

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24632 of 2015 (O&M)

Date of Decision: 27.10.2016

Jai Parkash ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

CWP No.13248 of 2016 (O&M)

Dinesh Kumar & Anr. ... Petitioners

VS.

State of Haryana & Anr. ... Respondents

CWP No.14665 of 2016 (O&M)

Daya Chand ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

CWP No.14679 of 2016 (O&M)

Jai Parkash & Anr. ... Petitioners

VS.

State of Haryana & Ors. ... Respondents

CWP No.14688 of 2016 (O&M)

Pritpal Singh ... Petitioner

VS.

State of Haryana & Anr. ... Respondents

CWP No.14767 of 2016 (O&M)

Shish Ram ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

CWP No.14837 of 2016 (O&M)

Girraj Singh ... Petitioner

VS.

State of Haryana & Ors. ... Respondents

CWP No.14206 of 2016 (O&M)

Gulab Singh ... 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? | No |
| 4. To be referred to the Reporters or not? | No |
| 5. Whether the judgment should be reported in the Digest? | No |

Present: Mr. Vikram Singh, Advocate;
 Mr. Deepender Singh, Advocate;
 Mr. Inderjeet Singh, 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 on one of the grounds under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, namely, that the physical possession of the acquired land/property(ies) is still with them.

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

CWP No.24632 of 2015

(3) The land of the petitioner measuring 6 kanal 10.5 marla out of total land measuring 26 kanal 2 marla fully described in para 2 of the writ petition, was acquired by the State Government for development of Industrial Model Township at Faridabad vide award passed in July, 2008. According to him, the subject acquisition is 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 the petitioner is still in possession of the land comprising a constructed structure and a residential house as may be seen from the photographs placed on record.

(4) A short reply has been filed by the Divisional Town Planner, HSIIDC – respondent No.3. It is averred that the land measuring 26 kanal 2 marla out of which petitioner's 1/4th share i.e. 6 kanal 10.5 marla is under litigation. In para 13, it is explained that the compensation of the aforementioned land to the tune of ₹ 2009271/- was paid to the petitioner vide Cheque No.533404 dated 01.09.2008 whereas compensation towards the structure constructed by the petitioner amounting to ₹ 939295/- was paid vide cheque No.491159 dated 28.01.2014. The factum regarding payment of enhanced compensation to the petitioner has also been explained.

(5) As regard to possession, it is averred in para 14 that the same has already been taken by HSIIDC vide kabja karvahi dated 07.08.2008 and mutation of the said land has also been entered in its name. Thereafter, a plot measuring 300 sq.yards has also been allotted to the petitioner on 21.07.2016 which has been accepted by him as he deposited 25% of the cost of the plot on 30.08.2016. Hence the writ petition is not maintainable.

(6) The petitioners seek a declaration to the effect that acquisition of their land measuring 5 kanal 12.5 marla fully described in para 2 of the writ petition acquired vide Award passed in July, 2008 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. The petitioners have averred that they are in actual physical possession of the land/property in question and thus one of the ingredients of Section 24(2) of the 2013 Act is satisfied.

(7) The HSIIDC has filed its written statement dated 21.10.2006 and in para 13 it is averred that the compensation of the aforementioned land to the tune of ₹ 1732130/- was paid to the petitioners vide Cheque No.967933 dated 07.08.2008. Apart from this, the petitioners have also received enhanced compensation of ₹ 1347913/- vide cheque No.125067 dated 20.11.2013.

(8) As regard to physical possession, it is pointed out that possession of land had already been taken by HSIIDC and mutation of the said land has also been entered in its name. It is urged that in fact plot measuring 8 marla has also been allotted to the petitioners on 21.07.2016 under the R&R Policy and the petitioners have even deposited 10% of the tentative cost of the plot. Hence the writ petition is not maintainable.

CWP No.14665 of 2016

(9) The petitioner who is a resident of Village Machgarh, Tehsil Ballabgarh, District Faridabad, seeks a declaration to the effect that acquisition of his land measuring 9.88 marla comprising khasra No.39//13/2, 18/2 situated in the revenue estate of his village which was acquired vide Award dated 29.07.2008 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. It is averred that the petitioner has constructed a residential house on the acquired land before issuance of Section 4 notification and the physical possession of the said land is still with him. Thus one of the mandatory conditions contained in Section 24(2) of the 2013 Act is satisfied. The petitioner has placed on record photographs, electricity bill and jamabandi for the year 2001-02 to substantiate his claim.

(10) The HSIIDC has filed written statement dated 21.10.2016 and in para 12, it is categorically mentioned that the compensation of the aforementioned land amounting to ₹ 152123/- including for the acquired structure to the tune of ₹ 700427/- was also paid to the petitioner vide cheque No.602725 dated 31.10.2011.

(11) It is pointed out that possession of land had already been taken and mutation of the said land has also been entered in the name of HSIIDC. It is averred that in lieu of the acquired land, the petitioner has been allotted a plot measuring 6 marla under the R&R Policy on 21.07.2016 and the petitioner has even deposited 25% of the tentative cost of the plot. Hence the writ petition is not maintainable.

CWP No.14679 of 2016

(12) The petitioners seek a declaration to the effect that acquisition of their land measuring 5 marla fully described in para 10 of the writ petition situated within the revenue estate of village Machgarh, Tehsil Ballabgarh, District Faridabad which was acquired vide Award dated 29.07.2008 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. It is averred that the petitioners have constructed a residential house on the acquired land in the year 1991 i.e. much before issuance of Section 4 notification and that they are in actual peaceful physical possession of the entire acquired land. The petitioners have placed on record jamabandi for the year 2001-02, photographs and electricity bill substantiate their claim and to say that one of the ingredients of Section 24(2) of the 2013 Act is satisfied.

(13) The HSIIDC has filed written statement dated 21.10.2016 and in para 12, it is categorically mentioned that the compensation of the aforementioned land amounting to ₹ 38492/- was paid to the petitioners vide cheque Nos. 231399 and 231501 dated 12.12.2012. Besides this, the petitioners have been paid even for the acquired structure.

(14) As regard to possession, it is pointed out that HSIIDC has taken the possession of the land vide kabja karvahi dated 07.08.2008 and mutation has also been entered in its name. It is averred that in lieu of the acquired land, the petitioners have been allotted a plot measuring 90 sq.mtrs. under the R&R Policy on 21.07.2016. Hence the writ petition is not maintainable.

CWP No.14688 of 2016

(15) The petitioner seeks a declaration to the effect that acquisition of land measuring 8 marla comprising Khasra No.39//13/2, 18//2/1 situated in the revenue estate of village Machgarh, Tehsil Ballabgarh, District Faridabad which was acquired vide award dated 29.07.2008 is deemed to have lapsed on one of the grounds as contained in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioner claims himself to be in actual physical possession of the land/property in question and the compensation

has also not been received. The petitioner has placed on record jamabandi for the year 2001-02 and photographs in order to establish that one of the ingredients of Section 24(2) of the 2013 Act is fully satisfied.

(16) The HSIIDC in its written statement dated 21.10.2016 has categorically averred in para 12 that the compensation amount of ₹ 123174/- was paid to the petitioner vide cheque No.226012 dated 15.12.2011 including for the structure.

(17) As regard to possession, it is pointed out that HSIIDC has taken the possession vide kabja karvahi dated 07.08.2008 and mutation has also been entered in its name. It is averred that in lieu of the acquired land, the petitioner has been allotted a plot measuring 14 marla under the R&R Policy on 21.07.2016 and he has even deposited 25% of the cost amount of the plot. Hence the writ petition is not maintainable.

CWP No.14767 of 2016

(18) The petitioner owns 6 kanal 10 marla land in village Machgarh, Tehsil Ballabgarh, District Faridabad. His land has been acquired vide award dated 29.07.2008. He now seeks a declaration to the effect that after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the acquisition of his land has lapsed in view of one of the grounds mentioned in its Section 24(2). In other words, the case of the petitioner is that since he is in actual physical possession of the acquired land, the ingredients of Section 24(2) are fully satisfied. Photographs and electricity bill have been pressed into aid to support their above-stated plea.

(19) In the written statement dated 21.10.2016 filed by HSIIDC, it is averred in para 12 that the compensation to the tune of ₹ 1990666 was paid

to the petitioner vide different cheques bearing Nos.533482 dated 27.08.2008 and 491653 dated 08.08.2012. Besides this, the petitioner has been paid compensation for the structure as well.

(20) It is maintained that possession of acquired has already been taken by HSIIDC and mutation to this effect has also been entered in the name of the beneficiary on 07.08.2008. It is further pointed that a plot measuring 350 sq.mtr. has also been allotted to the petitioner on 02.09.2016.

CWP No.14837 of 2016

(21) The petitioner has questioned the acquisition of his land measuring 12 marla fully described in para 2 of the writ petition situated within the revenue estate of village Machgarh, Tehsil Ballabgarh, District Faridabad vide award dated 29.07.2008. It is urged that the petitioner has constructed a residential house on the acquired land in the year 1991 and since the physical possession is still with him, the 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. In support of his claim, the petitioner has placed on record photographs and copy of electricity bill.

(22) The HSIIDC has filed written statement dated 21.10.2016 and in para 12, it is averred that the compensation amount of ₹ 387474/- was paid to the petitioner vide cheque No.967893 dated 07.08.2008. Apart from this, the compensation *qua* the acquired structure amounting to ₹ 1049698/- was also paid vide cheque No.183441 dated 01.01.2010.

(23) As regard to physical possession, it is maintained that HSIIDC has taken possession of the land vide kabja karvahi dated 07.08.2008 and pursuant thereto, mutation has also been entered in its name. It is pointed

that in fact plot measuring 324 sq.yards. has also been allotted to the petitioner under the R&R Policy on 21.07.2016 and 25% of the cost amount of the plot has also been deposited by the petitioner.

CWP No.14206 of 2016

(24) The petitioner, who is a resident of village Bhatoli, Tehsil Jagadhari, District Yamuna Nagar, seeks a declaration to the effect that acquisition of land measuring 220 sq.yards fully described in para 2 of the writ petition and which was acquired vide Award dated 16.07.2007 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. The petitioner claims that his father built a residential house comprising four rooms, veranda, stairs on the ground floor and one room on the upper storey, kitchen bathroom, toilet and boundary wall on the acquired land much prior to the date of initiation of the acquisition proceedings. It is further averred that since the physical possession of acquired property is still with the petitioner, hence the ingredients of Section 24(2) of the 2013 Act are fully satisfied. The petitioner has placed on record copy of jamabandi, photographs and electricity to support his claim.

(25) 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.

ISSUES FOR DETERMINATION:

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

(27) In the light of these partly admitted and partly disputed facts, the question which arises for determination is whether the impugned acquisition is deemed to have lapsed in view of Section 24(2) of the Act?

(28) The petitioners have admittedly received compensation but they claim applicability of Section 24(2) of the 2013 Act on the plea that physical possession is still with them, be it be, with or without court intervention. There is no material placed on record by the respondents to show that the petitioners were ever dispossessed from the acquired land. In other words, only symbolic possession has been taken. That being so, the ingredients of Section 24(2) of the 2013 Act are fully satisfied in each case.

(29) For the reasons afore-stated read with the detailed reasons assigned by this Court vide order dated 27.10.2016 rendered in **CWP No.17464 of 2007** titled as **Satnam Singh & Anr. vs. State of Haryana & Ors.**, the instant writ petitions are allowed and the impugned acquisition is declared to have lapsed on both grounds as contained in Section 24(2) of 2013 Act.

(30) However, since the petitioners are stated to have received the compensation amount, they are directed to refund the same along with interest at the rate admissible to a landowner under the Land Acquisition Act, 1894. The amount of compensation along with interest shall be determined by the Land Acquisition Collector within one month and the petitioners shall be required to deposit the entire compensation amount along with interest in lumpsum within one month whereupon the acquisition shall be taken to have been lapsed.

(31) If the petitioners have been allotted any plot under the R&R policy/Oustee policy of the State Government in lieu of the acquired land, it

is directed that the same shall be returned by the petitioners and if any allotment price has been paid, the authorities would refund/adjust the same.

(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