

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

CWP No.11247 of 2014(O&M)

Date of decision:18.9.2015

Manjit Kaur and others

....Petitioners

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

Mr. Manoj Bajaj, Additional Advocate General, Punjab for respondents.

HEMANT GUPTA, J.(Oral)

The petitioners have invoked the writ jurisdiction of this Court for quashing of the acquisition proceedings for the reason that no compensation on account of acquisition of land measuring 6 kanals 7 marlas has been either paid or deposited before the Reference Court.

The acquisition of 26 kanals 19 marlas of land was initiated with the publication of a notification dated 15.01.2002 under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') for a public purpose namely for excavation of Sekhpura Adaltiwala Drain from RD-0-61000. The declaration under Section 6 of the Act was published on 18.09.2002 and the award was announced on 14.07.2003. The petitioners were paid compensation of land measuring 20 kanals 12 marlas i.e. an amount of

Rs.9,32,601/-. Aggrieved against the award, petitioners had sought a reference under Section 18 of the Act not only that the compensation is inadequate but also to the effect that the petitioners are entitled to compensation of 26 kanals 19 marlas. The learned Reference Court answered the reference on 12.09.2013 (Annexure P-3) wherein the State has been directed to pay compensation of the entire land. An appeal by the land-owners against the said award of the Reference Court is pending consideration before this Court.

In reply, the stand of the respondents is that the petitioners were the owners only to the extent of 2/3rd share i.e. 17 kanals 19 marlas as per the Jamabandi for the year 1998-99 i.e. the relevant Jamabandi prior to the publication of the notification under Section 4 and 6 of the Act. It is pointed out that the petitioners were not shown owners of Khasra Nos.32/5/2 and 6/1 which was shown to be in the ownership of the petitioners by way of *Fard Badar* i.e. by correction of the revenue record. It is pointed out that the compensation was assessed of the entire land and that the petitioners have been paid excess compensation.

The argument of learned counsel for the petitioners is that payment of compensation of the entire acquired land, in terms of the award of the Reference Court, has not been paid to the petitioners. Therefore, land acquisition proceedings stands lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act').

We do not find any merit in the argument raised. The compensation has to be paid as per the ownership in the revenue record. As per the revenue record, the petitioners are owners of 2/3rd share of the land measuring 26 kanals 19 marlas, as per the Jamabandi prior to the publication of the notification under Section 4 of the Act. The date on which the revenue record (Fard Badar) was corrected has not come on record. The argument of the petitioner is that there was mistake only in one Jamabandi for the year 1998-99. Therefore, the said Jamabandi cannot be made basis of non-payment of compensation of 6 kanals and 7 marlas of land.

In view of the respective stand of the parties, we find that there is dispute in respect of extent of ownership of the petitioners on the date of notification under Section 4 of the Act was published. The action of the State Government in paying compensation of 20 kanals 12 marlas even though the petitioners, as per the revenue record, were owners of 17 kanals 19 marlas cannot be said to be a case where compensation has not been paid.

In respect of an argument that for non-payment of compensation, the proceedings stands lapsed in terms of Section 24(2) of 2013 Act, again we find no merit in the same. For facility of reference Section 24(2) of 2013 Act reads as under:-

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.-

(1) xx xx xx

(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.”

Though, the petitioners have been paid compensation in terms of the ownership record in the revenue record but the argument of learned counsel for the petitioners that proceedings stand lapsed is required to be examined after taking into consideration proviso to sub-section (2) of Section 24 of 2013 Act. As per the said proviso, provisions of Section 24(2) of 2013 Act would be applicable where compensation in respect of majority of land-holdings has not been deposited. The consequence is that the beneficiaries are then entitled to compensation in terms of provisions of 2013 Act. Such proviso has been examined by Hon’ble Supreme Court in Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, AIR 2014 (SC) 982, wherein it has been held that the proviso appended to Section 24(2) of 2013 Act deals with the situation where in respect of acquisition initiated under the Act, the compensation in respect of majority of land-holdings has not been deposited, then all beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act. The relevant extract reads as under:-

“11. Section 24(2) also begins with non obstante clause. This provision has overriding effect over Section 24(1). Section 24(2) enacts that in relation to the land acquisition proceedings initiated under the 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied viz. (i) physical possession of the land has not been taken, or (ii) the compensation has not been paid; such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition proceedings, if the appropriate Government still chooses to acquire the land which was the subject-matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. *The proviso appended to Section 24(2) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the Section 4 notification become entitled to compensation under the 2013 Act.(Emphasis supplied)*”

The total land holding acquired was 26 kanals 19 marlas and the compensation of the land measuring 20 kanals 12 marlas has been admittedly paid to the petitioners, therefore, majority of land-owners of the land acquired has been paid compensation. Even if compensation of 6 kanals 7 marlas of land has not been paid, the consequence is contemplated in the proviso i.e. compensation under the 2013 Act and not that the proceedings will lapse. Since, the compensation of the majority of the land-holdings stands paid, we do not find that the petitioners are entitled to any indulgence in the present writ petition.

Consequently, the present writ petition is dismissed.

However, it shall be open to the petitioners to execute the award of the Reference Court in accordance with law through an appropriate Forum.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 18, 2015
‘D. Gulati’

(SNEH PRASHAR)
JUDGE