

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

CWP No. 15104 of 2014 (O&M)

Date of decision : 27.11.2017

Amrik Kaur and another

.. Petitioners

versus

The State of Haryana and others

.. Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
 Hon'ble Mr. Justice Gurvinder Singh Gill

Present: Mr. Shailendra Jain, Senior Advocate with
 Mr. Satyendra Chauhan, Advocate, for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
Mr. Shivendra Swaroop and Mr. Manoj Dhankhar, Assistant
Advocate Generals, Haryana.

Mr. Abhay Gupta, Advocate for
Mr. Amar Vivek, Advocate, for respondent no. 3.

Rajesh Bindal, J.

The petitioners have filed the present writ petition claiming that the acquisition of land in question has lapsed, in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the 2013 Act”), as neither the compensation for the acquired land has been paid nor the possession thereof has been taken.

Learned counsel for the petitioners submitted that notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short “the 1894 Act”), were issued on 2.1.2002 and 24.12.2002, respectively. The Land Acquisition Collector (for short, 'the Collector') announced the award

on 21.12.2004. The petitioners are owners to the extent of 2 kanals 2 marlas of land in joint khewat, where they jointly owned half share. After the award was announced by the Collector, the petitioners filed CWP No. 3435 of 2007, challenging the acquisition. The writ petition was disposed of along with bunch of writ petitions vide order dated 9.9.2008 passed in CWP No. 14287 of 2003 Nasib Singh and others vs State of Haryana and others, by giving liberty to the petitioners to file representation to the Director, Town and Country Planning, Haryana, raising plea of discrimination. Liberty was given to file fresh writ petition in case of rejection of representation. The Director General, Urban Estates and Town & Country Planning Departments, Haryana, rejected the claim of the petitioners vide order dated 7.8.2012. To challenge the same, the petitioners filed CWP No. 24372 of 2012, which was dismissed by this Court vide order dated 21.8.2013 by passing a common order in CWP No. 24373 of 2012 Ramesh Kumar Nagpal vs State of Haryana and others. Special Leave Petition filed by the petitioners against the aforesaid order before Hon'ble the Supreme Court vide Diary No. 40112 of 2013 on 16.12.2013, was withdrawn.

He further submitted that the petitioners filed objections disputing the adequacy of compensation, which were referred to the Reference Court. The same were decided on 11.8.2009. The compensation was enhanced. RFA No. 2269 of 2011 filed by Amrik Kaur petitioner was dismissed along with bunch of appeals and the award of the Reference Court was upheld by this Court vide common order dated 27.3.2014 passed in RFA No. 3493 of 2009 - Jagmal Singh and another vs State of Haryana and others. The submission is that the amount of compensation either assessed by the Collector or by the Reference Court having not paid to the

petitioners and the possession of the acquired land being still with them, the acquisition has lapsed, as the conditions laid down in Section 24(2) of the 2013 Act are fully complied with. There was no procedure followed for taking possession of the acquired land. In support of the arguments, he relied upon judgments of Hon'ble the Supreme Court in Pune Municipal Corporation and another vs Harakchand Misirimal Solanki and others- 2014 (1) RCR (Civil) 880 and The Working Friends Co-operative House Building Society Limited vs State of Punjab and others 2016(1) RCR (Civil) 63.

On the other hand, learned counsel for the respondents submitted that in the case in hand the petitioners had been indulging in litigation and having failed in that upto Hon'ble the Supreme Court have started this new process by invoking the provisions of the 2013 Act claiming that the acquisition has lapsed. On the one hand, the petitioners filed objections to the award of the Collector raising dispute regarding valuation of land and on the other hand, even after the objections have already been decided, they filed the writ petitions challenging the acquisition. The petitioners had full knowledge of the passing of the award by the Collector and even by the Reference Court, but still did not collect the compensation. It was deliberate act on their part. Hence, they cannot be permitted to invoke the provisions of Section 24(2) of the 2013 Act on that issue. The co-sharers to the extent of half share in the joint khewat have neither made any grievance regarding acquisition of land nor invoked the provisions of Section 24(2) of 2013 Act.

It was further submitted that the land at the time of issuance of notification under Section 4 of the 1894 Act and even now is lying vacant. It

is not the case that the petitioners had raised any construction thereon, hence, cannot claim that they are in possession thereof. Possession of the acquired land was taken immediately after the award was announced, hence, even on that ground, the claim of the petitioners is not made out. In support, reliance was placed upon judgment of Hon'ble the Supreme Court in Mahavir and others vs Union of India and another – 2017 (4) RCR (Civil) 567.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, notifications under Sections 4 and 6 of the 1894 Act were issued on 2.1.2002 and 24.12.2002, respectively. The award was announced by the Collector on 21.12.2004. The petitioners being satisfied with the acquisition, filed objections under Section 18 of the 1894 Act, raising dispute regarding valuation of the land. The same were referred to the learned Reference Court. Vide award dated 11.8.2009, the compensation was enhanced to ₹ 439/- per square yard, which was upheld by this Court in Jagmal Singh's case (supra) and the appeal filed by one of the petitioners was dismissed.

More than two years after the announcement of the award by the Collector when the petitioners had already filed objections under Section 18 of the 1894 Act, CWP No. 3435 of 2007 was filed challenging the acquisition. The writ petition filed by the petitioners was disposed of by this Court vide order dated 9.9.2008 passed in Nasib Singh's case (supra), giving liberty to all the petitioners therein to submit fresh representations to the Director, Town and Country Planning, Haryana, on the ground of discrimination as also in terms of the policy of the State. Liberty was also

given to the petitioners therein to file fresh writ petition in case their representations are rejected. Thereafter, the matter was considered by the Director General, Urban Estates and Town & Country Planning Departments, Haryana, and the representations filed by the petitioners were rejected vide order dated 7.8.2012. It has been recorded in the aforesaid order that admittedly the land was lying vacant at the time of issuance of notification under Section 4 of the 1894 Act. The plea of discrimination was also found to be baseless and so the claim made by the petitioners regarding release of land in terms of the policy framed by the Government. The aforesaid order passed by the Director General was challenged by filing CWP No. 24372 of 2012. The said writ petition was dismissed by this Court vide order dated 21.8.2013 by passing a common order in Ramesh Kumar Nagpal's case (supra), while upholding the acquisition of land owned by the petitioners. However, they were held entitled to the benefit of the Government policy notified on 9.11.2010 regarding allotment of plot under the oustees' quota subject to their eligibility and entitlement. As stated in the writ petition, to challenge the aforesaid order, Special Leave Petition was filed before Hon'ble the Supreme Court, which was withdrawn. No order is forthcoming on record.

Section 24(2) of the 2013 Act provides that acquisition of land would lapse in cases where award had been announced by the Collector five years prior to the enactment of the 2013 Act i. e. 1.1.2014, in case either the compensation for the acquired land has not been paid or the possession thereof had not been taken.

As far as the possession of the acquired land is concerned, out of the total area of 4 kanals 4 marlas in the joint khewat, the petitioners

owned half share i.e. 2 kanals 2 marlas. It is not the case of the petitioners that there was any construction existing on the acquired land. Even as per the facts noticed in the order dated 7.8.2012 passed by the Director General, Urban Estates and Town & Country Planning Departments, Haryana, it was the admitted case of the parties that the plot at the time of acquisition was lying vacant, the possession whereof was taken along with entire acquired land after the award was announced, as claimed by the respondents. Hence, no case is made out to claim that the petitioners are still in possession of the acquired land.

As far as the payment of compensation is concerned, no doubt the same has yet not been received by the petitioners, but the fact remains that the petitioners are in complete knowledge of all the facts regarding assessment of compensation by the Collector and even enhancement thereof by the Reference Court. They had even filed appeal before this Court, where compensation as assessed by the Reference Court was upheld, but still they did not come forward to receive the same. Similar issue came up for consideration before Hon'ble the Supreme Court in Mahavir's case (supra), wherein it has been opined that where there is deliberate action on the part of the landowners for not collecting the compensation while they were indulging in challenging the acquisition, Section 24(2) of the 2013 Act will not come to their rescue. At the most, the landowners therein will be entitled to payment of interest, as envisaged under Section 34 of the 1894 Act. Relevant para is extracted below:-

“20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24(2) of the

2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court under section 31(1) in such cases would attract only interest as envisaged under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.”

For the reasons mentioned above, we do not find any merit in the present writ petition. The same is accordingly dismissed. The petitioners shall be entitled to receive compensation along with interest as admissible in terms of the provisions of law.

(Rajesh Bindal)
Judge

27.11.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No