

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. Civil Writ Petition No. 17369 of 2001(O&M)
Date of Decision: May 23, 2014.

Bhupal Sharma PETITIONER(s)

Versus

State of Haryana and another RESPONDENT (s)

2. Civil Writ Petition No. 5495 of 2002(O&M).

Satish Chand and others PETITIONER(s)

Versus

State of Haryana and another RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. M.L.Sarin, Senior Advocate with
Mr. Hemant Sarin, Advocate
for the petitioners.

Ms. Palika Monga, DAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

SURYA KANT, J.(Oral)

This order shall dispose of CWP No.17369 of 2001 and CWP No.5495 of 2002 as both the petitions challenge the same set of notifications

dated 28.08.2001 and 30.08.2001 issued under Sections 4 and 6, respectively, of the Land Acquisition Act, 1894, followed by the award dated 27.03.2002, to the extent of acquisition of land of the petitioners.

[2] In CWP No.17369 of 2001, interim relief regarding dispossession of the petitioner was granted by this Court vide order 02.11.2001 in the same terms as was granted to the petitioner in CWP No.7539 of 2001.

[3] In CWP No.5495 of 2002 also vide order dated 05.04.2002, dispossession of the petitioners was stayed by this Court.

[4] The above-mentioned interim stay orders are operating till date.

[5] In this undisputed factual backdrop, the solitary question that arises for consideration is whether the petitioners are entitled to seek benefit 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 '2013 Act')?

[6] The aforementioned question is no longer *res-integra*. The Hon'ble Supreme Court in its recent judgment dated 07.05.2014 rendered in Civil Appeals No.5478-5483 of 2014, Union of India and others v. Shiv Raj and others, has interpreted Section 24(2) of 2013 Act in the context of those cases where State could not take possession of the acquired land due to interim stay orders passed by court(s) and meanwhile, the 2013 Act has come into force w.e.f. 01.01.2014. In the cited decision, the Hon'ble Supreme Court has held as follows:-

“4. **Limitation**

As regards this item relating to the period spent during

litigation would also be accounted for the purpose of determining whether the period of five years has to be counted or not, it should be clarified that it will apply only to cases where awards were passed under Section 11 of the Land Acquisition Act, 1894, 5 years or more prior to 1.1.2014 as specified in Section 24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of benefiting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the pendente lite period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have elapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act.”

The objects and reasons of the Act 2013 and particularly clause 18 thereof fortify the view taken by this court in the judgments referred to hereinabove. Clause 18 thereof reads as under:

*“The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where **award has not been made or possession of land has not been taken.**”*

(Emphasis added)

20. However, the aforesaid appeals have to be decided in the light of above settled legal propositions. The admitted facts of the case remains that the Respondents-Tenure Holders had filed objections under Section 5A of the Act 1894 as admitted in the

*affidavit filed by Smt. Usha Chaturvedi, Deputy Secretary (Land Acquisition), Land and Building Department, Vikas Bhawan, New Delhi, filed in January 2014 before this court. The award no. 15/87-88 had been made on 5.6.1987 and possession has not been taken till date though compensation has been deposited with the Revenue Department, which cannot be termed as 'deemed payment' as has been held in case of **Pune Municipal Corporation & Anr. (Supra)**."*

[7] The respondents have admittedly not taken possession of the acquired land in the instant cases, of course, due to stay orders passed by this Court. The award was passed more than five years before 01.01.2014 i.e., the date when the 2013 Act came into force. The petitioners have not received any compensation also till date. The principle of inclusion of *pendente lite* period expounded in Shiv Raj and others' case (supra) thus is fully applicable in the instant case(s).

[8] The concept of *pendente lite* having been explained by the Hon'ble Supreme Court, the acquisition of petitioners' land is declared to have lapsed. Consequently, both the writ petitions are allowed; the impugned notifications dated 28.08.2001 and 30.08.2001 and the award dated 27.03.2002 qua the petitioners are set aside. The respondents, however, shall be at liberty re-acquire the subject property in accordance with law and provisions of 2013 Act.

[9] Having held that, we cannot be oblivious of the fact that the land was acquired for the regulated development. As a consequence of the lapse of acquisition, if the petitioners succeed in changing the nature of land or if they create third party rights, it is likely to be detrimental to the 'public interest' as

several basic amenities like roads, sewerage or park etc. would also be adversely affected. We, thus, restrain the petitioners from alienating and/or changing the nature of their released land for a period of one year from the date of receipt of certified copy of the order. No construction shall be raised by the petitioners on their respective sites and the District Administration shall ensure that nature of the land is not changed by anyone.

[10] The aforesaid period of one year has been fixed so as to enable the State authorities to consider and re-acquire the subject land in accordance with the provisions of 2013 Act, if need be. If no fresh acquisition takes place during the period of one year, the petitioners shall be at liberty to utilize their land in the manner as may be permissible under the local laws.

(SURYA KANT)
JUDGE

(LISA GILL)
JUDGE

May 23, 2014.
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