

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

CWP No. 2559 of 2015 (O&M)

Date of decision : 6.11.2017

Samey Singh and another

.. Petitioners

versus

The State of Haryana and another

.. Respondents

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

Present: Mr. Vikram Singh and Mr. Hardeep Singh Dhillon, Advocates,
for the petitioners.

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 praying that the acquisition of land owned by the petitioners 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 short, the 2013 Act'), as neither the compensation has been paid nor the possession thereof was taken.

Notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') was issued on 24.8.2000, for acquisition of land situated in the area of village Mullahera, Hadbast No. 65, Tehsil and District Gurgaon, for the development and utilisation thereof for 30' wide rasta and for providing an approach to *Shamshan Ghat*, Sector 22, Gurgaon (now

Gurugram). The petitioners filed objections under Section 5-A of the 1894 Act. Thereafter, notification under Section 6 of the 1894 Act was issued on 22.8.2001. The Land Acquisition Collector announced the award for the acquired land on 21.7.2003.

Learned counsel for the petitioners submitted that the petitioners owned total 11 biswas of land. As there was construction existing on part thereof, 2 biswas of land was released from the acquisition. The acquisition pertaining to the remaining 9 biswas of land has lapsed, as the petitioners are still in possession thereof and even the compensation has not been paid to them. They have even constructed their houses and boundary wall.

On the other hand, learned counsel for the State submitted that after the land was acquired and even the award had been announced by the Collector, the representation filed by the petitioners was considered and finding that there was construction existing on small portion of the land acquired, 2 biswas of land was released from the acquisition. As per the policy of the government, double the constructed area is released, wherever any constructed portion is considered for release. After the release of 2 biswas of land, the petitioners never raised any issue, as it was done way back in the year 2003. The possession of rest of the land was taken by the authorities. The petitioners had complete knowledge of the award announced by the Collector, determination of compensation, but never came forward to collect the same, however, aggrieved against the amount of compensation, objections under Section 18 of the 1894 Act were filed. The objections were referred to the Reference Court, which were decided on 23.8.2011 and as a consequence enhanced compensation to the tune of ₹

6,24,38,265/- was paid to the petitioners vide cheque nos. 627310, 627311 dated 23.7.2012. It is dishonest on the part of the petitioners to claim that the acquisition has lapsed as neither the petitioners have been paid the compensation for the acquired land nor the possession thereof has been taken. In fact, the petitioners have encroached upon the government property, hence, there is no question of lapsing of acquisition. The amount of compensation, as determined by the Collector, can be claimed by the petitioners in accordance with law, including interest, if statutory payable.

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

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.

Admitted facts on record are that the petitioners owned 11 biswas of land, which was acquired. Award was announced by the Collector on 21.7.2003. As the petitioners raised issue that on some small portion of land the construction was existing, after considering the claim made by the petitioners, 2 biswas of land was ordered to be released. The petitioners were satisfied as no issue was raised that there was construction on any area beyond 2 biswas of land, which was ordered to be released. Mere fact that the petitioners filed objections under Section 18 of the 1894 Act seeking enhancement of compensation itself shows that they had knowledge of the award announced by the Collector, but never came forward to receive the compensation from the Collector. Further the objections filed by the

petitioners were referred to the Court below, which were decided on 23.8.2011. The enhanced amount of compensation to the tune of ₹ 6,24,38,265/- was paid to the petitioners vide cheque nos. 627310 and 627311 dated 23.7.2012. Though the petitioners are claiming that they are in possession of 9 biswas of land, which was acquired, but the fact remains that it was never so claimed, as admittedly 2 biswas of land where the construction was existing, was released from the acquisition. The stand of the State is that the possession of 9 biswas of land, which was lying vacant, was taken by the State. The petitioners may have encroached upon the same only for the reason that the same may not have been utilized by the State. That cannot endure to the benefit of the petitioners merely because after a decade, the 2013 Act has been enacted granting certain benefits, which may not be admissible to the persons like the petitioners. It would amount to nothing else than abuse of process of law.

Hon'ble the Supreme Court in Mahavir and others vs Union of India and another, 2017(5) R.A.J. 430 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 attract interest, as envisaged under Section 34 of the 1894 Act and the provisions of Section 24(2) of the 2013 Act cannot be invoked. 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.”

In the case in hand, substantial amount of compensation has been paid to the petitioners. For part of the amount, which was lying with the Collector, due notice was given to the petitioners. They failed to collect the same and possession of the land was also taken, as claimed by the State.

For the reasons mentioned above, we do not find any merit in the writ petition. The same is accordingly dismissed. The petitioners shall be at liberty to collect compensation from the Collector including interest, in accordance with law.

(Rajesh Bindal)
Judge

6.11.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No