

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

CWP No.22096 of 2016 (O&M)

Date of Decision:06.02.2018

Surender Kumar Gupta

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present:- Mr. Sumit Gupta, Advocate for the petitioner.

Ms. Palika Monga, DAG, Haryana.

SURYA KANT, J. (Oral)

CM No.16736 of 2016

This is an application for restraining the respondents from dispossessing/demolition of the shop, house and place of worship during the pendency of the said writ petition.

Application is dismissed as having been rendered infructuous.

CM No.7122 of 2017

This is an application for placing on record reply along with Annexures P.14 to P.16.

Application is allowed. Reply along with documents Annexures P.14 to P.16 are taken on record.

CM No.11373 of 2017

This is an application for placing on record Annexure P.17 (Photographs).

Application is allowed. Annexure P.17 is taken on record.

CWP No.22096 of 2016 (O&M)

The petitioner seeks quashing of acquisition of his land made vide notification dated 02.01.2002 and 24.12.2002 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 respectively (for short, 'the 1894 Act') as also the order dated 20.01.2014 (Annexure P.12) whereby his claim for the release of the land from acquisition has been rejected. The petitioner also seeks a declaration to the effect that the impugned acquisition has lapsed under 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) The controversy in this case pertains to release of land measuring 973 square yards comprised in Rectangle No.22 Khasra No.9 (Old Khasra No.302) situated in Village Mangalpur Tehsil and District Karnal. The above stated land was part of a big chunk of land acquired by State of Haryana through the impugned acquisition for the development of residential and commercial area for Sector 9 (Part), 32 and 33 (Part), Karnal. The sectors were to be developed by HUDA.

(3) A plain reading of sub-section (2) of Section 24 unveils that the acquisition made under the provisions of 1894 Act "shall be deemed to have lapsed" (i) where the Award under that Act was made five years or more before the commencement of the new Act but physical possession of the acquired land has not been taken; (ii) or no compensation has been paid for a period of five years before the New Act came into force.

(4) There would thus be two categories of cases for the purpose of declaration to the effect that the acquisition shall be deemed to have lapsed, namely, (i) where the State or its agencies have not taken "physical

possession” of the acquired property though the Award was passed five years or more prior to the commencement of the new Act w.e.f. 01.01.2014 or (ii) the compensation amount has not been `paid'/'tendered' to the expropriated owners or persons interested within such stipulated period. Both these expressions embedded in Section 24(2) of 2013 Act have been interpreted by the Hon'ble Supreme Court in a catena of decisions including the latest one in Civil Appeal No.20982 of 2017 titled as Indore Development Authority v. Shailendra (Dead) through LRs and others 2018 SCC online SC 100.

(5) The petitioner had made bald averments in the writ petition to the effect that neither he was paid compensation nor the same has been deposited with the Reference Court in accordance with law. Similarly, the petitioner claims that physical possession of the acquired property is also with him. Reliance is placed on the bills of the electricity connection.

(6) To controvert the claim of the petitioner, the Land Acquisition Collector, Urban Estate Haryana, Panchkula has filed written statement-cum-affidavit dated 10.05.2017 and in paras 8 and 9 following averments have been made:-

“8. That the total amount of compensation of land of the petitioner that is Rs.1,20,088/- stands deposited in the court of Additional District Judge, Karnal under Section 18 and 30 of Land Acquisition Act, 1894 vide Bank Draft No.244213 dated 10.1.2007.

9. That supplementary award was announced vide Award No.10 dated 13.12.2006 and the total amount of compensation

of trees on the land of the petitioner was Rs.2,883/- which is lying deposited in the account of LAC because they are not coming forward to receive the compensation amount and not tendering the documents regarding ownership and is available for payment immediately on demand of land owners.”

(7) Similarly, the Land Acquisition Collector has further averred “That in compliance of the order dated 09.09.2008, representation of the petitioner was rightly decided on 03.08.2012. Thereafter the petitioner again filed CWP No.26097 of 2012 in case titled as Surender Kumar Gupta vs. State of Haryana and Others challenging the order dated 03.08.2012 whereby it was decided not to release any land as the construction was only at foundation stage which was raised after issuance of notification under Section 4 and also no permission was sought and the site was affecting the sector dividing road.”

(8) We have heard learned counsel for the parties and gone through the record.

(9) It emerges out that for the acquisition of land of the petitioner, the compensation amount was not released as he failed to produce the documents regarding his ownership. Consequently, the compensation amount was deposited by the Land Acquisition Collector with the Reference Court i.e. Additional District Judge, Karnal vide bank draft 244213 dated 10.01.2007. Thus, the compensation amount so deposited with Reference Court was well before the 2013 Act had come into force with effect from 1.1.2014. There was no impediment against the receipt of the said compensation amount from the Reference Court. The petitioner could

receive compensation amount any time by producing the title documents.

Thus, the first plea of the petitioner that the compensation amount was neither paid nor deposited with the Reference Court cannot be accepted.

(10) Adverting to the petitioner's 2nd plea regarding retention of possession, it is the categorical case of respondents that there was no construction at the site when notification under Section 4 was issued. They have specifically averred that the construction and that too at the foundation stage only was raised subsequently. The fact that the petitioner raised some construction subsequently will not improve his case as he has failed to produce any permission obtained from the competent authority to raise the construction. The respondents themselves have pointed out that some temporary store was constructed which the petitioner had let out unauthorisedly to run wine shop etc. As there was no construction raised before the notification under Section 4 was issued coupled with the fact that no permission for erecting premises was ever taken from the competent authority, belies the second plea of possession and does not satisfy the ingredients of Section 24(2) of the 2013 Act. In this view of the matter, we do not find any merit in this petition. The same is accordingly dismissed.

(SURYA KANT)
JUDGE

February 06, 2018
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(SHEKHER DHAWAN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No