

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

Reserved on: 01.05.2023

Pronounced on: 12.05.2023

1. CWP-5546-2016 (O & M)

RASHPAL SINGH AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

....Respondents

2. CWP-5755-2016 (O & M)

AJMER SINGH AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB & ORS.

....Respondents

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

Argued by: Mr. A.P.S.Sandhu, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Ms. Urvashi Singh, Advocate
for Mr. Vivek Singla, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J.

1. Since both the writ petitions relate to a common relief, besides relate to a common impugned order Annexure P-8. Therefore, they are amenable to be decided through a common verdict.

Factual Background.

2. Admittedly through notification No. 10/6/99-4T(3)/4308, dated 31.03.2000, issued by the Government of Punjab, Department of Civil Aviation (Annexure P-1), the petition lands became acquired, for a public purpose, relating to the extension and development of Rajasansi Aerodrome into an International Aerodrome, and also relating to the setting up of a full-fledged Cargo Complex, at village Schinder (H.B. No. 346) and Heir (H.B.No. 347), Tehsil Amritsar-II, District Amritsar.

3. Admittedly, the said notification became issued in terms of Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'). The notification for acquisition, as revealed by Annexure P-1, and also as admitted in reply filed to the instant petition by co-respondents No. 2 and 3, thus was made, through recouring being made to the provisions, as, contemplated in Section 17 (2) of the 'Act of 1894'. It is also admitted besides is revealed from the impugned Annexure P-8, as appended to both the writ petitions, that the determined compensation, thus became released to the land owners concerned. Moreover, earlier to the institution of the instant petition, the writ petitioners, had admittedly filed Civil Writ Petition No. 23429 of 2014, before this Court, and the said writ petition through an order drawn thereons, on 17.11.2014, became disposed of with the hereinafter extracted order.

“The petitioners have filed two representations dated 19.09.2013 and 27.05.2014, Annexures P/3 and P/5 respectively, before the SDM-II, Amritsar with regard to the same relief as claimed in this writ petition.

Learned counsel submits that petitioners would be satisfied if a direction is issued to respondents to decide

the petitioners' representation expeditiously.

After hearing learned counsel for the petitioners, we dispose of this writ petition with a direction to respondent no. 3 to take a decision on the representation filed by the petitioners expeditiously, preferably, within a period of three months from the date of receipt of certified copy of the order.”

4. However, in pursuance to the above direction being made to the Sub Divisional Magistrate, Amritsar-II, the latter declined relief on the said representations of the petitioners, thus through his making Annexure P-8, whereby the petitioners are led to re-motion this Court through the instant writ petitions.

5. The reason as meted in Annexure P-8, for non drawing, an award in terms of Section 11 of the 'Act of 1894', is grooved, in the factum, that 80 per cent of the compensation had been determined through an award made on 10.05.2001, and also became rooted in the factum, that the said determined compensation became released to the claimants, besides possession of the acquired lands also became assumed. Therefore, the grievance raised by the petitioners, that they were yet entitled to, compensation to be determined, thus in terms of the provisions of Section 24 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'), but obviously became rejected. The provisions (supra) of the 'Act of 2013' are extracted hereinafter.

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

Land Acquisition Act, 1894,--

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

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

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

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

Submissions of the learned counsel for the petitioner(s).

6. The hereinabove extracted provisions make candid speakings, that where no award has been made under Section 11 of the 'Act of 1894', thereupon, the provisions of the 'Act of 2013' shall apply. Therefore, the learned counsel for the petitioners argues, that since the notification for acquisition (Annexure P-1) became issued, as revealed

Resultantly, he argues that the determination of 80 percentum of compensation, in favour of the land owners concerned, and also disbursement to them, yet did not relieve the Collector concerned, to yet in terms of Section 11 of the 'Act of 1894', thus make an award. However, since he has not made an award in terms of Section 11 of the 'Act of 1894'. Thus, he argues that for non drawing of the said award, thereby thus within the ambit of Section 24 (1) (a) of the 'Act of 2013', the proceedings under the 'Act of 1894' are deemed to have become lapsed, and, with a further consequence that compensation is to be determined in terms of the 'Act of 2013'.

Submissions of the learned State counsel.

7. The learned State counsel argues, that the above made argument cannot be accepted, as both the petitioners have accepted 80 per cent of compensation, though the said compensation being released in their favour.

8. Therefore, the issue which falls for consideration is whether the above made argument before this Court by the learned counsel for the petitioners, is covered, by the judgment of the Constitution Bench of the Hon'ble Apex Court, rendered in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned. In the case (supra), the Hon'ble Apex Court, after deliberating upon the provisions of Section 24 of the 'Act of 2013', has therein in paragraph No. 363 thereof, thus summarized the principles relating to the application of the provisions of Section 24 of the 'Act of 2013', and or, has expostulated, the principles, which speak whether the said lapsings

of acquisition proceedings under 'the Act of 1894', are applicable or not applicable to the factual scenario(s) concerned. The said principles, as contained in paragraph No. 363 of the judgment (supra), as made by the Hon'ble Apex Court, thus are extracted hereinafter.

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

- 1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.*
- 2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.*
- 3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.*
- 4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894*

shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of

2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

9. Tritely, the Hon'ble Apex Court, has in the above extracted principles, expostulated that the acquisition proceedings drawn under the 'Act of 1894', rather will not lapse under Section 24 (2) of 'the Act of 2013', but if compensation is deposited in the treasury instead of Court. Moreover, it has also been expostulated therein, that the word 'or' used in Section 24(2) between possession and compensation, should be read as 'nor' or as 'and'. In addition, it has also been mandated therein, that in case acquisition proceeding drawn under the 'Act of 1894', are initiated and possession is taken, but award is not passed, thereupon, there is no lapse of the entire proceedings as embarked upon under the 'Act of 2013', but compensation is to be determined in accordance with the provisions of the 'Act of 2013'. The relevant paragraph for making a decision, upon, the gravity or validity of the above argument, as, moved before this Court, is carried in paragraph No. 122 of the verdict (supra), para whereof stands extracted

122. Section 24(2) of the Act of 2013 deals with a situation only where the award has been made 5 years or more before the commencement of the Act, but physical possession of the land has not been taken, nor compensation has been paid. It does not visualize a situation where possession has been taken under the urgency provision of Section 17(1), but the award has not been made. In such cases, under Section 24(1)(a) of the Act of 2013, there is no lapse of entire proceedings: but compensation is to be determined in accordance with the provisions of the Act of 2013. In case of urgency, possession is usually taken before the award is passed. Thus, where no award is passed, where urgency provision under Section 17(1) of the Act of 1894 had been invoked, there is no lapse, only higher compensation would follow under Section 24(1)(a) even if payment has not been made or tendered under Section 17(3A) of the Act of 1894.

10. A reading of the above paragraph, unfolds that Section 24(2) of the 'Act of 2013', deals with the situation, only when the award is made five years or more before the commencement of the Act, but possession of the land has not been taken nor compensation has been paid. It has been further mandated, therein, that the said provision, does not visualize a situation, where possession has been taken, under the urgency provision of Section 17(1) of the 'Act of 1894', but award has not been made. Therefore, in such a situation, thus, in term of Section 24(1)(a) of the 'Act of 2013', there is no lapse of the entire proceedings but compensation is to be determined in accordance with the provisions of the 'Act of 2013' as in case of urgency, possession is usually taken before the award is passed. Therefore, it has been enshrined therein, that when no award has been passed, where the urgency provision

engrafted in section 17 (1) of the 'Act of 1894', thus has been invoked, thereby, there is no lapse of acquisition proceedings drawn under 'Act of 1894', but only higher compensation would follow under Section 24(1)(a) of the 'Act of 2013', even if payment has not been made or tendered under Section 17(3A) of the 'Act of 1894'. The imperative underlinings made in the above extracted relevant paragraph of the verdict of the Hon'ble Apex Court, are that, though when under the 'Act of 1894', the notification for acquisition occurs thus in terms of Section 17(1) of the 'Act of 1894', resulting in possession over the acquired lands becoming assumed but no award has been made in terms of Section 11 of the 'Act of 1894'. Thus, in terms of Section 24(1)(a) of the Act of 2013, there is no lapse of the entire earlier drawn acquisition proceedings rather under the 'Act of 1894', but compensation is to be determined, yet in terms of the provision (supra), of the 'Act of 2013'. However, yet further it has also been underlined therein, that compensation, thus in terms of Section 24(1) (a) of the 'Act of 2013' would be determined qua the land owners concerned, irrespective of the payment not being made to them nor being tendered under Section 17(3A) of the 'Act of 1894'. Resultantly the insightful signification of the above, is thus, that even if assumingly no award is passed under Section 11 of the 'Act of 1894', in sequel to an acquisition notification becoming issued in terms of Section 17(1) of the 'Act of 1894', then though compensation is to be determined in terms of Section 24(1)(a) of the 'Act of 2013', but with a rider that only if payment, has not been made or tendered under Section 17(3A) of the 'Act of 1894'. Therefore, only if the petitioners were not disbursed compensation, even if it was

only 80 percentum of the amounts, which they were otherwise entitled to, and or, if payment was not made or tendered under Section 17(3A) of the 'Act of 1894', whereby the lands became acquired, besides possession over them became not assumed, thereupon, alone for want of making of award in terms of Section 11 of the 'Act of 1894', thereby the petitioners would become entitled to claim determination of compensation in terms of Section 24(1)(a) of the 'Act of 2013'.

11. Consequently when in the instant case, though no award *stricto sensu* has been made in terms of Section 11 of the 'Act of 1894', but when 80 percentum of the compensation has been determined, under, an award made by the competent Authority, and the same when also becomes evidently disbursed to them, but as revealed by the impugned Annexure P-8, as well as by the reply filed on behalf of respondents No. 2 and 3. Therefore, the above condition precedent for theirs' invoking the provision of Section 24(1)(a) of the 'Act of 2013', inasmuch as, no compensation being paid to them, in pursuance to an award, thus does remains but completely unsatiated.

12. Be that as it may, the above interpretation thus would fall in complete alignment with principle No. 3, as carried in paragraph No.363 of the judgment (Supra), which contemplates, that there would be no lapsing of proceedings as drawn under the 'Act of 1894', in case compensation has been paid, to the land owners concerned, besides when possession of the acquired lands, thus has also been assumed. Therefore, when the word 'or' used in sub section 24(2) of the 'Act of 2013' between possession and compensation thus become mandated, to be read as 'nor' or as 'and', thereby when sub section (2) of Section 24 of

the 'Act of 2013', obligates that irrespective of no award, being pronounced under Section 11 of the 'Act of 1894', but both physical possession of the acquired land becomes assumed, besides compensation became disbursed to the land owners concerned, thereby the land owners concerned, becoming not entitled to the mandate of sub section (1) (a) of Section 24 of the 'Act of 2013'.

13. Nonetheless, the remaining 20 per cent of compensation be forthwith released to the land owners concerned, but alongwith interest accrued thereons, but in terms of the relevant statutory provisions, as carried in the 'Act of 1894'.

14. The above be done within four weeks from today. The remissions of the said amounts be made in the respective savings bank accounts of the land owners concerned.

Final Order

15. In aftermath, this Court finds no merit in the writ petitions, and, with the above observations, the same are dismissed. The impugned orders, Annexure P-8, are maintained and affirmed.

16. No order as to costs.

17. Since the main cases itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

12.05.2023
kavneet singh

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