

CWP No.6986 of 2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6986 of 2018

Date of Decision: 17.08.2021

Pardeep Kumar & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Sushil K. Sharma, Advocate,
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 22.02.2006 (Annexure P-10) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 20.07.2006 (Annexure P-12) issued under Section 6 of the 1894 Act and the award dated 28.04.2008 (Annexure P-13) as also the order dated 31.07.2017 (Annexure P-18) passed by the Administrator, HUDA-cum-Additional Director, Urban Estates, Haryana, Panchkula – respondent No.4, whereby the representation of the petitioners for release of their land as per Section 24 (2) of the Right of Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act') has been rejected.

2. Counsel for the petitioners asserts that in the light of the provisions as contained in Section 24 (2) of 2013 Act, respondents having

neither taken physical possession of the land nor have the compensation amount been disbursed, would render the land of the petitioners acquired vide award dated 28.04.2008 liable to be released, in view of Section 24 (2) of 2013 Act, especially when the petitioners have constructed their houses thereon and are residing therein. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the order dated 31.07.2017 (Annexure P-18) cannot sustain and deserves to be set aside.

3. On the other hand, learned counsel for the respondents submits that for applicability of Section 24 (2) of 2013 Act, which would entitle the petitioners the benefit of release of land on the lapsing of the acquisition proceedings initiated under the 1894 Act, there should neither be physical possession taken nor compensation paid. If any of the two contingencies has been complied with, then the land acquisition proceedings under 1894 Act would not lapse. In this regard, counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC 1496.

To substantiate this contention, counsel for the respondents has referred to the reply which has been filed by way of an affidavit of Land Acquisition Collector, Urban Estate, Panchkula, dated 08.01.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.501, dated 28.04.2008, after the passing of the award dated 28.04.2008 and mutation No.7731 was entered in favour of the beneficiary department. It has further been asserted that the total amount of the award is Rs.12,44,804/-, which is lying deposited in the LAC account. and so far as

the amount of compensation due to the petitioners i.e. Rs.7,80,849/- is concerned, petitioners have not lifted the said compensation amount.

4. His further contention is that the land of the petitioners affects the site of 30 meter road and five plots measuring 10 marlas, therefore, the land of the petitioners cannot be released. Since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.501, dated 28.04.2008, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

5. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings as well as the judgment passed by the Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

6. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 22.02.2006 and 20.07.2006 respectively, leading to the passing of the award dated 28.04.2008. Petitioners assert themselves to be the owners of house bearing No.671/57, measuring two kanals (1210 square yards) comprising in Khasra No.11/25/4/1, situated in the revenue estate of Village Patti Mehar, Tehsil and District Ambala, and are seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

Paras 244 and 245 of the judgment in *Indore Development Authority's* case (supra) deal with the vesting of the land in the State on taking of possession of the acquired land, for which the award has been passed free from encumbrances. The person retaining possession thereafter

is to be treated as a trespasser as he does not have any right to continue in possession of the land, which has vested in the State. Possession of the land has been taken vide No.501, dated 28.04.2008, thus, fulfilling one of the conditions with regard to the possession having been taken over especially in the light of the fact that the possession through rapat roznamacha has been held to be valid mode of taking possession of the land.

7. As regards the compensation amount is concerned, it has been specifically averred in the reply that the total amount of the award is Rs.12,44,804/-, which is lying deposited in the LAC account. Petitioners, as per the award dated 28.04.2008, are entitled to compensation of Rs.7,80,849/-, which has not been collected by the petitioners till date. Merely because the petitioners have not collected the amount of compensation, it would not entitle them to assert that the compensation has not been disbursed to them.

8. Para 203 of the judgment in *Indore Development Authority's* case (supra) deals with the word 'paid' and it has been concluded in para 206 that when the amount has been tendered, the obligation has been fulfilled by the Collector. In case a person does not collect the amount, he cannot take the benefit of the same by asserting that the amount has not been paid to him and as such, there is a lapse of proceedings. Apart from that, it has been held in para 224 of the said judgment that word 'paid' used in Section 24 (2) of 2013 Act does not include within meaning the word 'deposited', which has been used for proviso to Section 24 (2). It has, therefore, been concluded that the acquisition would not lapse, if the compensation amount is deposited with the Land Acquisition Collector, which is available for disbursement to

the land owner(s).

That apart, since the land of the petitioners affects the site of 30 meter road and five plots measuring 10 marlas, the land of the petitioners, in any case, cannot be released as it would directly affect the planning.

9. In view of the above, we do not find any merit in the present writ petition and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

17.08.2021
Harish

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