

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-3475-2014
Reserved on 01.09.2023
Date of Decision : 29.9.2023

M/S SOUTH WEST PROBUILD PVT. LTD.

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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CWP-24671-2012

M/S SOUTH WEST PROBUILD PVT. LTD.

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present : Mr. Sanjiv Ghai, Advocate with
Ms. Parminder S. Kaul, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana.

KULDEEP TIWARI. J.

1. Both these writ petitions have been preferred by the petitioner-company and the facts, legal issue and the relief sought therein are almost the same and similar, therefore, the same are being taken up together for disposal.

2. In CWP No.3475 of 2014, the petitioner company has

challenged the compulsory acquisition notification dated 6.3.2002 (Annexure P-4) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') followed by declaration dated 15.11.2002 (Annexure P-5) issued under Section 6 of the Act, and the award dated 22.7.2003 (Annexure P-6) under Section 11 of the Act of 1894 on the ground that the acquisition notifications have lapsed in terms of 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**'). In CWP No. 24671 of 2012, the petitioner company has prayed for issuance of a mandamus directing the respondents to consider the representation dated nil (Annexure P-17) and notice for demand of justice of the petitioner dated 5.3.2012 (Annexure P-18) in terms of policy dated 22.10.2008 (Annexure P-11) and to allot its own acquired land or other lands.

3. Before we adjudicate the contention raised by the learned counsel for the petitioner company, it is imperative to deal with the facts in detail.

4. The respondent-State Government had issued notification dated 06.03.2002 issued under Section 4 of the Act of 1894, for acquisition of land measuring 177 acres 5 kanal 19 marla of villages Bans Khusla, Kasan, Naharpur Kasan and Manesar, Tehsil and District Gurgaon, for a public purpose, namely, for setting up of Industrial Model Township to be planned and developed as an integrated complex for Industrial, Residential, Institutional, Commercial, Recreational and other public utilities and as per the provisions of the Act, the said notification

was published in the Official Gazette of the State Government vide notification No. 32/3/1994-4IB1 dated 06.03.2002 and in two daily newspapers, namely, "The Pioneer" (English) on dated 14.03.2002 and "Hari Bhoomi" (Hindi) on dated 15.03.2002. In view of the recommendations of the LAC, Gurgaon and the comments of the HSIIDC, the State Government issued declaration dated 15.11.2002 under Section 6 of the Act, for acquisition of land measuring 175 acres 4 kanal 15 marla of villages Bans Khusla, Kasan, Naharpur Kasan and Manesar, Tehsil and District Gurgaon and as per the provisions of the Act, the said declaration was published in the Official Gazette of the State Government vide notification No. 32/3/1994-4IB1 dated 15.11.2002 and in two daily newspapers, namely, "Indian Express" (English) on dated 23.11.2002 and "Vir Arjun" (Hindi) dated 25.11.2002. The order under Section 7 of the Act of 1894, was issued on dated 11.03.2003. The LAC, Gurgaon, announced the Award of land measuring 175 acres 4 kanal 15 marla vide Award No. 5 on dated 22.07.2003, thus completing the acquisition proceedings. The said land of the petitioner company was a forming part of instant land acquisition proceedings.

5. Initially, the predecessor company of the petitioner has challenged the impugned acquisition notification by filing CWP No.13230 of 2003 which was disposed of vide order dated 22.5.2006 with a direction to the committee of Group of Ministers to consider the representation of the petitioner-company. The operative part of the order (Supra) is reproduced hereinafter:-

“Shri R.N. Raina, learned counsel for the petitioner states that a committee of Group of Ministers has been constituted by the Governor of Haryana through notification dated March, 20/21, 2006. The learned Counsel maintains that the present writ petition filed by the petitioner-Company be dismissed as withdrawn with a liberty to the petitioner-Company to approach the aforesaid committee of group of ministers for Redressal of its grievances. Without expressing any opinion on merits of the controversy pleaded by the petitioner-Company, we dismissed the present petition as withdrawn with liberty to the petitioner-Company to approach the committee of group of ministers in accordance with law.

The petitioner Company would be at liberty to seek the appropriate interim relief before the aforesaid committee, if so advised.

Dismissed with the aforesaid liberty”.

6. The representation of the petitioner was not found to be favourable to the grievance committee and the same was ordered to be declined vide communication dated 2.1.2007. Having aggrieved with the declining order dated 2.1.2007, the petitioner company has again challenged the declining order (Supra) as well as the impugned acquisition notification by filing CWP No.3206 of 2008. However, the same was dismissed by this Court vide order dated 3.3.2008 on the ground that since the award has been passed, therefore, the petition is not maintainable. The operative part of the order reads as under:-

“We are further of the view that once the award under Section 9 of the Land Acquisition Act, 1894 has been passed on 22.7.2003, after issuance of notification

*and declaration under Sections 4 and 6 of the Land Acquisition Act, 1894, no writ petition would be maintainable as has been held by the Hon'ble Supreme Court in the cases of **Star Wire (India) Ltd., Vs. State of Haryana (1996) 11 SCC 698; Municipal Council Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48; C. Padma v. Dy. Secretary to the Government of Tamil Nadu, (1997) 2 SCC 627; and M/s Swaika Properties Pvt. Ltd. v. State of Rajasthan, JT 2008 (2) SC 280.** Therefore, we find that the instant petition is devoid of merit and is, thus, liable to be dismissed.”*

7. Now the petitioner company has filed the present writ petitions on the ground that the acquisition notification stands lapsed in view of the provisions of Section 24(2) of the Act of 2013.

8. It is pertinent to note here that prior to the filing of the instant writ petition, the petitioner company has also filed the second writ petition i.e. CWP No. 24761 of 2012 wherein the petitioner company has sought directions against the acquiring authority to consider its representation/notice of demand of justice in terms of policy dated 22.10.2008, and to allot the petitioner company its own land or any other land.

9. It is also pertinent to mention here that the writ petition No.3475 of 2014, was earlier allowed by this Court vide order dated 27.10.2016, on the ground that the acquisition notification has lapsed in view of the provisions of Section 24(2) of the Act of 2013. The order dated 27.10.2016, was subsequently challenged by the acquiring authority i.e. HSIIDC by filing SLP No.5958 of 2020. The respondent

No.3, herein, remained successful, and the SLP was finally allowed by the Hon'ble Supreme Court vide order dated 14.3.2022, and the matter was remanded back with a direction to decide the *lis* afresh in view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manohar Lal and others, AIR 2020 SC 1496**.

10. We have heard the learned counsel for the parties and perused the entire record with their able assistance. From the perusal of record, it reveals that after passing of the award dated 22.7.2003, the possession of petition land(s) was assumed by the HSIIDC vide *rojnamcha rapat* No.651 dated 22.7.2003 and the mutation was entered in favour of HSIIDC on dated 13.8.2003. It is further revealed from the record that the awarded money was not only tendered but was also deposited by the DRO-cum-LAC in the Court of learned Additional District Judge, Gurgaon vide its letter No.1089 dated 10.11.2014 vide cheque No. 503151 dated 10.11.2014 amounting to ₹33,25,924/-.

11. Moreover, the Constitution Bench of the Hon'ble Supreme Court in Manohar Lal's case (Supra), has laid down the two contingencies i.e. assumption of possession of land and tendering of award amount which are required to be fulfilled for the acquisition to sustain. Since both the contingencies stated above have been complied with, therefore, the impugned notification and the award have not been lapsed.

12. Since the compulsory notification has been successfully terminated by the pronouncement of award on dated 22.7.2003 and assumption of possession of petition land(s) by the acquiring authority

concerned, therefore, the provisions of Section 24(2) of the Act of 2013 cannot be invoked to revive the stale and time-barred claims and does not reopen concluded proceedings nor allow land owners 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. The reliance can be placed upon the relevant observations made by the Hon'ble Supreme Court in Manohar Lal's case (Supra):-

“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”.

13. We have examined the entire record and find that both the contingencies as prescribed by the Constitution Bench of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manohar Lal and others, AIR 2020 SC 1496**, have been complied with. In the aforesaid judgment, the Hon'ble Supreme Court has observed as under:-

“The concluding paragraph of the judgment is reproduced herein below for the kind consideration of this Hon'ble 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 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 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 nonpayment 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.”*

14. In view of the above specific observations, and as both the contingencies have been complied with, and consequently there is no lapsing to the impugned notification in view of the provisions of Section 24(2) of the Act of 2013, we find no merit in the present writ petitions and, therefore, the same are, hereby, dismissed.

15. All the pending applications, if any, stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

29.9.2023

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No