

Date of decision:14.9.2015

CWP No.15444 of 2014(O&M)

....Petitioners

VERSUS

.....Respondents

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the petitioners.

Mr. Manoj Bajaj, Additional A.G. Punjab
for respondents.

CWP No.215 of 2015(O&M)

....Petitioners

VERSUS

.....Respondents

Present: Mr. Naresh Kaushal, Advocate
for the petitioners.

Mr. Manoj Bajaj, Additional A.G. Punjab
for respondents No.1 to 3.

None for respondent No.4.

CWP No.19106 of 2014(O&M)

....Petitioners

VERSUS

....Respondents

Present: Mr. Naresh Kaushal, Advocate
for the petitioners.

Mr. Manoj Bajaj, Additional A.G. Punjab
for respondents.

CORAM: HON’BLE MR. JUSTICE HEMANT GUPTA
HON’BLE MR. JUSTICE HARI PAL VERMA

HEMANT GUPTA, J.

This order shall dispose of three writ petitions bearing CWP Nos.15444 and 19106 of 2014 and CWP No.215 of 2015 raising identical questions of law and facts. In all the writ petitions, the land was acquired by Public Works Department, Irrigation Branch, for different distributaries to provide irrigation facilities with the completion of Sutlej Yamuna Link (SYL) Canal Project.

The date of notifications under Section 4 and 6 of the Land Acquisition Act, 1894 (for short ‘the Act’); the date of award and the date of mutation in favour of the State are different in each case which are reproduced in a tabulated form:-

Case No.	Date of notification u/s 4 of the Act	Date of notification u/s 6 of the Act	Date of award	Date of mutation
CWP No.15444 of 2014	16.09.1988	05.10.1988	20.11.1990	27.03.2002
CWP No.215 OF 2015	30.03.1988	29.04.1988	31.03.1989	14.06.1990
CWP No.19106 of 2014	21.03.1988	11.04.1988	09.08.1989	26.02.2008

The abovementioned writ petitions have been filed on the ground that the acquired land continues to be in physical possession of the

petitioners being under cultivation, though in revenue record, the State is shown in possession, therefore, in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “2013 Act”), the acquisition proceedings are deemed to be lapsed.

In the written statements filed, the stand of the respondents is that physical possession of the land which was subject matter of acquisition is with SYL Canal Project and that the mutation stands sanctioned as mentioned above. The khasra girdawari records the ownership and possession of the Punjab Government. It is also pointed out that compensation of the acquired land has been received by the land-owners without protest. In fact, the land-owners have sought references under Section 18 of the Act and the enhanced compensation has also been deposited before the Reference Court. The land-owners have parted with possession after receiving of the compensation. Therefore, the petitioners are not entitled to the provision of Section 24(2) of the 2013 Act.

During the course of hearing, learned counsel for the petitioners were candid enough to admit that the petitioners have received the amount of compensation including the enhanced compensation and it was asserted that they continued to be in physical possession and that the State has not produced any document of act of taking possession as laid down by Hon’ble Supreme Court in Velaxan Kumar v. Union of India and others, AIR 2015 SC 1462.

On the other hand, learned counsel for the State has pointed out that the photographs produced by the petitioners in CWP No.15444 of

2014 shows that the land is vacant. No crop seen to be standing on the land which according to the petitioner is depicted in Annexure P-18. In CWP No.215 of 2015, though the petitioner has relied upon the photographs (Annexure P-8) wherein the crop is shown to have been sown but it is argued that after withdrawal of the amount of compensation including enhanced compensation and that too more than 25 years back, even if the petitioners have sown some crop, it will be an unauthorized act. Once the compensation amount has been withdrawn; mutation sanctioned and the State recorded in possession, the act of sowing crop even if it is presumed, will not entitle the land-owners of benefit of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

We have heard learned counsel for the parties and find no merit in the writ petitions.

The acquisition of the land was undertaken in the year 1988 and the compensation deposited in the year 1989 or soon thereafter. Such compensation has been withdrawn by the land-owners. The land-owners have sought references under Section 18 of the Act and have withdrawn enhanced compensation as well. Once, the compensation has been withdrawn, the act of the State of taking possession carries presumption of correctness. The land owners, who have withdrawn compensation around 25 years ago, cannot be permitted to say that though they have received the amount of compensation but continues in possession of land. The landowners are estopped to assert that they are in physical possession of land in these circumstances. The act of sanctioning of the mutation in

favour of the State is a public notice of the fact that the State is factually in possession.

Since it is impossible for the State to keep the acquired land under fencing, the unauthorized act of cultivation of the land vesting in the State cannot be treated to be a possession under Section 24(2) of 2013 Act. The acquired land was a vacant land without any super-structure. The possession of a vacant land follows the title. Once the State Government is the owner of the vacant land, the State is deemed to be in possession thereof. The possession contemplated under Section 24(2) of 2013 Act is legal possession but will not include unauthorized occupation after receiving the amount of compensation. The fact of possession of the State is manifest, when the mutation has been sanctioned. Therefore, the acquisition cannot be deemed to be lapsed.

The judgment referred to by learned counsel for the petitioner in Velaxan Kumar's case (supra) is a judgment wherein super-structure was acquired but the possession not taken. The facts in the present case do not lead to any inference that the possession was not taken by the State after the acquisition.

In view thereof, all the writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 14, 2015
'D. Gulati'

(HARI PAL VERMA)
JUDGE