on the land in question comprised in Khasra no. 4345/1/1/1(0-15) and 45453/1/1/6 (0-15) i.e. 1 Bigha 10 Biswa situated in the revenue estate of Village Taraf Insar, Tehsil and District Panipat. The said land is in the continuous possession of the petitioner since the time of its purchase. The said land was acquired by the State of Haryana vide notifications dated 23.02.1989 and 22.02.1990 issued under Section 4 and Section 6 of the Land Acquisition Act, 1894 respectively; followed by award dated 21.02.1992 for the public purpose namely for the development of

Residential and Commercial Sector 13-17 Panipat. It is the case of the petitioner that even after passing of the award neither the possession of the land was taken nor compensation was paid to him by the authorities and as such the acquisition proceedings have lapsed in view of Section 24 (2) of the Act of 2013.

6. Per contra, Mr. Ankur Mittal, learned Additional Advocate appearing for the respondent-the State of Haryana submits that the contention of the petitioner that he is in physical possession of the land is absolutely fallacious in view of the law laid down by the Hon'ble Supreme Court of India in Indore Development Authority (supra) wherein the recording of rapat-rojnamcha has been construed as a valid mode of taking possession and as such even in the case at hand, the possession of the land was taken vide Rapat No. 277 dated 21.02.1992 and further mutation No. 18741 dated 15.10.2003 has also been sanctioned in favour of the beneficiary department i.e. HSVP. Therefore, the land stood vested in the State free from all encumbrances and even if the petitioner is stating himself to be in the possession of the land, it is only in the capacity of a trespasser and not as owner. As regards the compensation he has submitted that the amount of entire compensation including for the land in question was duly tendered which is substantiated from the fact that out of the total amount of the award i.e. Rs. 16,52,32,478/- an amount of Rs. 13,44,57,860/- which constitutes majority of the compensation amount. The petitioner has thus chosen not to receive the same out of his own will. As a sequel of the aforesaid, he submits that since possession of the land stands duly taken and the compensation stands duly tendered, therefore, none of the contingencies provided under section 24(2) of Act of 2013 are fulfilled and as such the present petition merits dismissal.

7. 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

8. The petitioner in the instant petition has claimed to be in the physical possession of the land in question. Positive case set up by the petitioner is that even though the award was passed on 21.02.1992 but yet the physical possession 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 was duly taken by recording Rapat no. 277 dated 21.02.1992 and Mutation no. 18741 dated 15.10.2003 was duly sanctioned in favour of beneficiary department. 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 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.*

9. 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 petitioner 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.

10. 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. 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 aforesaid facts clearly reveals that the amount of compensation was duly tendered so much so the majority of the compensation amount stands disbursed and thus, the State has discharged its obligation towards making the compensation for the land acquired and thus the plea being raised by the petitioner that they have not been paid the compensation amount is rejected.

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

11. The Hon'ble 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. 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...'

12. In the case in hand as reflected from the reply filed, it is evident that after the award was announced on 21.02.1992, the physical possession was taken by recording the Rapat no. 277 dated 21.02.1992 where after the mutation was sanctioned in favour of the beneficiary department. As far as the compensation part is concerned, it stands duly stated in the reply that the amount was duly tendered and was made available to the petitioner. In view thereof, both the contingencies as provided in Section 24 (2) of the Act of 2013 are not fulfilled.

IV. Essentiality of the land in question

13. 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. Sector 13 to 17 Panipat 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.

14. 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, mutation was sanctioned in favour of the beneficiary department 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 petitioner 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.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
ravinder

Whether speaking reasoned	Yes/No
Whether reportable	Yes/No