

CWP-8430-2018

2023:PHHC:126936-DB

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-8430-2018

Date of Decision : 6.9.2023

M/S JEEVAN HANDLOOMS THROUGH NAVEEN PURI AND
BALKSH PURI AND ORSPetitioners

VERSUS

STATE OF HARYANA AND ORSRespondents

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

Present : Mr. Rakesh Nagpal, Advocate for the petitioners.
Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, DAG, Haryana.

KULDEEP TIWARI. J.

1. The instant petition engages the petitioners, in the third round of litigations whereby challenge is made to the acquisition notification dated 12.9.2021 (Annexure P-5) as issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act of 1894**') to the declaration dated 1.3.2002 (Annexure P-7) as issued under Section 6 of the *ibid* Act and also to the award dated 11.4.2002 (Annexure P-11). In the instant motion also, the petitioners have challenged the acquisition proceedings in view 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**') on the premise that neither the actual physical possession has been assumed by the acquiring authority concerned nor any compensation has been paid to the petitioners. Therefore, in view of the provisions of Section 24(2) of the Act of 2013, the impugned acquisition proceedings stand lapsed.

2. Before we adjudicate the contention(s), as raised by the learned counsel for the petitioners, to conclusively give quietus to the dispute once for all, it is deemed imperative to make an indepth survey of facts.

3. The Government of Haryana had issued a notification under Section 4 of the Act of 1894 on 12.9.2001 thereby expressing its intention to acquire 172.72 acres of land in Taraf Afghan, Hadbast No.17, 182.15 acres of land in Siwah, Hadbast No.31, 61.09 acres of land in Rissalu, Hadbast No.18 and 183.22 acres of land in Sewah, Hadbast No.32 of the Tehsil and District Panipat for a public purpose, i.e. to set up Sector 29, Part II, Panipat under the Haryana Urban Development Authority Act, 1977 and for shifting the Dying Units.

4. It is apt to note here that the petitioners are the subsequent purchasers/vendees of the original land owners concerned, as they purchased petition land after the issuance of notification under Section 4 of the Act qua the petition land(s). It is not in dispute that the petitioners had purchased the petition land vide registered sale-deed dated 21.9.2001 whereas, the notification under Section 4 of the Act was issued prior in time i.e. on 12.9.2001. Though the petitioners have tried to overcome the legal hindrances to well challenge the acquisition notification on the premise that they had executed an agreement to sell much prior to the issuance of the notification(Supra). However, nothing material has been placed on record to substantiate the legal and valid transfer of right, title and interest of the petition land(s) in favour of the petitioners, prior to the

issuance of the notification under Section 4 of the Act of 1894. Therefore, the petitioners, who are the subsequent purchasers of the petition land(s), are not at all entitled to lay any challenge to the acquisition proceedings, in view of catena of judgments of the Hon'ble Supreme Court as well as of this Court in this regard. More-so, the petitioners had earlier motioned this Court seeking quashing of impugned notification(s) by filing CWP-1989-2006, which was disposed of vide order dated 9.2.2006, with a direction to the authority concerned, to reconsider the claim of the petitioners in the light of the factual position as highlighted in the representation dated 25.1.2006. However, finding no merit in their representation, the authority concerned, rejected the same vide order dated 6.5.2006 which caused grievance to the petitioners and they again approached this Court by filing CWP-9372-2006 which was also disposed of by this Court vide order dated 28.9.2010. The relevant operative part of the judgment reads as under:-

“We have perused the electricity bills and the photographs also which indicate towards the above-said fact. Because no finding was given by the competent authority as to whether the unit was in existence and running when notice under Section 4 was issued, we deem it appropriate to allow this writ petition and quash the order dated 6.5.2006 (Annexure P-21) and remit the matter to the competent authority to decide it again. The petitioners be given an opportunity to produce the evidence to show that its unit was in existence and running when notice under Section 4 of the Act was

issued. The competent authority then shall pass an appropriate order.

In compliance of the order of the Hon'ble High Court, the claim of the petitioners were rejected by Government of Haryana vide detailed speaking order dated 28.1.2011 (Annexure P-17) and the relevant portion of the order is reproduced as under:-

“It is held that though the petitioner might be carrying on business in the name of 'Jeevan Handlooms' at some other site but no industrial unit was functioning at this site on 12.9.2001. Therefore, the representation for release of land is rejected.”

4. It is undisputed that the above order was not challenged by the petitioners, therefore, it attained finality and it is now established that at the time of issuance of impugned notification under Section 4 of the Act of 1894, the Industrial Unit was not functional at the acquired site. The petitioners remained silent until the enactment of the Act of 2013 and now they have laid challenge to the notification in view of the provisions of Section 24(2) of the Act of 2013.

5. Although, the learned State counsel has filed reply to the petition and according to the reply both the contingencies i.e. assumption of possession of the petition land(s) vide Rapat No. 409 dated 11.4.2022 and also the tendering of awarded amount with the competent authority concerned, have been fulfilled. As per the reply, out of the total amount of the award i.e. Rs.8,62,28,367/-, the amount of Rs.8,58,34,800/- has been disbursed and the rest of the amount is available for disbursement

and the petitioners are at liberty to receive the same.

6. 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.”*

7. In view of the above specific observations, since both the contingencies have been complied with consequently, there is no lapsing of the impugned acquisition proceedings in view of the provisions of

Section 24(2) of the Act of 2013 thereby we do not find merit in the present writ petition and, therefore, the same is, hereby, dismissed.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

6.9.2023

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