

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

Date of decision:24.9.2015

1.

CWP No.14698 of 2007(O&M)

Gurmit Singh

....Petitioner

VERSUS

State of Punjab and others

.....Respondents

Present: Mr. R.B.S. Chahal, Advocate for the petitioner.

Ms. Deepa Singh, Additional A.G. Punjab
for respondents.

2.

CWP No.9974 of 2006(O&M)

Charanjit Singh and another

....Petitioners

VERSUS

State of Punjab and others

.....Respondents

Present: Mr. Amit Jhanji, Advocate
for the petitioners.

Ms. Deepa Singh, Additional A.G. Punjab
for respondents No.1 and 2.

Mr. Simranjeet Singh, Advocate
for respondent No.3.

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

HEMANT GUPTA, J.(Oral)

By this order, we shall dispose of CWP No.14698 of 2007 and
CWP No.9974 of 2006 raising identical question of laws and facts
regarding acquisition of land.

For the facility of reference, the facts are being taken up from CWP No.14698 of 2007 wherein the challenge is to the acquisition of land initiated vide notification dated 07.03.1979 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') followed by a declaration dated 19.10.1979 under Section 6 of the Act for acquiring the land for construction of New Mandi Township at Phagwara. Award in pursuance of such notification was announced on 01.10.1982.

The petitioner challenged the acquisition proceedings before this Court by filing CWP No.4675 of 1982 but the writ petition was dismissed on 10.12.1982. However, the Civil Appeal Nos.2375-83 of 1986 titled State of Punjab and others v. Chanan Singh and others, before Hon'ble Supreme Court was disposed of when the following order was passed:-

"In these appeals the notification under section 4 of the Land Acquisition Act was issued on 07.03.1979 and the declaration under section 6 of the Act was published on 19.10.1979. Notices under section 9 of the Act were issued to the respondents in the month of November, 1979. In the latter part of 1982 the respondents filed writ petitions in the High Court questioning the validity of the impugned notification relying upon the decision in Radhey Shyam Gupta & Ors. v. State of Haryana & Ors., (A.I.R. 1982 P & H 519) which we do not approve. These writ petitions should have been dismissed by the High Court on the ground of delay. Instead of dismissing them the High Court proceeded to set aside the notifications relying upon the decision in Radhey Shyam's case (supra). We feel that the decision of the High Court is erroneous. We, therefore, set aside the judgment of the High court and dismiss the writ petitions filed before it. The Land Acquisition Officer shall proceed to pass the awards if he has not already passed them. He shall complete the proceedings within four months from the date of receipt of a copy of this order.

We are informed by Shri Uma Dutta, learned counsel for the respondents in civil appeal No.2383 of 1986 that subsequent to the decision of the High Court quashing the notifications the respondents

there in has constructed a building worth about two lakhs on the land in question. It is open to the Government to consider whether the area on which the building has been constructed may be withdrawn from acquisition. If the Government feels that the said area should be withdrawn from acquisition it may be proceed to issue appropriate notification under section 48 of the Land Acquisition Act.

Subject to the above observations all the appeals are allowed. No order as to costs.”

Even though the writ petition was dismissed on merits but in respect of the present land-owners there was a direction to consider as to whether the area on which the building has been constructed may be withdrawn from acquisition. It is thereafter, the State Government did not pass any order considering the construction raised except to state in the written statement filed that representation of the petitioner stands rejected vide order dated 21.08.2007. The said order has not even been appended with the reply.

The claim of the petitioners now is that the petitioners continue to be in possession of the land subject matter of acquisition and that compensation has not been deposited before the Reference Court.

In reply, it stands admitted that the compensation has not been paid to the land owners but was deposited with the Land Acquisition Collector. Learned counsel for respondent No.3 now states that the compensation has been deposited with the Reference Court on 23.09.2015.

Since, the award was announced in the year 1982 and neither the compensation has been paid before the Reference Court nor the possession has been taken, therefore, in terms of judgment of Hon’ble Supreme Court in Pune Municipal Corporation and another v. Harakchand

Misirimal Solanki and others, AIR 2014 (SC) 982, the acquisition proceedings stands lapsed in terms of Section 24(2) of the 2013 Act. The relevant extract from the judgment reads as under:-

“18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in *Nazir Ahmad v. King Emperor* [AIR 1936 Privy Council 253(2)] that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

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20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act.”

In view of the above, when admittedly compensation was not deposited before the reference Court, the proceedings stand lapsed. The acquisition proceedings in respect of the petitioners are declared to have been lapsed.

Thus both the writ petitions are allowed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 24, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE