

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

**CWP No. 13006 of 2014
Date of decision: 21.5.2015**

Balbir Singh and others

.....Petitioners

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr.Rajesh Khandelwal, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana.

Mr. Ashish Chopra, Advocate for respondent No.6.

Ajay Kumar Mittal,J.

1. Challenge in this petition inter alia is to declare Section 24(1) (b) and (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, “the 2013 Act”) as discriminatory and violative of Article 14 of the Constitution of India to the extent it excludes cases for the grant of compensation under the 2013 Act in case the land acquisition proceedings are within five years of the passing of the said Act. Further prayer has been made for quashing the impugned order dated 29.5.2014, Annexure P.5, passed by respondent No.4, rejecting the petitioners' claim for compensation under the 2013 Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Agricultural land of Village Gorkhpur, Tehsil and District Fatehabad including the petitioners

was acquired in pursuance to notification under Section 4 of the Land Acquisition Act, 1894 (in short, “the 1894 Act”) for a public purpose namely for construction of 2800 Mega Watt Gorakhpur Atomic Power Project by the Nuclear Power Corporation of India Limited followed by notification under section 6 of the 1894 Act on 25.7.2011. According to the petitioners, they have not received any compensation till date. After the passing of the 2013 Act, they submitted a representation dated 5.10.2013, Annexure P.1 to SDM (Civil) Fatehabad for granting them fair compensation under the said Act. When no action was taken, they served a legal notice on the respondents to release the compensation alongwith all consequential benefits but nothing was done. Thereafter, the petitioners approached this Court through CWP No.895 of 2014 which was disposed of vide order dated 29.5.2014, Annexure P.5 with a direction to the respondents to decide the legal notice within three months. The respondents tried to dispossess the petitioners forcibly with the help of the police. According to the petitioners, the actual possession of the land is with them till date. They have no other source of income. Hence they have filed the instant writ petition with the prayer to grant them fair compensation under the new Act.

3. We have heard learned counsel for the parties.
4. Learned counsel for the petitioners submitted that period of five years prescribed under Section 24(2) of the 2013 Act is discriminatory, arbitrary and unreasonable whereas under Section 11A of the 1894 Act, the period prescribed for pronouncement of award is two years. Further, no award has been passed regarding super structures, crops and trees. In such a situation, it could not be said that the petitioners were not entitled to benefit

under Section 24 of the 2013 Act. Still further, on the basis of actual and physical possession of the petitioners, the benefit under Section 24 of the 2013 Act was also claimed. Reference was made to judgments of the Apex Court in *Mulchand Khanumal Khatri vs. State of Gujarat and others*, (2012) 5 SCC 365 and *Laxman Pandya and others vs. State of Uttar Pradesh and others*, (2011) 14 SCC 94.

5. Learned counsel for the respondents supported the impugned order.

6. It would be expedient to refer to Section 24 of the 2013 Act which reads thus:-

“24(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 -

(a) Where no award under section 11 of the said Land Acquisition Act has been made, then all provisions of this Act relating to the determination of compensation shall apply; and

b) Where an award under the said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(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.”

Clause (a) of Sub-section (1) of Section 24 of the Act provides that where no award under Section 11 of 1894 Act had been made, all the provisions of the 2013 Act shall apply for determination of compensation. Under Clause (b) of Section 24(1) of the 2013 Act, in an eventuality where the award had been announced under Section 11 of the 1894 Act prior to enforceability of 2013 Act, further proceedings shall continue under the 1894 Act. A plain reading of Sub section (2) of Section 24 shows that it is applicable in those cases where the award is announced five years or more prior to coming into force of 2013 Act.

7. Examining the issue of vires of Section 24 of the 2013 Act, it may be noticed that it is settled position that the courts should not ordinarily interfere with the policy decisions or statutory provisions enacted unless they are clearly illegal or unconstitutional. A statute is an edict of the legislature. When there is no violation of the constitutional provision or in the absence of arbitrariness or unreasonableness, the court shall not interfere with the legislation. The challenge has been laid to the provisions of Section 24 of the 2013 Act on the ground that the period of five years prescribed in Section 24(2) of the Act is arbitrary, unreasonable and discriminatory especially when under Section 11A of the 1894 Act, the period prescribed for announcing an award is two years. The legislature is fully empowered to specify the period and it cannot be said that the period of five years prescribed under Section 24(2) of the 2013 Act is discriminatory, arbitrary, unreasonable or violative of any provision of

Constitution of India or law or statute. The period prescribed under Section 11A of the 1894 Act is only for the purpose of announcing the award. The judgments in ***Mulchand Khanumal Khatri*** and ***Laxman Pandya's*** cases (supra) relied upon by the learned counsel for the petitioners also do not advance their case being based on individual facts involved therein.

8. Adverting to the merits of the controversy, it has been inter alia stated by the respondents in the written statement that the award was announced on 18.7.2012. The award having been announced in the present case on 18.7.2012 does not satisfy the essential requirements of Section 24 (2) of the 2013 Act. Possession of the entire land including that of the petitioners was handed over to Nuclear Power Corporation of India Limited (NPCIL) on 5.12.2013. Majority of the land owners received the compensation whereas the balance amount was deposited in the court on 1.4.2014. Learned counsel for the petitioners has not been able to substantiate that petitioners have any claim under Section 24(2) of the Act. In the order dated 29.5.2014, which has been attached by the respondents as Annexure R.4/12, it was recorded as under:-

“Award was announced by DRO cum LAC, Fatehabad on 18.7.2012. The possession of complete land including the land of the petitioners was handed over to NPCIL On 5.12.2013. majority of land owners i.e. 679 out of total 689 landowners, have accepted compensation. Compensation amount of balance 10 landowners (petitioners in this case) has already been deposited on 1.4.2014 in the Court of Additional District and Sessions Judge Fatehabad by DRO cum LAC Fatehabad.

In view of the facts given above, the petitioners are not entitled for compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

resettlement Act, 2013 as the ibid Act is not applicable in the instant case.”

In so far as compensation for super structures, crops and trees are concerned, in case, no compensation has been paid to them, the petitioners shall be entitled to claim the same in accordance with law.

9. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

May 21, 2015
'gs'

(Rekha Mittal)
Judge