

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Civil Writ Petition No. 22202 of 2016 ((O&M)

Reserved on : 08.02.2023

Date of pronouncement: 24 April, 2023

Adarsh and others ...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. Sanjeev Kumar Dubey, Senior Advocate with  
Mr. Ankit Grewal, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with  
Ms. Kushaldeep K Manchanda, Advocate, for the  
respondents.

\*\*\*\*\*

**RAVI SHANKER JHA, CHIEF JUSTICE**

The core question that arises for our consideration is:  
whether the acquisition proceedings qua the land of the petitioners have  
lapsed in view of the deeming fiction envisaged in Section 24(2) of the  
Right to Fair Compensation and Transparency in Land Acquisition,  
Rehabilitation and Re- settlement Act, 2013 (“the Act of 2013”).

2. The petition at hands was earlier dismissed, along with a batch  
of several other writ petitions (lead case being CWP No. 18718 of 2016),  
on 12.10.2020 with the observations that since possession of the land in  
question had already been taken (by recording Rapat Roznamcha), thus, in

Court in *Indore Development Authority Vs. Manohar Lal and others* 2020(8) SCC 129, lapsing of the acquisition proceedings in terms of Section 24 (2) of the Act of 2013 could not be sought. Against the said decision, the petitioners moved the Supreme Court by a filing Special Leave Petition (C) No. 14937 of 2020, which was decided on 15.12.2020 and the petitioners were relegated to file a review petition so that this Court could consider/examine the factual matrix obtaining in the matter as also the documents that are being relied upon by the petitioners.

3. Consequently, the petitioners filed RA-CW No. 276 of 2020, which was allowed on 25.04.2022, whereupon a detailed written statement was filed by Land Acquisition Collector, Gurugram, to which replication has also been filed by the petitioners.

4. Learned senior counsel for the petitioners contended that land of the petitioners measuring 9 Bighas 15 Biswas 10 Biswani, situated in Village Faridabad, was sought to be acquired for a public purpose, namely, for development of Sector 28, Faridabad. Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 09.10.1973. However, upon consideration of the objections under Section 5-A of the Act of 1894, land measuring 2.48 acres was released from acquisition proceedings on account of construction raised on the said land. And eventually land measuring 5 Bighas 39 Biswas was notified under Section 6 issued on 01.10.1976. The award acquiring the land of the petitioners was announced on 15.04.1989.

By placing reliance on letter dated 19.09.1994 issued by the District Town Planner, Faridabad to Director, Urban Estate, Haryana, learned senior counsel for the petitioners contends that in addition to 2.48

acres of land, which was released pursuant to the objections under Section 5A, 1.39 acres of additional land was also released from the acquisition proceedings. In the light of the said fact, it was contended that there was no acquisition of the land at all, which shows that neither the possession of the land was taken by the respondents nor compensation has been paid to the petitioners. Therefore, acquisition proceedings qua the land in question lapsed.

In addition to the aforesaid, it has been contended that HSVP had carved out plots on the acquired land of the petitioners, out of which one plot measuring 500 square yards was allotted to Sh. S. Banga son of Sh. H.S. Banga, which was purchased by the petitioners. Upon which they had constructed the shops and houses, which are in existence for more than 40 years which, substantiates the claim of the petitioners that possession of the land in question was never taken by the respondents, and thus, the acquisition proceedings be declared to have lapsed under Section 24 (2) of the Act of 2013.

5. Per contra, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, submits that apparently the submissions made by learned senior counsel for the petitioners are contradictory. For on one hand, it is stated that the land is no more under acquisition and on other, declaration has been sought that acquisition proceedings be declared to have lapsed. In case the land had already been released from acquisition, there was no occasion for the petitioners to plead or seek any such declaration.

In reference to the written statement filed by the State, he crystallized the factual position that a notification under Section 4 of the Land Acquisition Act, 1894 (the Act of 1894) was issued by the State of Haryana (through Urban Estate Department) notifying its intent to acquire land measuring 147.28 acres, situated in Village Faridabad and 15.72 acres of land situated in Village Mewla Maharajpur, for development and utilization of land for residential Sector 28, Faridabad. As far as the petitioners are concerned, it was urged that Khasra No.1 comprises of land measuring (4B-2B), 1876/1 (3B-11B), 39 (0B-2B), 40 (1B-12B) and 4 (3B-0B). And in proportion to the share of the petitioners' in Khasra No. 4 (3B-0B), he owned a land measuring 11 Bigha 10 Biswas, situated in village Faridabad. As regards the land situated in village Mewla Maharajpur, the land owned by the petitioners comprised in Khasra No. 116//6/2 (1K-16M), 15 (7K-3M) and 16/1 (2K-11M), it was included and notified for acquisition vide aforesaid notification dated 01.10.1973 issued under Section 4 of the Act of 1894.

He submits that on consideration of the objections under Section 5-A of Act of 1894 filed by the petitioners, land measuring 2.48 acres i.e. 2 Bighas 4 Biswas comprised in Khasra No.1; 1 Bigha 2 Biswas comprised in Khasra No. 1876/1, and 14 Biswas comprised in Khasra No. 4, situated in village Faridabad, was left out of the acquisition proceedings. Pursuant thereto, a declaration under Section 6 of Act of 1894 was issued in two phases i.e., firstly, an area measuring 100.06 acres situated in village Faridabad was included in Section 6 declaration issued on 04.01.1974, which was followed by award date 22.02.1974.

However, no land of the petitioners was included in the said declaration

as well as in the award.

Thereafter, declaration under section 6 of 1894 Act was issued on 01.10.1976 for acquiring land measuring 37.22 acres (Village Faridabad) and land measuring 1.44 acres (Village Mewla Maharajpur). This declaration included the land of the petitioners measuring 4.14 acres comprised in the aforesaid Khasra numbers, after excluding the area released under Section 5-A situated in Village Faridabad, and further included land measuring 1.44 acres situated in Village Mewla Maharajpur. Subsequent to the issuance of section 6 declaration dated 01.10.1976, two awards were announced for Village Faridabad i.e. Award No. 7 dated 21.09.1978 and Award No. 5 dated 15.04.1982. The land of the petitioners i.e. 4.14 acres situated in village Faridabad (which has been claimed in the petition) was acquired vide the award No. 5 dated 15.04.1982. The possession of the land included in the award was taken by recording Rapat Roznamcha No. 429 dated 15.04.1982.

He submitted that as far as the land situated in village Mewla Maharajpur is concerned, again two awards were announced; one was award No. 7 dated 21.09.1978 and second was Award No. 4 dated 15.04.1982. The land of the petitioners measuring 1.44 acres was included in Award No 4 dated 15.04.1982 and the possession of the said land was taken by recording Rapat Roznamcha No. 378 dated 15.04.1982. In support of his above submissions, learned State counsel has placed reliance upon Annexure R-2, appended with the written statement, to show the factual matrix of the acquisition, which is summarized hereinbelow in the tabular form: -

| Khasra No.                                                                                                                                                                                                                                                                                                                                                                                                                                | Village   | Section 4                    | Release U/s 5- A     | Section 6                 | Award No. /Date                               | Awar d Area | Rapat No.              | Release after award                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|------------------------------|----------------------|---------------------------|-----------------------------------------------|-------------|------------------------|----------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |           | 01.10.1973<br>(147.28 acres) |                      | 1.10.1976<br>(37.22 acre) | 05/<br>15.04.1982                             |             | 429 Dt.<br>15.04.1982  | 0.83 Acre vide order dated 13.03.1986 (Balance Land 3.31 Acre) |
| 1<br>(4B - 2B)                                                                                                                                                                                                                                                                                                                                                                                                                            | Faridabad | (4B - 2B)                    | (2B - 4B)            | (1B - 18B)                | (1B - 18B)                                    | 4.14 Acre   | 429 Dt.<br>15.04.1982  |                                                                |
| 1876/1<br>(3B - 11B)                                                                                                                                                                                                                                                                                                                                                                                                                      | Faridabad | (3B - 11B)                   | (1B - 2B)            | (2B - 9B)                 | (2B - 9B)                                     |             | 429 Dt.<br>15.04.1982  |                                                                |
| 39<br>(0B - 2B)                                                                                                                                                                                                                                                                                                                                                                                                                           | Faridabad | (0B - 2B)                    | -                    | (0B - 2B)                 | (0B - 2B)                                     |             | 429 Dt.<br>15.04.1982  |                                                                |
| 40<br>(1B - 12B)                                                                                                                                                                                                                                                                                                                                                                                                                          | Faridabad | (1B - 12B)                   | -                    | (1B - 12B)                | (1B - 12B)                                    |             | 429 Dt.<br>15.04.1982  |                                                                |
| 4 (3B - 0B)                                                                                                                                                                                                                                                                                                                                                                                                                               | Faridabad | (3B - 0B)                    | (0B -14B)            | 4/1/1<br>(0B - 11B - 10B) | 4/1/1<br>(0B - 11B - 10B)                     |             | 429 Dt.<br>15.04.1982  |                                                                |
| Note: At time of Section-6, Khasra No.4 was divided in 3 part i.e. 4/1/1 (0B-11B-10B), 4/2(0B-11B-10B), 4/3 (1B-3B-10B). Out of this 4/1/1 (0-B-11B-10B) is under ownership of petitioner and was acquired vide award dated 15.04.1982. As far as Khasra No.4/2(0B-11B-10B), 4/3(1B-3B-10B), it is not under ownership of petitioner nor claimed in the petition and was acquired vide different award dated 21.09.1978 for (30.82 acre). |           |                              |                      | 4/2<br>(0B-11B-10B)       | 4/2(0B-11B-10B)<br>Award No.07/<br>21.09.1978 |             | 24 dated<br>21.09.1978 |                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |           |                              |                      | 4/3(1B-3B-10B)            | 4/3(1B-3B-10B) Award No.7/<br>21.09.1978      |             | 24 dated<br>21.09.1978 |                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |           |                              |                      |                           |                                               |             |                        |                                                                |
| 12B-7B<br>(7.718 acre)                                                                                                                                                                                                                                                                                                                                                                                                                    | -         | 12B-7B<br>(7.718 acre)       | 4B-0B<br>(2.48 acre) | 8B-7B<br>(5.218 acre)     | 8B-7B<br>(5.218 acre)                         |             |                        |                                                                |

| Khasra No.             | Village           | Section 4                  | Release U/s 5A | Section 6                 | Award No. /Date        | Award Area | Rapat No.             | Release after award                                            |
|------------------------|-------------------|----------------------------|----------------|---------------------------|------------------------|------------|-----------------------|----------------------------------------------------------------|
|                        |                   | 01.10.1973<br>(15.72 Acre) |                | 1.10.1976<br>(15.72 Acre) | 05 /<br>15.04.1982     |            |                       | 0.56 Acre vide order dated 13.03.1986 (Balance Land 0.88 Acre) |
| 116//6/2<br>(1K-16M)   | Mewla Maharaj pur | (1K – 16M)                 | -              | (1K – 16M)                | (1K – 16M)             | 1.44 Acre  | 378 Dt.<br>15.04.1982 |                                                                |
| 15 (7K-3M)             | Mewla Maharaj Pur | (7K – 3M)                  | -              | (7K – 3M)                 | (7K – 3M)              |            | 378 Dt.<br>15.04.1982 |                                                                |
| 16/1 (2K-11M)          | Mewla Maharaj pur | (2K – 11M)                 | -              | (2K – 11M)                | (2K – 11M)             |            | 378 Dt.<br>15.04.1982 |                                                                |
| 11K-10M<br>(1.44 Acre) | -                 | 11K-10M<br>(1.44 Acre)     | -              | 11K-10M<br>(1.44 Acre)    | 11K-10M<br>(1.44 Acre) |            |                       |                                                                |

It is urged that from a perusal of the aforesaid factual matrix, it is clear that in total 4.14 acres of land comprised in Khasra No.1 (1B-18B), 1876/1 (2B-9B), 39(0B-2B), 40 (1B-12B) and 4 (0B-11B-10B), situated in Village Faridabad, belonging to the petitioners was acquired vide award No. 5 dated 15.04.1982, the possession of which was taken vide Rapat No. 429 dated 15.04.1982. Further, land measuring 1.44 acres comprised in Khasra No. 116//6/2 (1K- 16M), 15 (7K-3M) and 16/1

(2K-11M) situated in Village Mewla Maharajpur belonging to the petitioners was acquired vide the Award No. 4 dated 15.04.1982 and the possession of the said land was taken vide Rapat No. 378 dated 15.04.1982. Accordingly, he asserts that since possession of the acquired land was obtained, the same stood vested in the State Government free from all encumbrances. He has placed reliance in this regard on the discussion made by the Constitution Bench of the Supreme Court in *Indore Development Authority (supra)*, wherein it has been held that drawing of panchnama is the valid mode of taking possession of the acquired land.

Further elucidating the factual aspect of the case at hand, Mr. Mittal submits that the amount of compensation qua the entire acquired land, which also included the land in question, was duly tendered at the time of announcement of award and was made available to the landowners as also the petitioners. However, they have chosen not to receive the amount of compensation out of their own will and volition. No fault can be attributed to the State agencies for non-payment of compensation as they had fulfilled their obligation to pay the compensation once the compensation amount was tendered. He submits that this aspect is also covered by the decision rendered in *Indore Development Authority (supra)*, for the “*tender*” of compensation is sufficient discharge of the obligation to pay compensation and actual payment or deposit in the Court is not required. As a sequel to the aforesaid, he submits that for declaring the acquisition proceedings to have been lapsed, it is incumbent upon the landowner to show that both the contingencies prescribed in Section 24(2) of Act of 2013 i.e. “*non-*

*payment of compensation*” and failure to obtain “*non-taking of possession*” co-exist. If one of the contingencies is not fulfilled, there can be no declaration as regards the lapsing of acquisition proceedings. Since in the case at hand, the possession of the land in question stands taken and the compensation also stands tendered, there can be no declaration as to lapsing of acquisition proceedings as none of the contingencies as prescribed in section 24(2) of Act of 2013 is fulfilled.

As regards the letter dated 19.09.1994, he has clarified that said letter merely states that additional land measuring 1.39 acres was released from the acquisition proceedings, which included 0.83 acres of Village Faridabad and 0.56 acres of Village Mewla Maharajpur. He submits that decision to release the land was taken as it was holding up the progress work as per the development plan due to retaining of possession by the petitioners even after it was acquired and further an area of 1420 square yards was also exchanged due to the same reason. Thus, the said letter could not be read to mean that land in question was never acquired. Rather, only an additional land was released from acquisition and a parcel of land was exchanged in lieu of exchange of 1420 sq. yards of land and rest of the land is still under acquisition. He has referred to the Part Demarcation Plan (appended with the written statement as Annexure R-2), which clearly depicts the area which stands released, the area which is acquired and the land which is to be exchanged.

Therefore, on two occasions, land of the petitioners was released from the acquisition proceedings i.e. 2.48 acres situated in Village Faridabad at the time of Section 5-A and 1.39 acres, situated in

Village Faridabad and Mewla Maharajpur, as depicted in the Part Demarcation Plan (Annexure R- 2) after the announcement of the award. Rest of the land is under acquisition, possession of which stands taken and the same forms part of the planning of the HSVP, the beneficiary department.

He has further drawn our attention to the Revised Layout Plan of Sector-28 Faridabad, which shows that land in question affects the planning of plot Nos. 9, 43 and 44 of Sector-28 Faridabad. He further submits that from a perusal of the layout plan, it reveals that except the land released in the manner stated above, rest of the land is acquired land and the land in question also forms integral part of the planning of the Sector. Rather the petitioners have encroached upon the acquired land unauthorizedly. The attempt of the petitioners to prove their possession over the land in question by referring to the fact that they had purchased the Plot No. 44-P from original allottee of HSVP also fails. Because firstly, this admission clearly shows that the land was acquired, developed and allotted by HSVP and thus, forms part of the acquired land. Secondly, the respondents have categorically stated in their reply that there is no record to show that plot was subsequently purchased by the allottee and even if it is so, it would not change the factum that the land is an acquired land and the petitioners are in unauthorised possession thereof.

6. We have heard learned counsel for the parties and perused the record.

7. The petitioners are seeking lapsing of acquisition proceedings in terms of Section 24(2) of Act of 2013 on the ground that neither the

possession of the land in question has been taken by the Government nor they have been paid the compensation. Therefore, two issues need to be addressed while deciding the question of lapsing i.e., *whether possession of the acquired land has been taken by the State and whether compensation for the land in question stands “paid” or not?*

8. The interpretation of Section 24(2) of Act of 2013 had remained subject matter of controversy for quite a while until it was settled by the Constitution Bench of the Supreme Court in the case of *Indore Development Authority (supra)*. The principles of interpreting the provision were summarized in the penultimate paragraph-366 of the judgment in the manner as follows:

**366.1. 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.**

**366.2. 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.**

**366.3. 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.**

**366.4. 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 landholdings 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.***

***366.5. 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.***

***366.6. 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).***

***366.7. 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).***

***366.8. 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.***

***366.9. 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.”***

9. Apparently, the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court is that the first condition to seek lapsing is that both the contingencies provided i.e. about the physical possession and the payment of compensation is to be fulfilled. Meaning thereby, if either of the conditions is not satisfied, there would be 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. For it would mean that compensation amount was made available to the land owner. And, if that was not accepted by the land owners, they cannot assert and claim that they have not been paid the compensation. Similarly, word “*deposit*” has been interpreted to mean depositing with the LAC or the treasury or the Reference Court. Further, 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 Supreme Court 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 also been clarified that Section 24 (2) of the Act of 2013 does not give rise to a new cause of action to question the legality of acquisition proceedings that have already been concluded. For

it applies only to those cases, wherein the proceedings were pending on the date of enforcement of Act of 2013.

10. In fact, we have had an occasion to comprehensively deal with and explain the entire gamut of discussion made by the Supreme Court in *Indore Development Authority (Supra)*, while deciding a bunch of petitions (lead case being *CWP No. 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others*) decided on 11.11.2020 and encapsulated the principles laid down by the Court as follows:-

***“32(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.(para 363 (1))***

***(b)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.***

***(c)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 in Indore Development Authority (supra)***

***(d)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 SC 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. (para 224 of the judgment)**

**(e) While reading the proviso to section 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.**

**(f) 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. (para 244, 245 and 363(7) of the judgment.**

**(g) 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. (para 363(4) of the judgment)**

**(h) 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. (Para 359 and 363(9) of the judgment)***

***(i) 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."***

11. Testing the factual matrix of the case against the touchstone of the principles laid down by the Supreme Court, it transpires that in total 4.14 acres of land comprised in Khasra No. 1 (1B-18B), 1876/1 (2B-09B), 39(0B- 2B), 40 (1B-12B) and 4 (0B-11B-10B) situated in Village Faridabad belonging to the petitioners was acquired vide award No. 5 dated 15.04.1982 for development of Sector-28 Faridabad. The possession of said land was taken by recording Rapat Roznamcha No. 429 dated 15.04.1982 and it was handed over to the beneficiary department. And land measuring 1.44 acres comprised in Khasra No. 116//6/2 (1K-16M), 15 (7K-3M) and 16/1 (2K-11M) situated in Village Mewla Maharajpur belonging to the petitioners was acquired vide Award No. 4 dated 15.04.1982 for the afore stated public purpose. Possession of the said land was also taken by recording Rapat Roznamcha No. 378 dated 15.04.1982. Significantly, the Supreme Court in ***Indore Development Authority (Supra)*** categorically held that recording of panchnama is the valid mode of taking possession and would amount to taking physical possession of the land. Therefore, once the possession of the land is taken, it vests in the State free from all encumbrances and any person who still retains possession of the land is a trespasser. The reference in this regard is made to the following paragraphs from the

judgment:-

***“ 246. Section 16 of the 1894 Act 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 1894 Act, whereas in Section 24(2) of the 2013 Act, 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.***

***247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act 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 is 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.”***

12. As noted above, learned senior counsel of the petitioners has made an attempt to persuade this Court to believe that physical possession still remains with the petitioners by placing reliance on letter dated 19.09.1994 and contending that they have constructed a residential house and shops on the land in question and even submitted that the land claimed by them was not even acquired. However, we do not find any merit in this contention for the Supreme Court, as indicated earlier, has laid down unequivocally that recording of Rapat Roznmacha denotes that the physical possession of the land has been taken by the government. And, if despite that possession is retained by the erstwhile landowners in any form, their possession over the acquired land would be of a trespasser and not of an owner. Therefore, at present, if there is any construction existing on the land at the instance of the petitioners, the same is unauthorised. Even otherwise, the State has clarified that on two occasions the land of the petitioners was released from the acquisition proceedings i.e. 2.48 acres (situated in Village Faridabad) was released at the time of Section 5-A on account of construction and 1.39 acres (situated in Village Faridabad and Mewla Maharajpur), as depicted in the Part Demarcation Plan (Annexure R-2), after announcement of the award. This fact is so recorded in the letter dated 19.09.1994 itself, upon which reliance has been placed by the petitioners, which states that in total 3.87 acres of land (2.48 acres + 1.39 acres) has been released from acquisition proceedings and rest of the land measuring 4.155 acres situated in village Faridabad and Mewla Maharajpur is under acquisition. In addition to this, land measuring 1420 square yards was also exchanged due to

holding up of development works.

13. The letter dated 19.09.1994 (Annexure P-5) records reasons for release of land and same is attributable to the petitioners, who refused to hand over the possession of the acquired land and were blocking the development works in the Sector. In no manner does this letter can be read to mean that the land in question is not under acquisition. The Part Demarcation plan (R-2) appended with the written statement clearly depicts the area, which stands released, area which is acquired and the land which is to be exchanged.

14. Rather, on the contrary, we are constrained to observe that the aforesaid letter dated 19.09.1994 shows the inequitable conduct of the petitioners, who first took advantage of illegally possessing the acquired land; got the land released and now again by misreading the release letter issued in their favour, are trying to project that there is no acquisition for the land and in case land was acquired, possession has not been taken by the State Government. Thus, the facts of the present case prove that the petitioners have retained possession of the land illegally even though it stood vested in the State.

15. It is further pertinent to mention that the Revised Layout Plan of Sector-28, Faridabad, depicts that the land in question affects the planning of plot Nos. 9, 43 and 44 of Sector-28 Faridabad. A perusal of the layout plan reveals that except the land released in the manner indicated above, rest of the land is the acquired land. And the land in question forms integral part of the planning of the Sector. Even on this ground, the prayer of the petitioners seeking release of the land cannot be countenanced.

16. As regards the compensation, the specific stand set out in the written statement is that the compensation for the acquired land was made available to all the landowners. Therefore, the amount due to the petitioners was/is available for disbursement and the petitioners are at liberty to receive the same. This shows that compensation amount was duly tendered and thus the obligation of the State to pay the compensation stands duly discharged. It would be apposite, at this stage, to refer to the observations rendered by the Supreme Court in para-205 in *Indore Development Authority (supra)*:-

*“...205. 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 the 1894 Act. 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% contemplated under Section 34, which is in pari materia with Section 80 of the 2013 Act. Section 34 is in pari materia with Section 80 of the 2013 Act 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 is 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.”*

17. Accordingly, we hold that the State has discharged its obligation towards making the compensation for the acquired land. As a consequence, second contingency for claiming lapsing of acquisition proceedings is also not available to the petitioners.

18. As shall be material to reiterate, the Supreme Court in ***Indore Development Authority (supra)*** 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. Further, it has been observed that word “or” occurring in Section 24 (2) of the Act of 2013 must be read as “nor” or “and” :-

***“100. 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 1894 Act read with the provisions of Section 24 of the 2013 Act. 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”.***

xxxx    xxxxx    xxxx    xxxx    xxxx    xxxx

***102. In Ranchhoddas Atmaram v. Union of India [Ranchhoddas Atmaram v. Union of India, AIR 1961 SC 935 : (1961) 2 Cri LJ 31] , 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 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 emphasized 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 1000 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 1000.**

**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.”**

**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.....**

**(emphasis supplied)”.**

19. Since the possession of the acquired land stands taken and the compensation amount has also been tendered, we hereby hold that none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled. Therefore, the said provision cannot be relied upon by the petitioners to claim lapsing of the acquisition proceedings. Accordingly, in conspectus of the aforesaid and especially in view of the exposition of law in *Indore Development Authority (supra)*, we dismiss the instant petition and vacate the interim order.

20. Having dismissed the main writ petition, all pending applications, if any, also meet the same fate. The writ petition is dismissed.

**(RAVI SHANKER JHA)  
CHIEF JUSTICE**

**(ARUN PALLI)  
JUDGE**

24 .04.2023

ravinder

|                           |         |
|---------------------------|---------|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable        | √Yes/No |