

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23645-2014 (O&M)

Date of Decision: November 23, 2016

Sunil Dutt Sharma

.....Petitioner

Versus

The State of Haryana and others

.....Respondents

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

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

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Present: Mr.Adarsh Jain, Advocate
for the petitioner.

Mr.R.D.Sharma, DAG, Haryana.

Mr.Sandeep Moudgil, Advocate
for respondent No.4.

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SURYA KANT, J.

Petitioner has laid challenge to the Notifications dated 31.07.2006 and 09.08.2007 as well as the Award dated 29.07.2008 passed under the Land Acquisition Act, 1894 (for brevity, 'the 1894 Act') on the ground that the subject acquisition is deemed to have lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity, 'the 2013 Act').

estate of Machhgarh, Tehsil Ballabgarh, District Faridabad. Petitioner has admittedly constructed a residential house at the site. The factum of construction of residential house even before initiation of acquisition process is admitted by the respondents also.

[3] Petitioner seeks declaration re: lapsing of the acquisition on two grounds, namely, (i) he has not received the compensation amount so far; and (ii) he is in physical possession of the property for a period of more than five years before 01.01.2014 and after passing the Award.

[4] As regard to the payment of compensation, the Land Acquisition Collector in his written statement, dated 28.01.2015 has averred as follows:-

“25. That in reply to para no.25 of the petition it is submitted that the award money of the petitioners & others land owners have been deposited in the court of Sh.Y.S.Rathore, ADJ Faridabad under Section 30 of LA Act vide cheque No.231474 dated 01.03.2012 amounting Rs.3,07,934. Possession of the land has also been taken by the HSIIDC vide rapat no.915 dated 02.06.2011 after 27.01.2010 decision of the writ petition filed by the petitioners and other land owners.”

[5] In view of the fact that on refusal to accept compensation by the petitioner, the Land Acquisition Collector has deposited such amount before the Competent Court, petitioner can have no advantage of non-receipt of the compensation amount.

[6] The petitioner, however, succeeds on the plea of retention of physical possession of the site for a period of more than five years as on the date when the 2013 Act came into force on 01.01.2014. Such a conclusive inference can be drawn from the averments made by the State Government in its written statement dated 24.04.2015 where it is averred as follows:-

land has been entered in favour of the HSIIDC vide mutation No.3194/1 dated 26.03.2009 and khasra girdawari has also been sanctioned in the favour of the HSIIDC. The HSIIDC has also informed that the petitioner's land is falling under 18 meter wide peripheral road in R&R plots. It has also been informed that the petitioner has boundarised the plot area measuring 266.58 square meters on which he has constructed a house on land measuring 192.23 square meters and the balance area is open at site and also an area measuring 242.16 square meters has been boundarised on land in dispute”

[7] Similarly, the Land Acquisition Collector has also acknowledged the existence of residential house at the site in para 13 of its written statement, where he has averred as follows:

“13. That in reply to para no.13 of the petition it is submitted that the compensation/award money of the land Rectangle No.39 Kila No.17/1 has been deposited in the Court on 01.03.2012. The land on which the houses are constructed, possession of the same has also been taken by the HSIIDC vide rapat no.915 dated 02.06.2011 after 27.01.2010 decision of the writ petition filed by the petitioners and other land owners.”

[8] The photographs on record clearly indicate that the petitioner is residing alongwith his family at the site. The averments made by him to this effect in his writ petition have not been controverted by the respondents. The plea taken by the State Government that the petitioner was allowed to retain possession of the house at his own request is neither here nor there as no such request has been brought on record. Assuming that the petitioner made such a request, the fact remains that he was never dispossessed and physical possession of the house, after passing of the Award on 29.07.2008, continued with him uninterruptedly till the 2013 Act came into force on 01.01.2014 or even thereafter.

[9] Applying the ratio of catena of decisions of the Hon'ble Supreme Court on interpretation of Section 24(2) of the 2013 Act more particularly the decision in The Working Friends Cooperative House Building Society Ltd. Vs The State of Punjab and others, (Civil Appeal No.8468-2015) decided on October 12, 2015, we are of the considered view that the petitioner has successfully established that by virtue of retention of possession for a period of five years or more after the date of the Award till the 2013 Act came into force on 01.01.2014, the impugned acquisition is liable to be declared to have been lapsed.

[10] Ordered accordingly. The respondents shall be at liberty to withdraw the compensation amount deposited by them with the Reference Court qua the petitioner.

[11] Having held so, we are surely of the view that since Section 24 (2) of 2013 Act itself, in so many words, contemplates the possibility of reacquisition of the land/property in respect whereof the previous acquisition has lapsed, it is necessary to direct the petitioner to maintain *status quo* re: creation of third party rights; to keep the land/property free from all types of incumbrances 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.

**(SURYA KANT)
JUDGE**

November 23, 2016
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**(SUDIP AHLUWALIA)
JUDGE**

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |