

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

CWP-26589-2016

Reserved on: 20.07.2023

Pronounced on: 28.07.2023

M/S J.D.WOOD PRODUCTS

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. Vikram Singh, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner had asked for de-notification or for release of the petition lands, thus on the ground that the earlier issued notification(s) Annexure P-4, and, Annexure P-5, as became respectively issued on 18.08.1987, and, 16.08.1988, in terms of Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter for short call as the 'Act of 1894'), thus inviting the mandate 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'), whereby there is lapsing of the earlier launched acquisition proceedings under the 'Act of 1894'.

2. The above claim/prayer in the writ petition was contested on behalf of the respondents through theirs instituting a reply on affidavit to the present petition.

Factual background of the case

3. The petitioner has earlier accessed this Court through theirs instituting Civil Writ Petition no. 26589 of 2016, and, through a decision made thereons on 27.11.2017, this Court allowed the writ claim, as became banked upon the provisions of Section 24(2) of 'Act of 2013' and thereby concluded that the earlier launched acquisition proceedings under the 'Act of 1894' thus became lapsed. However, the verdict (supra), became challenged at the instance of the State of Haryana before the Hon'ble Apex Court, through its filing civil appeal No. 6468 of 2021. On the said SLP, the Hon'ble Apex Court, through an order made on 06.04.2022, set aside the verdict (supra), and remanded the *lis* to this Court for a decision afresh, but in accordance with law, thus being made thereons. The decision, as made by this Court was made on anvil of a verdict of the Hon'ble Apex Court, as became pronounced in "*Pune Municipal Corporation and Others v/s. Harakchand Misirimal Solanki and Others*" (2014 (3) SCC 183). Nonetheless, since subsequent to the making of the said decision, a constitutional bench of the Hon'ble Apex Court, made a verdict in case titled as "*Indore Development Authority v/s Manoharlal and Ors.*", reported in (2020)8 SCC 129, whereby it departed from the earlier made verdict rendered in *Pune Muncipal Corporation* (supra). Since the verdict, as made by the Hon'ble Apex Court in case *Indore Development Authority* (supra), was rendered on 2020, whereas, the verdict of remand, as made on civil appeal no. 6468 of 2021 by the

Hon'ble Apex Court thus was made on 06.04.2022, thereupon the verdict as made by the Hon'ble Apex Court in *Indore Development (supra)*, is required to be applied to the facts at hand.

4. Before proceeding to apply the expostulations of law, as made by the Hon'ble Apex Court in verdict (*supra*), it is but obvious to extract the said expostulations and which become extracted hereinafter.

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.”*

5. The candid underlinings in the above extracted expostulations are that, the word 'or' used in Sub Section 24 (2) of the 'Act of 2013' thus between possession and compensation, has to be read as 'nor' or as 'and'. Therefore, in other words, in case possession has been taken but compensation has not been made, thereby there is no lapse and similarly if compensation has been paid but possession has not been taken, thereby also there is no lapse of the earlier launched acquisition proceedings under the 'Act of 1894'.

6. In addition, in case a person has been tendered, the compensation, as provided under Section 31(1) of the 'Act of 1894', thereupon too, it is not open for such a land owner to claim, that acquisition has lapsed under Section 24 (2) of the 'Act of 2013', but on the premise of non-payment or non-deposit of compensation in Court. The tendering of the amount would mean that the amount is made available to the landowner concerned, and thereby 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. In other words, once the payment of compensation, has been offered/tendered under Section 31(1), then the acquiring authority cannot be penalized for non-payment, as the amount has remained unpaid due to refusal to accept by the landowner. Thus, the obligation to pay is complete by tendering the amount under Section 31 (1) of the 'Act of 1894' and the land owners who refuse to accept compensation or who sought reference for higher compensation, thus cannot claim that the earlier drawn acquisition proceedings under the 'Act of 1894' thus lapse, through the invocation of Section 24(2) of the 'Act of 2013'.

7. In addition, the mode of taking possession under the 'Act of 1894', as contemplated under Section 24 (2), is merely by drawing of inquest report/memorandum. As such, once award has been passed in pursuance to taking of possession under Section 16 of the 'Act of 1894', thereby it has been mandated therein, that the land vests in the State, given there being no divesting provided under Section 24 (2) of the 'Act of 2013'. Moreover, when upon assumption of possession, besides upon tendering of compensation amount, thus there is no lapse of the earlier launched acquisition proceedings under the 'Act of 1894', rather through any purported invocation of the mandate of Section 24 (2) of the 'Act of 2013'.

Reasons for rejecting the submissions of the learned counsel for the petitioner in respect of non-tendering of the compensation amount.

8. Nonetheless, this Court is enjoined to deal with the merit of the submissions made by the learned counsel for the petitioner, that the imperative statutory condition which was required to be complied

with at the instance of the respondent concerned, so as to defeat the mandate of Section 24(2) of the 'Act of 2013' inasmuch as, the one relating to the tendering of the compensation amount in terms of Section 31(1) of the 'Act of 1894', whereby the said tendered compensation amount becomes available for being released to the land owner concerned. However, in respect thereof, also it is evident on a reading of the contentions raised in the reply that the compensation amount as determined in respect of the petition property, is lying deposited in the Court of learned Additional Sessions Judge, Faridabad, whereby, when it is thus tendered there, but in terms of Section 31(1) of the 'Act of 1894' and thus is made available for being claimed by the petitioner. Resultantly even if no releases therefrom are claimed nor are made in favour of the petitioner, yet the absence of making of any application for claiming releases thereof, nor the said determined compensation being released to the petitioner. Moreover, yet this Court, thus cannot sustain any argument as posed before this Court, by the learned counsel for the petitioner, that since the compensation amount has not been physically tendered to the petitioner, and thereby since the said physical tenderings are but a sine-qua-non alongwith assumption of possession, thus in terms of Section 24 (2) of the 'Act of 2013' resultantly the earlier launched acquisition proceedings are deemed to become lapsed. Contrarily, in view of the expostulations of law, as made in the judgment (supra), the above argument is completely fallacious and is rejected. In other words, given the above made expostulations of law, the said argument is un-meritworthy and is rejected.

9. In addition, in the face of the above, since the reading of the reply furnished to the writ petition by the respondent-State reveals, that both in pursuance of issuance of notifications (supra), besides in pursuance to the making of an award by the competent authority on 13.08.1990, not only possession over the petition lands became assumed by the authority concerned, but also the determined compensation became tendered, thus making it available for being released to the land owners concerned. Therefore, when the above reply, on affidavit, to the petition thus palpably reveals, that thereby the land owners concerned have but acquiesced to the legality of the earlier launched acquisition proceedings, as became drawn under the 'Act of 1894'. In consequence, the writ claim relating to the earlier launched acquisition proceedings being declared to as such lapse, is declined.

Further submissions of the learned counsel for the petitioner and reasons for rejecting the same.

10. Be that as it may, the learned counsel appearing for the petitioner has forcefully contended, by planking his submission on the mandate of Section 101 A of the 'Act of 2013', as became incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, that the petition lands are un-essential or unviable for the relevant public purpose. Therefore, he has argued that yet the petition lands, and or, irrespective of the earlier launched acquisition proceedings under the 'Act of 1894' thus becoming fully terminated, yet when the petition lands are un-essential or are unviable for being used for the relevant public purpose, thereby they are yet available for becoming released from acquisition.

“101A. Power to denotify land.- When any public

purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government.”

11. Therefore, though the above submission also, is but an acceptance, that the assumption of possession in respect of the petition lands, as contended in the reply, on affidavit, furnished to the writ petition by the respondent concerned, was through a *Panchnama* and/or through a *Rapat Rojnamcha*, and that such a mode of assumption of possession, thus falls in alignment with the expostulation of law (*supra*), as carried in the verdict made by the Hon'ble Supreme Court in case *Indore Development Authority (supra)*, whereby the earlier made verdict in case *Pune Municipal Corporation (supra)*, thus became overruled.

12. However, since as above stated, the learned counsel appearing for the petitioner has also planked his submission on anvil of Section 101 A (*supra*), but yet even the said submission becomes completely unhinged, in the face of a specific contention existing in paragraph No. 9 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“9. That it is respectfully submitted that the land in question has already vested in the State. The acquisition is complete in all the aspects. The land in question is very much essential to complete the development work as per the planning. As far as development works are concerned the development works stand completed in Sector 16A and Sector has been developed with all amenities. As per report received from the office of District Town Planner, Faridabad vide Memo. No. 1217 dated 24/02/2022 the land in question has been earmarked on the copy of approved Demarcation plan of Sector-16 A, Faridabad bearing Drawing No. DTP (F) 1741/95 dated 30/06/1995 and found that plot No. 679-P to 690-P, 24 feet wide road and 30 Mtr. Wide Green Belt along Delhi- Mathura road of sector-16-A, Faridabad as per development plan are affected from the land involved in the present writ petition.”

13. A reading of the said contents, does make graphic emergence(s), that the petition lands are earmarked for the apposite public purpose and thereby are utilized, or utilizable, and or, are viable for facilitating the apposite public purpose. Consequently, the counsel for the petitioner cannot argue that the petition lands are either un-essential or unviable for facilitating the apposite public purpose nor he can well rest any argument premised on the provisions of Section 101 A of the 'Act of 2013'. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention of the petition lands, which but evidently sub-serve the public purpose is rather completely unlawful. The reason being that the above ground premised on anvil of Section 101 A of the 'Act of 2013', is completely capricious and also is arbitrary. The reason being that the

unviability of the disputed lands rather for facilitating the apposite public purpose, thus are to be tested, on anvil of objective contemplations, as made by the authority concerned, and since the above objective thereto contemplation rather has been made by the authority concerned. Therefore, the petitioner has untenably planked the above argument, thus premised on the provisions of Section 101 A of the 'Act of 2013'.

Final order of this Court.

14. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders/notifications are maintained and affirmed.

15. No order as to costs.

16. 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

28.07.2023

kavneet singh

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