

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP No.21837 of 2012 (O&M)

Date of Decision: 27.10.2016

Rajbir Singh & Ors. ... Petitioners
VS.
State of Haryana & Ors. ... Respondents

(2) CWP No.22073 of 2013 (O&M)

Dr.AC Nagpal ... Petitioner
VS.
State of Haryana & Ors. ... Respondents

(3) CWP No.2423 of 2014 (O&M)

Gajraj Singh ... Petitioner
VS.
State of Haryana & Ors. ... Respondents

(4) CWP No.2627 of 2014 (O&M)

M/s Penam Laboratories Ltd. ... Petitioner
VS.
State of Haryana & Ors. ... Respondents

(5) CWP No.2541 of 2014 (O&M)

Smt. Sudesh Chawla ... Petitioner
VS.
State of Haryana & Ors. ... Respondents

(6) CWP No.5430 of 2014 (O&M)

Mahinder Singh & Ors. ... Petitioners
VS.
State of Haryana & Ors. ... Respondents

(7) CWP No.3475 of 2014 (O&M)

M/s South West Probuild Pvt.Ltd. ... Petitioner
VS.
State of Haryana & Ors. ... Respondents

(8) CWP No.5905 of 2016 (O&M)

Dharam Pal & Ors. ... Petitioners
VS.
State of Haryana & Ors. ... Respondents

(9) CWP No.9451 of 2016 (O&M)

Sudesh & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

(10) CWP No.11987 of 2007 (O&M)

M/s Mudit Finance P.Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes / No |
| 4. To be referred to the Reporters or not? | Yes / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. Shailender Jain, Senior Advocate with
 Ms. Rajni Paul, Advocate;
 Mr. VK Jindal, Senior Advocate with
 Mr. Akshay Jindal, Advocate;
 Mr. JS Mehndiratta, Advocate;
 Mr. Vikas Lochab, Advocate;
 Mr. Sandeep Sharma, Advocate;
 Mr. Vikram Punia, Advocate;
 For the petitioners

Mr. Ravi Dutt Sharma, DAG Haryana
 Ms. Palika Monga, DAG Haryana

Mr. Lokesh Sinhal, Advocate for HSIIDC

SURYA KANT, J.

(1) This common order shall dispose of the above-captioned writ petitions as in all these cases, the question which arises for consideration is whether the acquisition of land shall be deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 on the ground that neither the petitioners have received compensation amount nor it was deposited in Civil Court as per Section 31(2) of the Land Acquisition Act,

1894 for a period of five years or more from the respective date of passing the award and till the new Act came into force w.e.f. 01.01.2014.

(2) Brief facts of each case are extracted for ready reference:-

CWP No.21837 of 2012

(3) The land of petitioners situated within the revenue estate of Village Umri, District Kurukshetra, fully described in para-2 of the writ petition was acquired by State of Haryana vide award dated 28.10.2005. The petitioners have constructed a cold storage on a part of the acquired land, and since the said cold storage was also acquired, they represented for its release. The cold storage was finally released from acquisition on 29.11.2006. Their representation for the release of vacant area which was being used by them for ancillary purposes was declined. The petitioners claim that they still continued to retain physical possession of the entire acquired area and have not received any compensation in lieu thereof.

(4) The Land Acquisition Collector has filed the written statement in which it is nowhere averred that the petitioners have received compensation for the acquired land or it has been deposited in the reference court in accordance with Section 31(2) of the 1894 Act.

(5) On the other hand, one of the petitioner (Sukhbir Singh) has filed an additional affidavit along with documents (A1 & A2) comprising the information received under the RTI Act, with a specific averment that they have not been paid the amount of compensation. The information received under the RTI specifically reveals that except 10 persons mentioned therein no one else has received the compensation. Names of the petitioners do not figure amongst the 10 persons who are said to have received the compensation.

(6) During the course of hearing also, it was duly acknowledged that the petitioners have not received the compensation nor it was deposited in the Court as per Section 31(2) of the 1894 Act.

CWP No.22073 of 2013

(7) The land of petitioner fully described in the head-note itself and situated in the revenue estate of Village Umri, District Kurukshetra was acquired vide Award dated 28.10.2005. Besides claiming continuous physical possession over the acquired land, the petitioner in his affidavit dated 10.03.2014 has specifically averred that he did not consent to receive the compensation amount and the same has not been deposited with the Civil Court/Reference Court in accordance with Section 31(2) of the 1894 Act. It is further averred in the affidavit that the compensation amount is in fact with the beneficiary Department, namely, HUDA.

(8) The above-stated averments have not been controverted by the respondents. In fact during the course of hearing, it was candidly admitted that neither the petitioner has been paid compensation amount nor it was deposited in the Reference/Civil Court.

CWP No.2423 of 2014

(9) The petitioner is a resident of village Mola Hera, Tehsil and District Gurgaon. His land fully described in para-2 of the writ petition and situated within the revenue estate of his village was acquired vide Award dated 08.12.2006. In para-9 of the writ petition, he has categorically averred that the compensation for his acquired land as assessed vide award (P4) was not paid to him and since he had already challenged the acquisition in this Court, he did not consent to receive the compensation amount. Respondent No.2 – Land Acquisition Collector was thus required to have deposited that

amount with the Civil/Reference Court as per Sections 31(2) & 34 of the 1894 Act but no such step was taken.

(10) Despite ample opportunities granted to the respondents, no reply/status report to rebut the above-stated stand of the petitioner has been filed. The averments are thus deemed to have been admitted. That apart, during the course of hearing, it was candidly admitted that neither the compensation amount was paid to the petitioner nor it was deposited with the Civil/Reference Court.

CWP No.2627 of 2014

(11) The land of the petitioner-company situated in the revenue estate of village Narsingpur, Tehsil and District Gurgaon fully described in para-3 of the writ petition was acquired vide Award dated 27.01.2006 (P4). The petitioner has specifically averred in para-8 of the writ petition that no compensation was paid to it and it never consented to receive the compensation assessed by the Collector. It is further averred that the compensation amount was not deposited in the Civil/Reference Court in accordance with Section 31(2) of the 1894 Act. It is also averred that physical possession of the land continues with the petitioner.

(12) The State Government in para-6 of its written statement dated 14.05.2015 has acknowledged the non-receipt of compensation by the petitioner. The beneficiary – HSIIDC has also filed its written statement and in para-8 thereof, it is claimed that the petitioner did not lift the compensation willfully. It is nowhere averred that the compensation amount was ever deposited with the Civil or the Reference Court.

CWP No.2541 of 2014

(13) The petitioner owned the land in village Mangalpur, Tehsil and district Karnal fully described in para-2 of the writ petition. The said land was acquired vide Award dated 21.12.2004. As per the averments made in para 15 of the writ petition, the petitioner has neither been paid the compensation amount nor in the absence of her consent to receive the same, it was deposited with the Civil or Reference Court as per Sections 31(2) & 34 of the 1894 Act.

(14) The Land Acquisition Collector has filed the written statement dated 27.02.2015 and in its para-15, it is admitted that the petitioner did not receive the compensation amount which is still lying deposited in the common account of the Land Acquisition Collector.

CWP No.5430 of 2014

(15) Petitioners No.1 to 3 are residents of village Rathdhana, while petitioners No.4 to 6 are residents of village Liwaspur, both in Tehsil and District Sonapat. The land fully described in para-2 of the writ petition, situated within the revenue estate of village Liwaspur was originally owned by petitioners No.1 to 3 but it was subsequently purchased by petitioners No.4 to 6. The said land was acquired vide award dated 01.05.1997. The acquisition came to be challenged before this Court in CWP No.3327 of 1997 which was admitted on 03.06.1997 with an order that if the award had not been pronounced the writ petitioners be not dispossessed.

(16) Besides claiming uninterrupted physical possession of the land, the petitioners have specifically averred in para-15 of the writ petition that no compensation amount has been paid to them.

(17) The Land Acquisition Collector, Urban Estate, Rohtak has filed status report dated 05.10.2016 and in para 4 of his affidavit, he has candidly

acknowledged that the compensation amount has not been lifted by the landowners till date and the said amount is lying with the Land Acquisition Collector in a separate account.

CWP No.3475 of 2014

(18) The petitioner is a transferee company of M/s Sarthak (India) Pvt. Ltd. as per the orders passed by Delhi High Court. M/s Bansal India (Pvt.) Ltd. has also amalgamated with the petitioner-Company.

(19) M/s Bansal India (Pvt.) Ltd. owned the land fully described in para-2 of the writ petition situated within the revenue estate of village Naharpur Kasan, Tehsil & District Gurgaon. The above-stated land was acquired vide Award No.5 dated 22.07.2003. The owner-company challenged the acquisition in this Court by way of CWP No.13230 of 2003 and its dispossession was stayed. The matter was referred to a High Powered Committee to consider the release of various claims like that of the petitioner. As the claim of the company was not accepted, it again approached this Court in CWP No.3206 of 2008 but the same was dismissed on 03.03.2008.

(20) In para 9 of the writ petition, the petitioner has averred that even after dismissal of the writ petition, it did not consent to receive the compensation and the said amount was never deposited before the Civil or Reference Court as per Section 31(2) of the 1894 Act. It is further averred in para 10 of the writ petition that the compensation amount actually remained lying with the beneficiary, namely, HSIIDC.

(21) State of Haryana has filed its written statement in which though it was claimed that physical possession was handed over to HSIIDC but as regard to the compensation, it is admitted in para 6 of the affidavit that the

award money has not been received by the petitioner and it has been deposited in the Court of Additional District Judge, Gurgaon only on 10.11.2014 i.e. much after the new Act came into force on 01.01.2014.

(22) During the course of hearing, learned State counsel also acknowledged the fact that compensation amount has not been paid to the petitioner.

CWP No.5905 of 2016

(23) The first petitioner and his two sons, namely, petitioners NO.2&3 are residents of village Kanhai, District Gurgaon. Their land measuring 2 kanal 6 marla described in para 2 of the writ petition was acquired vide Award dated 23.03.1993. In para 8 of the writ petition, the petitioners have averred that they have not received the compensation for the acquired land and the same is still lying with the Land Acquisition Collector Gurgaon. Physical possession of the acquired land is also stated to be with the petitioners.

(24) The Land Acquisition Collector, Urban Estate, Gurgaon has filed his written statement and in para 5 of reply on merits, he has admitted that petitioners did not give consent to receive the compensation and the undisbursed amount is lying deposited in the account of the Land Acquisition Collector.

CWP No.9451 of 2016

(25) The petitioners are resident of village Ashvarpur, Tehsil and District Sonapat. Their land measuring 8 kanal fully described in para 2 of the writ petition was acquired vide Award No. 17 dated 02.03.2006. They not only claim to be in physical possession of the acquired land, the

compensation amount has also not been paid as per averments made in para 9 of the writ petition.

(26) The Land Acquisition Collector, in his written statement dated 05.10.2016 has in para 3.2 admitted that the petitioners have not lifted the compensation amount which is still lying in a separate account maintained by Land Acquisition Collector.

CWP No.11987 of 2007

(27) The petitioner-Company claims to be the owner of the land fully described in para 3 of the writ petition and situated within the revenue estate of village Nathupur, Tehsil & District Sonapat. The above stated land was acquired vide award dated 24.11.2004. The petitioner – who is builder-cum-developer company is claimed to have applied for the grant of licence *qua* its acquired land. The long factual story narrated by the petitioner is wholly irrelevant for the purpose of decision of this case except the averments made in para-3&4 of CM-6170-CWP-2014, where it is specially averred that the compensation amount has neither been received by the petitioner nor it was deposited with the Civil or Reference Court in accordance with Section 31(2) of the 1894 Act.

(28) Land Acquisition Collector, Urban Estate, Rohtak has filed reply to the said application in which after making so many irrelevant and misleading averments, it is impliedly admitted that neither the compensation amount has been paid to the petitioner nor it was deposited in Court in accordance with Section 31(2) of the 1894 Act.

ISSUES FOR DETERMINATION

(29) We have heard learned counsel for the parties at a considerable length and gone through the records with their able assistance.

(30) The factual position as has emerged in these cases is that admittedly the petitioners did not give consent to receive compensation for their acquired properties and the same was neither paid nor it has been deposited in the competent court as per Section 31(2) of the Land Acquisition Act, 1894. There is, however, a serious dispute as to whether or not physical possession of the acquired properties has been taken by the respondents. Since the official respondents have categorically claimed that they have taken over the physical possession, we assume it to be correct for the limited purpose of deciding the applicability of Section 24(2) of the 2013 Act.

(31) For the detailed reasons assigned by us in a separate order of even date in **CWP No.11445 of 2008 titled as Ghasitu Ram vs. State of Haryana & Ors.** case on the question of “payment of compensation” within the meaning of Section 31(1) & (2) of 1894 Act, there can be no escape but to hold that petitioners succeed in their claim on the ground that as a result of non-payment of the compensation amount in accordance with law, the acquisition of their properties vide notifications/awards, details whereof are given in brief facts of each case, shall be deemed to have lapsed.

(32) Having held so, we are further of the view that since Section 24(2) of 2013 Act itself in so many words contemplates the possibility of re-acquisition of the land/property in respect whereof the previous acquisition has lapsed, it is necessary to direct the petitioners to maintain *status quo* re: creation of third party rights; to keep the land/property free from all types of encumbrances and not to change the nature of land/property for a period of one year so that meanwhile the respondent-State may, if such property is needed for a “public purpose”, again acquire it. Such a direction is

necessitated also for the reason that in numerous cases State or its agencies have taken possession in part and development works have been executed except over that land/property in litigation. Those development works ought to be completed in public interest and the only consequence of lapsing of previous acquisition, mostly due to fault of the Government Officers/ Officials, would be that the owners of such land/property will be entitled to compensation and other benefits admissible under the 2013 Act.

(33) Ordered accordingly.

(Surya Kant)
Judge

27.10.2016
vishal shonkar

(Sudip Ahluwalia)
Judge

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