

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-22082-2014

Reserved on: 07.08.2023

Pronounced on: 17.08.2023

MAMAN (DECEASED) THROUGH LRs and ORS.Petitioners

Versus

STATE OF HARYANA AND ORS.Respondents

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

Argued by: Mr. Satbir Singh Gill, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the writ petitioners crave the indulgence of this Court to accord to them the hereinafter extracted reliefs.

“.....for issuance of a writ in the nature of Certiorari quashing the impugned acquisition proceeding initiated by the respondents vide Impugned Notifications Dated 02.05.1972 (Annexure P-1) and dated 18.07.1972 (Annexure P-2) issued under Section 4 & 6 of the Land Acquisition Act, 1894 by respondents respectively, impugned notice dated Nil (Annexure P-3) issued under Section 9 of the Land Acquisition Act, 1894 and all subsequent proceedings in pursuance to the impugned Notifications in view of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the subject land

acquisition proceedings initiated under the Land Acquisition Act 1894 have lapsed as held by Hon'ble Apex Court in case of Civil Appeal No.877 of 2014 (Arising out of SLP (C) 30283 of 2008) titled as 'Pune Municipal Corporation and Anr. Versus Harakchand Misiriwal Solanki & Ors. decided on 24.01.2014 (Annexure P-12), as in the case in hand till date petitioners have not been paid compensation for the acquired land despite the fact that their land was acquired in the year 1972.

Further issuance of a writ in the nature of Mandamus directing the respondents to release the entire land from acquisition which was acquired under the Land Acquisition Act, 1894 and to follow the procedure now envisaged under the new Act as called The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

2. The reliefs (supra), became anchored upon a judgment made by the Hon'ble Apex Court in case titled as “*Pune Municipal Corporation and Others v/s. Harakchand Misirimal Solanki and Others*” (2014 (3) SCC 183) to which SLP No.30283 of 2008, became assigned, wherein despite the mandate being cast, upon, the acquiring authority to physically tender the awarded amount, to the estate holders concerned, and, upon the said mandate remaining evidently un-complied with, thereupon, it became declared that thereby the earlier launched acquisition proceedings under the Land Acquisition Act, 1894, (hereinafter for short call as the ‘Act of 1894’), thus in terms of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer to as the 'Act of 2013'), rather become deemed to have become lapsed.

3. The above made decision by the Hon'ble Apex Court has been over ruled by a Constitution Bench of the Hon'ble Supreme Court,

in a judgment rendered in '**Indore Development Authority Versus Manoharlal and others'** *AIR 2020 SC 1496*, to which SLP (Civil) Nos. 9036-9038 of 2016, became assigned, wherein, the hereinafter expostulations of law are made by the Hon'ble Apex Court.

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 the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.*
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 2013 Act under the 1894 Act 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 2013 Act 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 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the 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 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation*

under Section 31 of the Land Acquisition Act, 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 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, 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). The landowners 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 2013 Act.

6. The proviso to Section 24(2) of the 2013 Act 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 1894 Act 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 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, 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 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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 2013 Act 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 2013 Act, 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. However, yet the petitioners contend before this Court, that even in terms of the above expostulations of law, as carried in the judgment (Supra), the compensation amount has never being tendered before the Treasury concerned, for thereafter it becoming available, for becoming released to the petitioners, rather there is complete denial of payment of the determined compensation amounts, thus to the estate holders, and, as became determined through award dated 28.12.1982, as became made under the 'Act of 1894'.

5. Be that as it may, upon, both the duo of the conditions set forth in the judgment (supra) as made by Hon'ble Apex Court, thus remaining un-complied with, thereupon the award dated 28.12.1982, as became passed under the 'Act of 1894', thus would be amenable to become declared to become lapsed. However, though amongst the duo of conditions, as, relate to compliance being made, both qua tendering of compensation amount, in terms of Section 31 of the 'Act of 1894', and, besides rapat possession being assumed of the acquired lands, yet there is no dispute that rapat possession of the acquired lands became

assumed. However, there is yet a dispute with respect to the compensation amount becoming not tendered in terms of Section 31 of the 'Act of 1894', thus for enabling the land owners concerned, to seek releases thereof. Therefore, it is argued that the award, as made on 28.12.1982 be declared to become lapsed.

6. In-so-far as the evident possession becoming assumed of the acquired lands by the respondents concerned, the said evident assumption of possession of the acquired lands, thus by the authority concerned, rather is graphically displayed in the apposite admission, admission whereof is echoed in paragraph 3 of the writ petition, para whereof is extracted hereinafter.

“3. That though as per Annexure P-1 to P-3 the land of the petitioners was acquired in the year 1972 and the possession was also taken but till date no compensation as well as the damages suffered by the petitioners of their produce.”

7. Therefore, reiteratedly the subsisting grievance of the petitioners, for theirs thus claiming the availability to them, of the lapsing of the acquisition proceedings drawn under the 'Act of 1894', as contained in Section 24(2) of the 'Act of 2013', and as became interpreted by the Hon'ble Apex Court, in the hereinabove extracted manner, is confined to non tendering of the compensation amount in terms of Section 31 of the 'Act of 1894', and thereby also in terms of the judgment (Supra), the same not becoming available for becoming disbursed to the estate holders, who are the petitioners herein. For determining the above limited scope of controversy which is engaging the contesting litigants, it is imperative to refer to the petitioners initially instituting CWP No.1043 of 2010, before this Court, thus with

concerned, to release qua them the compensation, as became determined vis-a-vis the acquired lands. The said compensation amount became determined through an award dated 28.12.1982, as, made under Section 11 of the 'Act of 1894'. The said writ petition was disposed of with a direction to the respondent concerned to expeditiously decide the claim of the petitioners, in accordance with law.

8. Thereafter, the petitioners again approached this Court, through their filing CWP No. 22629 of 2011, for their thus claiming relief as became raised earlier by them in the earlier writ petition. However, this Court through a verdict made thereon (Annexure P-11), after allowing the writ relief (supra), directed the respondents to pay the awarded amount of compensation to the petitioners but alongwith all the apposite statutory benefits as embodied in the 'Act of 1894'. Moreover, in the last paragraph of the verdict (Annexure P-11), paragraph whereof becomes extracted hereinafter, it was declared that since the determined compensation amount, thus was not offered to the petitioners, therefore, the petitioners were permitted to avail the remedy of seeking a reference under Section 18 of the 'Act of 1894' within a period of two months from the making of Annexure P-11.

“Since the compensation was not offered to the petitioners, it shall be open to the petitioners to seek reference under Section 18 of the Land Acquisition Act, 1894 within a period of two months.”

9. Apparently, the said reserved liberty to the petitioners remained unavailed by them. If so, they are estopped from contending that yet they are entitled to the lapsing provisions, as contained in Section 24(2) of the 'Act of 2013' and as became interpreted by the Hon'ble Apex Court in the verdict (supra).

10. Though for non compliance to Annexure P-11, the petitioners were led to institute a contempt petition bearing No. COCP No. 179 of 2013 before this Court. However, as unfolded by Annexure P-13, the said contempt petition was dismissed as withdrawn. The impact of a dismissal order being made, upon, the contempt petition (supra), by this Court, through its recording thereons Annexure P-13, when becomes combined with the hereinafter extracted unrebutted paragraphs No. 3, 4, 6, 7 and 8, as embodied in the reply, on affidavit, as furnished to the writ petition, thus bring forth the hereafter inferences.

(a) that despite the respondents concerned, making available thus in terms of Section 31 of the 'Act of 1894', the determined compensation amount to the petitioners, yet the petitioners refusing to either seek releases therefrom.

(b) or the petitioners for reasons best known to them, not receiving the compensation amount even when it became offered in compliance with the directions as carried in Annexure P-11.

(c) the petitioners even not receiving payments of the determined compensation amount through an award made in terms of the 'Act of 1894', hence as and when they became enclosed in cheques, rather theirs refusing to accept the cheques comprising the compensation amount, as became determined qua them in terms of an award, as made under Section 11 of the 'Act of 1894'.

**(Extractions of the afore mentioned paragraphs, as occur in reply,
on affidavit, of the respondents)**

3. That the writ petition is not maintainable which has been filed by the petitioners seeking to quash the notification dated 02.05.1972 (Annexure P-1) and notification dated 18.07.1972 issued under sections 4 and 6, respectively and also the notice under section 9 of the Land Acquisition Act, 1894 (hereafter in short referred to as 'Old Act') claiming these to be in violation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter in short referred to as 'New Act') taking shelter of the section 24 of the New Act. The petitioners are actually mis-stating that after the commencement of New Act w.e.f. 01.01.2014, the old Act shall cease to have any effect.

On the other hand, no doubt the old Act has been repealed but the repeal of an Old Act shall be without prejudice to the provisions of section 6 of the General Clauses Act.

It has been held by the Hon'ble Supreme Court of India in Jagan M. Seshadri V. State of Tamil Nadu reported in AIR 2002 SC 2399 amongst other plethora of judgments that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, in so far as it is not inconsistent with the provisions of New Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the New Act.

In the instant case, there is no dispute that when the notifications under section 4 and section 6 of the Act 1894 were issued respectively on 02.05.1972 and 18.07.1973, it was the Old Act which was in operation. In addition to that the phraseology of section 4 and section 6 of the old Act is in para-materia with sections 11 and 19, respectively of the New Act. The opportunity of filing objections as provided under section 5A of the Old Act is also in para-materia with the section 15 of the New Act and the notice issued under section 9 of the Old Act is also in consistence with the section 21 of the New Act. In this manner, there is nothing in the New Act, that could seek to annul what had been done by the respondents for acquisition under the Old Act could be stated

to be inconsistent with the provisions of New Act. Moreover, the new provisions cannot substitute repealed provisions of law and application of new provision to repealed provision in any proceeding will offend section 6 as has been held by the Hon'ble Supreme Court of India in Jagan M. Seshadri case (supra). As such, Section 24 of the 2013 Act is applicable "without prejudice to the application of Section 6 of the General Clauses Act, 1894".

4. That the petitioners are estopped by their own acts and conduct from filing the present Civil Writ Petition. As has been admitted by the petitioners that their land had been acquired and the possession of their land so acquired had been taken by the concerned department and as such, the land of the petitioners, on the basis of acquisition, vests to the State of Haryana, free from all encumbrances. Therefore, seeking the relief of RELEASE of the acquired land in the rest part of the writ petition is also not maintainable. Moreover, the plea of the petitioners for seeking such reliefs as taken in the petition revolves around the non-payment of compensation for their acquired land but it is again the petitioners who ceased to co-operate and refused to receive the monies of compensation, as and when so offered to be given or even when it was deposited in the concerned Treasury. None from the petitioners came to receive the amount of compensation payable to them. Even the office of answering respondent made a number of correspondence to the petitioners calling and inviting them to receive the cheques of their payments of compensation but the petitioners never received the compensation offered to them by cheques nor did they come to receive the payment either. As such, the petitioners cannot take benefits of their own wrongs. Now in view of the amendment by way of Ordinance the contention of the petitioners are of no assistance to them.

6. That the petitioners have not come to this Hon'ble High Court with clean hands and have suppressed the true and material facts from this Hon'ble High Court.

7. That the claim of the petitioners is not only time-barred but is also barred by other laws for the time being in force more particularly when almost all the equally situated people whose lands had been acquired for the public purpose alongwith the

land of petitioners, had already received their compensation regardless of the fact they were satisfied with the extent of compensation or not. The amount of compensation payable to the petitioners also stood deposited in relevant accounts but the petitioners are not receiving the same with ill-motives.

8. That the writ petition is badly hit by the principles of res-judicata as the same issues of payment of compensation, which has been actually claimed under the garb of repealed Act, has already been settled twice in the writ petitions No.1043 of 2010 and CWP No.22629 of 2011 whereafter also, the answering respondent offered the payment of compensation to the petitioners but instead of receiving the same, the petitioners are adamant to keep the matter prolonged in the Courts of law for no use for the reasons best known to the petitioners. The petitioners were sent the cheques containing the fully calculated amounts of compensation, which was refused to be received by the petitioners. Copy of the letter and compensation cheques so sent to the petitioners are enclosed as Annexure respectively. R-1 and Annexure R-2, respectively.

11. Therefore, but obviously there was no breach on the part of the respondents concerned, of the mandate made by this Court, and as becomes carried in Annexure P-11, rather the petitioners were avoiding to receive the compensation amount, as became repeatedly offered to them.

12. Be that as it may, the effect of the above, is that, for the omission (supra) of the petitioners, they cannot claim that the compensation amount, as became determined under Section 11 of the 'Act of 1894' did not either become tendered nor it was made available thus for it becoming released to the petitioners nor they can well make any valid submission before this Court, that thereby they are entitled to thus, on the apposite statutory condition, other than the admitted

possession of the acquired lands, becoming assumed by the petitioners,

thus appertaining, to the other imperative condition set forth in the judgment (supra), thus relating to the above factum, rather remaining un-accomplished nor thereby they can claim that the acquisition proceedings, as became launched under the 'Act of 1894', thus being amenable for becoming declared to become lapsed.

Final order of this Court.

13. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned notifications and the award are maintained and affirmed.
14. No order as to costs.
15. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.08.2023

kavneet singh

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