

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.5150 of 2016 (O&M)

Date of Decision:- 14.07.2017

Shiv Lal @ Shiv Dayal and others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present:- Mr. Ram Darshan Yadav, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. A.G. Haryana.

Rajesh Bindal, J.

The petitioners have filed the present petition seeking a declaration that the acquisition of land, owned by the petitioners has lapsed in view of the provisions contained in Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the 2013 Act).

2. Learned counsel for the petitioners submitted that for acquisition of land owned by the petitioners, notification under Section 4 of the Land Acquisition Act, 1894 (for short, the 1894 Act) was issued on 29.03.1979. Notification under Section 6 of the 1894 Act was issued on 30.03.1979. Thereafter, the award was announced by the Land Acquisition Collector (for short, the Collector). Though in the petition it has been pleaded that compensation of the acquired land was not paid to the

petitioners, however, at the time of arguments, learned counsel for the petitioners stated that compensation had been received by the petitioners. It is submitted that the petitioners had raised construction on the acquired land and are in possession thereof. Award was passed more than 5 years prior to the enactment of the 2013 Act, hence, the acquisition has lapsed.

3. Learned counsel for the State submitted that the petition deserves to be dismissed on account of mis-statement of material facts in number of paragraphs. In the petition, it has been stated that the petitioners have not been paid the amount of compensation on account of acquisition of land. Even in the representation filed by the petitioners to the authorities praying for release of land in view of the 2013 Act as well, the petitioners had claimed that the amount of compensation had not been received. In the impugned order dated 27.11.2015 passed by the Superintending Engineer, JLN Water Services Circle, Rewari, the plea raised by the petitioners that the compensation had not been paid to the petitioners, was found to be wrong as the amount had been paid and the petitioners admitted the same. Despite this fact, in the writ petition wrong facts have been pleaded.

4. It was further submitted that vide letter dated 26.12.1979, the petitioners requested the Collector, Rohtak at camp Rewari for treating the land as 'Chahi' as it was irrigated by tubewell. Vide another letter request was made by the petitioners for acquisition of left out 2 kanals 14 marlas of land, as according to the petitioners the same was of no use to them as there being seven co-sharers, the State had acquired even that land subsequently.

5. It was further argued that prior to the writ petition in question, the petitioners had filed a civil suit seeking permanent injunction which was decreed by the trial Court on 22.02.2010. In appeal, filed by the State,

judgment and decree of the trial Court was reversed by the learned District Judge vide judgment dated 12.10.2010 holding that the petitioners had not been able to prove that pucca construction was existing on the acquired land. If any temporary construction had been raised that was after the acquisition. The learned District Judge also commented upon the conduct of the petitioners regarding concealment of true and material facts. Judgment and decree of the District Judge was upheld upto Hon'ble the Supreme Court, as even stated by the petitioners in para No.13 of the petition. Keeping in view the fact that the amount of compensation had been paid to the petitioners and even the possession thereof was taken immediately after the acquisition, even if the petitioners had raised construction, later on the same was unauthorised.

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

7. The petitioners were paid the compensation on account of acquisition of land vide cheques dated 17.01.1980. Even enhanced compensation had also been received by the petitioners. In the case in hand, the land owned by the petitioners was acquired for the purpose of construction of Left Embankment of Masani Barrage. Notification under Section 4 of the 1894 Act was issued on 29.03.1979. As the petitioners had dispute about the nature of land, they made a representation on 26.12.1979 for change of the quality of land to 'Chahi' as it was irrigated by tubewell. Vide subsequent representation, they requested for acquisition of their left over land measuring 2 kanals 14 marlas, as according to the petitioners, the same was of no use to them as there were seven co-sharers of the land. That land was also acquired by the State, as submitted by learned counsel for the

State. In the representation filed by the petitioners to the authorities invoking the provisions of the 2013 Act it has been repeatedly said that petitioners have not received compensation.

8. The petitioners filed a civil suit praying for permanent injunction. It was claimed that 3 kanals 4 marlas were released from acquisition on which they have raised construction of their houses, hence, the State be restrained from interfering in their possession. The suit was decreed by the trial Court vide judgment and decree dated 22.02.2010. In appeal, the learned District Judge reversed the findings of the trial Court. It has been specifically recorded in para No.20 of the judgment of the learned District Judge that it was neither the case of the petitioners nor any of the witnesses was produced by them stating that there was any pucca construction existing on the suit land. May be some temporary construction had been raised after the acquisition, it was nothing but merely as a trespasser. The learned District Judge also observed that the plaintiffs had approached the Court while concealing the true and material facts. The judgment and decree of the learned District Judge was upheld upto Hon'ble the Supreme Court as the appeal filed by the petitioners was dismissed. This has been admitted by the petitioners in para No.13 of the petition. Thereafter the petitioners filed a representation dated 30.06.2015 to the State authorities invoking provisions of Section 24(2) of the 2013 Act stating that the amount of compensation has not been paid to the petitioners on account of acquisition of land and further they are in possession thereof. The aforesaid fact was pleaded despite contrary findings recorded by learned District Judge in the earlier litigation initiated by the petitioners that the amount of compensation for the acquired land had been paid to the

petitioners. CWP No.7099 of 2015 was filed in this Court which was disposed of on 21.05.2015 directing the authorities to decide the representation. It was decided vide impugned order dated 27.11.2015 endorsed on 30.11.2015 (Annexure P-9).

9. In para No.4 of the aforesaid order it has been specifically recorded that the amount of compensation had been paid to the petitioners. The fact was even admitted by them. The petitioners still pleaded in number of paras in the writ petition that they have not been paid compensation for the acquired land which shows the conduct of the petitioners. In the earlier litigation the learned District Judge has also commented upon concealment of facts from the Court.

10. Pre requisites for invoking Section 24(2) of the 2013 Act are that award for compensation of land has to be announced five years prior to the enactment of the 2013 Act and the land owners had not received the amount of compensation or the possession thereof had not been taken by the authorities. In the case in hand it is not in dispute that the award was announced five years prior to the enactment of the 2013 Act. Though time and again the petitioners sought to plead that the amount of compensation had not been paid to them, however, they were caught on a wrong footing at each and every step and the counsel had to admit that the amount of compensation had in fact been paid to the petitioners. As regards the construction on the acquired land, in the earlier litigation initiated by the petitioners by filing a suit for permanent injunction claiming that they had raised construction on a portion of land released from acquisition is concerned, learned District Judge found that the petitioners had not been able to prove that any pucca construction existed on the suit land prior to

acquisition. Construction, if any, had been raised after the acquisition had already been made and the acquisition of land is for construction of Left Embankment of Masani Barrage.

11. Keeping in view the aforesaid factual matrix and conduct of the petitioners, we do not find any reason to interfere in the present petition and the same is accordingly dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

July 14, 2017
mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No