

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 1418 of 2016 (O&M)
Date of decision: 6.11.2017

Haryana Wakf Board

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Kuldip Singh, Advocate for
Mr. G. N. Malik, Advocate for the petitioner.

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

...

Rajesh Bindal J.

The present petition has been filed by Haryana Wakf Board claiming that acquisition of land owned by it has 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'), as it is still in possession thereof. The possession could not be taken as construction was existing thereon.

Learned counsel for the petitioner submitted that in the case in hand, even though notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') were issued on 30.11.2004 and 28.11.2005, respectively notifying 56.80 acres of land, however, acquisition pertaining to 92 kanals and 7 marlas of land has lapsed, as possession thereof was not taken. In terms of Section 24(2) of the 2013 Act for lapsing of acquisition, either of the two conditions, namely, either non-payment of compensation or possession of the land, has to be satisfied, hence, the acquisition in the present case has lapsed.

On the other hand, learned counsel for the State, on instructions from Anup Singh, Naib Tehsildar, office of Land Acquisition Officer, Hissar, submitted that out of the total land owned by the petitioner, which was notified for acquisition, 21 kanals and 6 marlas of land, where structures were existing as *kabristan* was released from acquisition. For rest of the land, award was announced by the Land acquisition Collector (for short, 'the Collector') on 27.11.2007. As the land was lying vacant, possession thereof was taken by the authorities vide rapat No. 126 dated 27.11.2007. 2/3rd of the total compensation amounting to ₹ 2,00,76,860/- was deposited in court of Additional District Judge, Sirsa way back in the year 2008, as there was certain dispute pertaining to apportionment of compensation, whereas part of that amounting to ₹ 71,34,678/- is lying deposited with the Collector, which the petitioner never claimed despite notice. For the aforesaid amount, the petitioner may be entitled to receive interest on account of delayed payment of compensation, in accordance with

law. The petitioner had complete knowledge of the award as objections were filed by it under Section 18 of the 1894 Act. On some portion of the acquired land, unauthorised construction was raised after announcement of award and when possession thereof had been taken by the authorities, the State is entitled to remove the construction. In support of the arguments, he relied upon the judgement of Hon'ble the Supreme Court in Mahavir and others v. Union of India and another, 2017(5) R.A.J. 430.

Learned counsel for the State further submitted that the petitioner had earlier challenged the acquisition on merits by filing CWP No. 12219 of 2008, which was dismissed by this court on 17.7.2008. Petition for Special Leave to Appeal (C) No. 69 of 2009 against the same was dismissed as withdrawn by the petitioner on 5.7.2016 to enable it to file objections seeking lapsing of acquisition under Section 24(2) of the 2013 Act.

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

In the present case, notifications under Sections 4 and 6 of the 1894 Act were issued on 30.11.2004 and 28.11.2005, respectively. The award was announced by the Collector on 27.11.2007. Out of the total land owned by the petitioner, 21 kanals and 6 marlas of land, where construction in the form of *kabristan* existed prior to the issuance of notification under Section 4 of the 1894 Act was released from acquisition after accepting the objections filed by the petitioner. Rest of the land, being vacant at that stage, was notified for acquisition. Out of the total compensation, ₹ 2,00,76,860/- were deposited by the State with Additional District Judge, Sirsa, way back in the year 2008, whereas ₹ 71,34,678/- are lying deposited

with the Collector. The petitioner is in knowledge of this fact as notice was duly served. It is evident from the fact that the petitioner had filed objections under Section 18 of the 1894 Act seeking enhancement of compensation. Despite notice, the petitioner failed to withdraw that amount from the Collector. It has specifically been claimed by learned counsel for the State that possession of the acquired land was taken on 27.11.2007, for which even rapat No. 126 was also entered as the same was lying vacant, however, he fairly stated that after the acquisition, on certain portion of the land unauthorised 'B' class construction was raised, which the State is entitled to demolish.

Hon'ble the Supreme Court in Mahavir and others' case (supra) opined that in cases where there is deliberate act of the landowners in not collecting the compensation, Section 24(2) of the 2013 Act does not come to their rescue. The provisions come to the rescue of those persons, who are deprived of compensation, but not for those who deliberately do not receive it. Failure to deposit compensation in court under Section 31(1) of the 1894 Act in such cases would only attracted interest, as envisaged under Section 34 of the 1894 Act and the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases. The relevant paras from the aforesaid judgment are 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.

21. In the instant case, the claim has been made not only belatedly, but neither the petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches.

22. The High Court has rightly observed that such claims cannot be permitted to be raised in the court, and cannot be adjudicated as they are barred. The High Court has rightly observed that such claims cannot be a subject matter of inquiry after the lapse of a reasonable period of time and beneficial provisions of section 24 of the 2013 Act are not available to such incumbents. In our opinion, Section 24 cannot revive those claims that are dead and stale.”

A perusal of the order passed by this court in earlier Civil Writ Petition No. 12219 of 2008 filed by the petitioner shows that possession of the acquired land was taken by the State. The aforesaid findings have not been set aside by Hon'ble the Supreme Court, as Special Leave Petition against the judgment of this court was dismissed as withdrawn.

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Considering the aforesaid facts, in our view, no case is made out for declaring that the acquisition in question has lapsed. The writ petition is, accordingly, dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

6.11.2017
mk/vs

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No