

CWP No.5415 of 2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5415 of 2019

Date of Decision: 17.08.2021

Smt. Vidya Maccune

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Saurabh Garg, Advocate,
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged notification dated 30.05.2005 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 22.05.2006 (Annexure P-3) issued under Section 6 of the 1894 Act and the award dated 16.07.2007 (Annexure P-4) with a prayer for release of her 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').

2. Counsel for the petitioner asserts that the petitioner had purchased a plot measuring 605 square yards vide sale deed dated 25.01.1988 (Annexure P-1). He states 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 petitioner acquired vide award dated 16.07.2007 liable to be released, in view of Section 24 (2) of 2013 Act, especially when the land of the petitioner is in the fully developed area where the people are residing. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the notifications dated 30.05.2005 and 22.05.2006 as also the award dated 16.07.2007 deserve to be quashed.

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 petitioner 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, Panchkula, dated 25.01.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.892, dated 16.07.2007, after the passing of the award dated 16.07.2007. It has further been asserted that out of the total amount of the award No.28, dated 16.07.2007, i.e. Rs.35,67,91,537/-, an amount of Rs.30,62,00,204/-, has already been disbursed, which comes to more than 85.82% of the total amount. So far as the amount of compensation due to the petitioner is

concerned, i.e. Rs.1,94,431/-, the said amount is also lying deposited in the account of Land Acquisition Collector.

4. His further contention is that the land of the petitioner affects the site of Tubewell and 45 meter wide sector dividing road and therefore, the land of the petitioner 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.892, dated 16.07.2007, 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 30.05.2005 and 22.05.2006 respectively, leading to the passing of the award dated 16.07.2007. Petitioner is owner of a plot measuring 605 square yards comprised in Khasra No.34//20/3 in the area of village Bhatauli, Hadbast No.405, Tehsil Jgadhari, District Yamuna Nagar and is 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 Rapat Roznamacha No.892, dated 16.07.2007, 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 out of the total amount of the award No.28, dated 16.07.2007, i.e. Rs.35,67,91,537/-, an amount of Rs.30,62,00,204/-, has already been disbursed, which comes to more than 85.82% of the total amount. So far as the amount of compensation due to the petitioner is concerned, i.e. Rs.1,94,431/-, the said amount is also lying deposited in the account of Land Acquisition Collector. Merely because the petitioner has not collected the amount of compensation, it would not entitle the petitioner to assert that the compensation has not been disbursed to her.

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 petitioner affects the site of Tubewell and 45 meter wide sector dividing road, the land of the petitioner, 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