

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No. 8629 of 2019 (O&M)

Date of Decision: 21st December, 2020

Subhash Chander

....Petitioner

VERSUS

State of Haryana and Others

....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Sant Kashyap, Advocate for the Petitioner
Mr. Ankur Mittal, Additional Advocate General, Haryana for the
Respondents

Dr. S. Muralidhar, J.

CM-8036-2020

1. This is an application on behalf of the Respondent/State for advancing the hearing of the main writ petition CWP No. 8629 of 2019.

2. For the reasons stated therein, the writ petition is taken up for hearing today itself. The application is disposed of.

CWP No. 8629 of 2019

3. This writ petition challenges the land acquisition proceedings which commenced with a notification dated 19th May, 2003 under Section 4 of the Land Acquisition Act, 1894 ('LAA'), a declaration dated 14th May, 2004 under Section 6 LAA and culminated in an Award dated 12th May, 2006, in respect of land admeasuring 7 *kanals* and 14 *marlas* in Khasra Nos. 132//9/2 (4-14), 132//9/1(2-18), 132//2/2 (6-0) and 132//2/1/2 (1-16) situated in village Hisar, Tehsil and District Hisar (hereafter, 'land in question'). The first prayer is for a declaration of deemed lapsing under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter, '2013 Act') as regards the land in question. The second prayer is for quashing the order dated 30th January, 2018 passed by the Zonal Administrator-cum-Additional Director, Urban Estates, Hisar/Respondent No. 4, whereby the Petitioner's

representation dated 27th August, 2015 for release of the land in question was rejected.

4. The Petitioner is stated to be the owner of the land in question. It is averred in the writ petition that the land in question is lying unattended, unused and vacant due to interference of the HUDA authorities and that the Petitioner continues to be in possession of the land in question. It is stated that the Petitioner filed his objections to the Section 4 LAA notification under under Section 5-A LAA, but that they were rejected by the Respondents without affording the Petitioner any opportunity to be heard. It is further averred in the petition that neither has compensation in respect of the land in question been received by the Petitioner, nor has the same been deposited by the Land Acquisition Collector (LAC) with the Court.

5. In para 2 (g) of the petition it is stated that after the Petitioner became aware of the 2013 Act, he made a representation on 1st June, 2014 to the LAC for release of the land in question. The basis for such request of release was that with the land lying unutilized and compensation neither having been paid to the Petitioner nor deposited in the Court, the acquisition proceedings in respect of the land in question stood lapsed under Section 24 (2) of the 2013 Act.

6. When the Respondents did not decide the aforesaid representation, the Petitioner filed CWP No. 12861 of 2015 in this Court praying that a declaration of deemed lapsing in terms of Section 24 (2) of the 2013 Act be issued as regards the land in question. That writ petition came to be disposed of by an order dated 2nd July, 2015, the operative portion of which reads as under:

“4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioner to file a detailed and comprehensive representation raising all the pleas as raised in the present writ petition before the appropriate authority. It is directed that in the event of a representation being filed by the petitioner within a period of two months from today, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to him within a period of four months from the date of receipt of representation. The petitioner shall be entitled to lead any evidence to substantiate his claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within

the stipulated period as noticed above, the interim order shall cease to operate, thereafter.”

7. Pursuant to the liberty granted by the aforesaid order of this Court, the Petitioner submitted a representation on 27th August, 2015, requesting that the land in question be released in view of Section 24 (2) of the 2013 Act. It was *inter alia* contended therein that due procedure was not followed while issuing the notification under Section 4 LAA as well while passing the Award under Section 11 LAA. As regards the declaration under Section 6 LAA, it was argued that discriminatory treatment had been meted out to the Petitioner in including the land in question in the declaration, while excluding the land of some similarly situated persons from acquisition.

8. That representation was rejected by the impugned order dated 30th January, 2018 of the Respondent No. 4. A perusal of the said order reveals that subsequent to the order dated 2nd July, 2015 in CWP No. 12861 of 2015, a Zonal Committee under the chairmanship of the Administrator, Haryana Urban Development Authority (HUDA) was constituted to visit the site and give its report. A site visit is stated to have been undertaken by the Committee on 13th January, 2016. The Petitioner was also stated to have been present at the time of the Committee's inspection and given his statement to the Committee.

9. In the report eventually prepared by the Committee, the land in question was not recommended for release. It was noted that while the site inspection revealed that the land was lying unutilized, its possession was with HUDA. Further, 92% of the compensation in respect of the land that stood acquired by the Award dated 12th May, 2006 had been paid to the concerned landowners. Specific to the Petitioners, it was mentioned that “payment to the Petitioner has not been made but maintained in a specific account. Whereas the payment of enhanced compensation of Rs. 45,11,937.00 has been deposited in the court of ADJ Hisar on 28.08.2012 in LA Case No. 224/06”. The Committee's report was considered by the Government, which decided to accept the Committee's recommendation to not release the land in question.

10. Nearly a year after the aforesaid impugned was passed by the Respondent No. 4, on 22nd February, 2019 the present petition came to be filed, praying for the

reliefs, noted hereinbefore. When the petition was listed for hearing on 1st April, 2019, it was adjourned to 3rd September, 2019 to await the decision of the Supreme Court in the Special Leave Petition (SLP) before it. Thereafter, on 3rd September, 2019 the petition was adjourned *sine die* awaiting the outcome of the SLP.

11. A written statement was filed on behalf of the Respondent Nos. 1 and 7 on 4th December, 2019, to which no rejoinder has been filed till date. It is stated therein that the notification under Section 4 LAA was duly publicized. No objections under Section 5A had been filed by the Petitioner. In instances where such objections had been filed, they were considered and the respective landowners were also heard. A decision was thereafter made to release 6.23 acres of land, on which constructions had been present prior to issuance of the Section 4 LAA notification. Further, by a letter dated 31st July, 2018, a further 12.91 acres was released in the cases of those on who had constructions on their land prior to the Section 4 notification being issued. It is further stated that possession of the land in question was taken by Rapat No. 383 way back on 12th May, 2006 i.e. the date of the Award itself and handed over to the Estate Officer, HUDA.

12. Specific to the Petitioner's plea that the land is lying unused and therefore ought to be released it is stated in para 8 of the preliminary submissions as under:

“That land in question affects the planning of the Section i.e. 32 plots of 6 marla category, 2 Nos. 12 mtr. wide internal roads, 12 mtr. wide road along sector dividing road & widening of sector dividing road, so it cannot be released from acquisition. The development works/consturction of road etc. is under process and as per report of Sub Divisional Engineer HSVP, Sub Division No. III, Hisar, main line of SWD has been laid. The copy of the layout plan is enclosed herewith as Annexure R-2.”

13. As far as the Petitioner's averment concerning non-receipt of compensation is concerned, it is stated that while the compensation of Rs. 22,43,022/- initially awarded is lying with the Repsodent and has not been picked up by the Petitioner, the enhanced compensation of Rs. 45,11,937/-, awarded to the Petitioner by an order dated 31st May, 2011 of Court of Additional District Judge, Hisar (ADJ) in Section 18 LAA petition filed by the Petitioner, has been deposited in the Court of the ADJ on 28th August, 2012.

14. The Court has heard learned counsel for the parties. None of the grounds on which a declaration of deemed lapsing under Section 24 (2) of the 2013 Act

is sought are available to to be urged by the Petitioner after the decision dated 6th March, 2020 of the Constitution Bench of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***.

15. As far as possession of the land in question is concerned, it is seen from the written statement of the Respondent Nos. 1 and 7 that possession was taken and handed over to the Estate Officer, HUDA way back on 12th May, 2006 i.e. on the date of the Award itself by Rapat No. 383. The Petitioner's assertion that the land has been lying vacant and unutilized and therefore possession continues to remain with the Petitioner even after 12th May, 2006 is not tenable in view of the following observations of the Supreme Court in ***Manoharlal (supra)***:

“245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

16. As regards the Petitioner's plea concerning non-payment, it is seen that the compensation amount initially awarded to the Petitioner is lying with the LAC and has not been picked up by the Petitioner. The Petitioner had even filed a petition under Section 18 LAA before the ADJ, Hisar for enhancement of compensation, which was awarded to him by the order dated 31st May, 2011. The enhanced compensation amount is stated to have been deposited in the Court of the ADJ. With this being the position as regards receipt of compensation, the Petitioner can no longer urge that the condition as regards

non-payment of compensation stands fulfilled, particularly in light of the following observations in *Manoharlal (supra)*:

“363 (4). The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

(5) In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.”

17. With none of the negative conditions under Section 24 (2) of the 2013 having been met in the present case, the first prayer for a declaration of deemed lapsing in terms of the aforesaid provision is required to be rejected.

18. Having perused the impugned order dated 30th January, 2018, the Court is of the view that the Respondent No. 2 was right in rejecting the Petitioner's representation. The fact of the matter is the Petitioner's case for release in his representation is principally based on the contention that the negative conditions under Section 24 (2) stood fulfilled in his case. As noted hereinabove, neither of the two conditions stand satisfied in the present case. Accordingly, the second prayer for quashing the above impugned order is also required to be rejected.

19. The writ petition is dismissed, but in the circumstances with no orders as to costs. The interim order, if any, hereby stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

21st December, 2020
Davinder Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No