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VIJAY LATKA & ANR.

v.

STATE OF HARYANA & ORS.

(Civil Appeal No. 4864 of 2016)

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MAY 05, 2016

[KURIAN JOSEPH AND R. F. NARIMAN, JJ.]

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Land Acquisition Act, 1894 – ss. 4, 6 and 11 – Land acquisition proceedings – Challenged in writ petition – Plea taken that since compensation was not paid, therefore in view of s. 24(2) of 2013 Act land acquisition proceedings lapsed – Petition dismissed by High Court – On appeal, held: Since the landlords have not been paid compensation in terms of the award passed, land acquisition proceedings are set aside as having been lapsed – Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – s. 24(2).

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Land Acquisition – Payment of compensation – Mode of – Held: When the land is compulsorily acquired, it is for the Requisitioning Authority to make payment and does not require the land-owner to come and receive the payment.

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Allowing the appeal, the Court

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HELD: 1. Under Section 24(2) of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, where an Award under Section 11 of the Land Acquisition Act, 1894 has been passed and in case compensation has not been paid to the land owner or deposited before the Court in terms of the requirements under the 1894 Act, the acquisition proceedings get lapsed, as if there is no acquisition. [Para 5] [766-F]

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2. It cannot be said that since the appellants failed to approach the quarters concerned for the compensation, they cannot be granted any relief. When a land is compulsorily acquired, it is for the Requisitioning Authority to make the payment and does not require the land owner to come and receive the payment. [Para 6] [766-G-H]

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3. As no compensation has been paid to the appellants in terms of the Award passed in the year 2005, the appellants are entitled to succeed. The proceedings for acquisition of land of the appellants and covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and leading to the Award referred to above stand set aside as having been lapsed. [Paras 8, 9] [767-C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4864 of 2016.

From the Judgment and Order dated 01.05.2008 in CWP No. 4118 of 2006 passed by the High Court of Punjab & Haryana at Chandigarh.

Rajiv K. Garg, Ashish Garg, Vineet Garg, T.L. Garg for the Appellants.

Dinesh Chander Yadav, AAG, M.K. Bansal, A.S. Rishi, Sanjay Kumar Visen for the Respondents.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted.

2. The appellants are aggrieved by the judgment dated 01.05.2008 in Civil Writ Petition No. 4118/2006 of the High Court of Punjab and Haryana. The writ petition was filed by the appellants challenging the Notification dated 11.11.2002 issued under Section 4 of the Land Acquisition Act, 1894 (For short '1894 Act') and the declaration dated 07.11.2003 and Award dated 31.10.2005. The High Court dismissed the writ petition on the sole ground that since Award had already been passed, the writ petition was not maintainable.

3. Be that as it may, during the pendency of the writ petition, in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short '2013 Act') appellants have filed an additional affidavit stating therein that the land acquisition proceedings have lapsed as far as the land of the appellants are concerned. Since according to the appellants, the respondent State has neither paid the compensation nor taken physical possession of the land, this court directed the State to respond to the affidavit. Accordingly, an affidavit dated 19th April, 2016 has been filed before this Court by the Administrator, Haryana

A Urban Development Authority. At paragraph 3 of the affidavit, it is stated that the award was made on 31.10.2005 and “that possession of the land was taken over on as is where is basis by the Land Acquisition Collector on 31.10.2005.....”. Whether taking over the possession in such a manner would satisfy the statutory requirement of taking physical possession is a question to be addressed.

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4. However, since the appellants are otherwise entitled to succeed in this case we leave that question open. It is the case of the appellants that no compensation in respect of the acquired land has been paid to them. Learned counsel for the respondents submits that whoever approached the Authority, the compensation has been paid. The learned counsel also invited our attention to paragraph 8 of the affidavit which reads as follows:

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“That as regards the compensation amount for acquired land, office of the Land Acquisition Officer, Panchkula has reported that the compensation has not been obtained by the petitioners though compensation to the extent of Rs.4,00,93,086/- has already been obtained by other land owners who came forward to take the compensation. Therefore, there was due offer of compensation and the present case does not fall within the meaning of provision contained in Section 31(2) of the Act, 1894.”

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5. Under Section 24(2) of the 2013 Act, where an Award under Section 11 of the 1894 Act has been passed and in case compensation has not been paid to the land owner or deposited before the Court in terms of the requirements under the 1894 Act, the acquisition proceedings get lapsed. In case compensation has not been paid, the land acquisition proceedings in respect of that acquisition will stand lapsed, as if there is no acquisition.

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6. The contention of the learned counsel appearing for the respondents is that whoever approached the Haryana Urban Development Authority or the competent authority has been paid compensation and since the appellants failed to approach the quarters concerned for the compensation, they cannot be granted any relief. We find this contention difficult to appreciate. When a land is compulsorily acquired, it is for the Requisitioning Authority to make the payment and does not require the land owner to come and receive the payment. *

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7. As and when land is taken over by way of acquisition, the land owner has to be compensated with the amount of compensation duly determined under the Act. In case there is any dispute as to who is to be paid the amount, the same is to be deposited in Court in terms of Section 31 of the 1894 Act. In this case before us, the stand of the Requisitioning Authority, namely, Haryana Development Authority is that the money is ready with them and it is for the land owner to come and receive the payment. This stand is not permissible under the law. It is for the authorities concerned to pay the money and take the land and in case there is any dispute as to whom the money should be paid, then the same has to be deposited in Court.

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8. As admittedly no compensation has been paid to the appellants in terms of the above mentioned Award passed in the year 2005, the appellants are entitled to succeed. Accordingly, the appeal is allowed.

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9. The proceedings for acquisition of land of the appellants and covered by the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and leading to the Award referred to above stand set aside as having been lapsed.

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10. The learned counsel for the Haryana Urban Development Authority submits that the land of the appellants has been acquired for the purpose of development scheme and it comes under the Green Belt. We make it clear that this judgment would not stand in the way of the HUDA taking fresh steps for requisition of the land of the appellants under the provisions of the 2013 Act.

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11. The appeal is allowed. No costs.

Kalpana K. Tripathy

Appeal allowed.

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