

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

**CWP No. 13216 of 2015
Date of decision: 27.7.2015**

Balbir Singh and others

.....Petitioners

Vs.

State of Haryana 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.

Ajay Kumar Mittal,J.

1. The petitioners pray for a writ in the nature of mandamus directing the respondents to hand over possession of agricultural land to them which was taken illegally and forcibly from them without adopting due process of law.

2. A few acts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Agricultural land of of Village Gorkhpur Tehsil and District Fatehabad was acquired by the State Government in pursuance to notification dated 29.7.2010 issued under Section 4 of the Land Acquisition Act, (in short, "the 1894 Act") followed by notification dated 25.7.2011 under Section 6 of the 1894 Act. The said land was needed for a public purpose namely for construction of 2800 Mega Watt Gorakhpur Atomic Power project in Village Gorakhpur, Tehsil and

District Fatehabad by the Nuclear Power Corporation of India Limited (NPCIL) which included the land of the petitioners measuring 28 acres 6 marlas. Other land owners had already received the compensation but the petitioners had not. The award was passed on 18.7.2012. According to the petitioners, no compensation qua trees, tubewell, structure and crops etc. had been awarded. The petitioners challenged the award through CWP No.16476 of 2014 in this Court which was dismissed. The review petition was also dismissed. The petitioners filed Special Leave Petition before the Apex Court which is stated to be pending. Thereafter, the petitioners filed CWP No.13006 of 2014 which was also dismissed vide order dated 21.5.2015. On 27.5.2015, respondent No.3 illegally and forcibly dispossessed the petitioners from their land. According to the respondents, the petitioners had been dispossessed in pursuance to the order passed by this court whereas according to the petitioners, there is no such order on the record. Hence the instant writ petition.

3. Learned counsel for the petitioners submitted that there is no High Court order regarding taking over of possession from the petitioners and given to NPCIL. There is a Press Note Annexure P.1 appended with the petition to this effect. Learned counsel further submitted that the possession has been taken from the petitioners in contravention of Section 24(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, "the 2013 Act"). There is no automatic transfer of possession acquiring the land. Reliance has been placed on judgment of the Apex Court in ***Balwant Narayan Bhagde vs. M.D.Bhagwat and others***, AIR 1975 SC 1767 and judgment of Bombay High Court in ***Sitaram Shivchandrai Garoda and another vs. State of***

Maharashtra and others, 1995 LACC 428 (Bombay).

4. After hearing learned counsel for the petitioners, we do not find any merit in the writ petition.

5. Adverting to the merits of the controversy, the notifications under Sections 4 and 6 of the 1894 Act were issued on 29.7.2010 and 25.7.2011 respectively. The award was announced in the present case on 18.7.2012. The purpose of acquisition is for construction of 2800 Mega Watt Gorakhpur Atomic Power Project in village Gorakhpur, Tehsil and District Fatehabad by the Nuclear Power Corporation of India Limited (NPCIL). The land of the petitioners was also included in the acquisition. CWP No. 16476 of 2014 challenging the acquisition was dismissed by this Court. In review petition, the petitioners remained unsuccessful. Another attempt was made by them by filing CWP No. 13006 of 2014 challenging the vires of Section 24(1)(b) and (2) of 2013 Act. The said writ petition was also dismissed on 21.5.2015. The record of earlier petitions bearing CWP Nos. 16476 of 2014 and 13006 of 2014 filed by the petitioners shows that the possession of the land of the petitioners had been taken on 5.12.2013. There is no concrete material on record to substantiate the plea of the petitioners that the possession of disputed property was taken on 27.5.2015 as the photographs (Annexure P-5) cannot form the basis for holding in their favour. In such a situation, in view of dismissal of CWP No. 13006 and 16476 of 2014 by this Court, the present petition is not maintainable.

6. Further, possession of the entire land including that of the petitioners was handed over to the NPCIL on 5.12.2013. Majority of the land owners received the compensation. Thus, under Section 16 of the 1894 Act, the land in dispute had vested in the State free from all encumbrances.

Section 16 of the Act reads as under:-

“16. Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.”

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.

7. Coming to the judgments relied upon by the learned counsel for the petitioners, it was held in those cases that the possession taken by the Government should be actual and not symbolic. In the present case, the actual possession was taken by the respondents and handed over the same to NPCIL. Thus, the petitioners cannot derive any advantage from the said pronouncements.

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

(Ajay Kumar Mittal)
Judge

July 27, 2015
'gs'

(Rekha Mittal)
Judge