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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : July 25, 2023

RAJ RANI

-Petitioner

V/S

STATE OF HARYANA AND OTHERS

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Gourav Verma, Advocate with
Mr. Aditya Gautam, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The writ of certiorari, as asked to be made in the present petition, relates to the quashing of the notification (Annexure P-1), as became issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), thus on 11.11.2002, whereby, the petition lands were brought to acquisition. Moreover, the further claim, as made in the present petition, is for the quashing of the notification (Annexure P-2), as became drawn under Section 6 of the Act of 1894, thus on 07.11.2003.

2. The learned counsel for the petitioner, in asking for the quashing of the Annexures (supra), makes a vehement espousal before this Court, that since the acquisition proceedings, as became launched under the Act of 1894, did not result, after an award being made by the learned Collector concerned, in pursuance to the Annexures (supra), and, after possession also becoming assumed by the acquiring authority concerned, in the compensation amount

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becoming tendered before the competent statutory authority or the court concerned, thus for its being made available for becoming disbursed to the landowner(s) concerned. Therefore, he submits, that thereby the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), thus become attracted, provisions whereof become extracted hereinafter.

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

3. However, since the learned State counsel has placed on record, a rapat of possession, relating to the petition lands, whereby, on 28.10.2005, the

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possession of the acquired lands became assumed by the acquiring authority concerned. Therefore, after assumption of possession of the acquired lands by the acquiring authority concerned, thereby there is complete vestment of right, title and interest over the petition lands, in the acquiring authority concerned, and, concomitantly there is complete divestment of any right, title and interest over the petition lands, in the present petitioner.

4. Though in terms of the statutory provisions (supra), one of the twin conditions relating to attraction of the mandate thereof, becomes accomplished for thereby this Court proceeding to construe, that the earlier launched acquisition proceedings under the Act of 1894, do not lapse as such, but the other statutory condition, which also requires its becoming completely satisfied and relating to the compensation amount, as became determined under an award, as made in pursuance to the Annexures (supra), thus becoming tendered before the authority concerned, or, before the court concerned, but was also required to be satiated at the instance of the acquiring authority concerned.

5. The above satisfaction would thus have ensured, that thereby this Court may be rather not proceeding to grant the asked for relief relating to the acquisition proceedings, as became launched under the Act of 1894, being construed to become lapsed.

6. In the above regard, it is stated at the bar by the learned State counsel, that the amount of compensation, as relates to the petition lands, did become tendered before the learned Collector concerned, thus prior to the making of the award concerned, and thereby, when as such, it was available to the landowner(s) concerned to claim its release, thereby in terms of paragraph 363 of the judgment, as rendered by the Hon'ble Supreme Court, in the case of

“Indore Development Authority V/s Manoharlal & Ors. Etc.”, SLP(C)

Nos.9036-9038 of 2016, paragraph whereof stands extracted hereinafter, wherein it has been postulated, that mere tendering of the compensation amount before the Collector concerned, for thus the same becoming available for becoming released to the landowner(s) concerned, rather would be a sufficient compliance to the mandate, as carried in Section 24(2) of the Act of 2013, and thereby, merely for non-payment, or, non-deposit of the compensation amount in the court concerned, thus would not cause the ill sequel qua thereby the acquisition proceedings, as became launched under the Act of 1894, becoming thereby construable to become lapsed.

“363. In view of the aforesaid discussion, we answer the questions as under:

“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*

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in the treasury instead of court to invalidate acquisition.”

7. In sequel, this Court finds no merit in the instant writ petition and is constrained to dismiss it. Accordingly, the writ petition is dismissed.

8. Moreover, in terms of paragraph 244 of the judgment (supra), paragraph whereof becomes extracted hereinafter, if yet the petitioner is in unlawful possession over the petition lands, or, is trespassing over the petition lands, thereupon it is open to the respondent(s) concerned, to draw such appropriate proceedings, as it may deem fit and appropriate.

“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.”

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 25, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No