

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No. 11227 of 2014 (O&M)

Date of Decision: 17th November, 2020

Bhim Singh and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Ms. Divya Bajaj, Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. The prayer in the present writ petition is for quashing the notification dated 3rd March, 2003 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), the declaration dated 2nd March, 2004 issued under Section 6 of the LAA, and Award No. 23 dated 29th December, 2005 on the basis that the acquisition proceedings are deemed to have lapsed under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') in respect of the 31 *kanals* and 19 *marlas* of land situated in revenue estate of village Adampur, District Gurugram, Haryana.

2. The Petitioners claim to be owners as co-sharers and in cultivating possession of the land bearing Khewat No. 98, Rect. No. 19, *Kila* Nos. 2/2 (2-0), 8/1 (4-15), 9 (8-0), 12 (8-0), 3 (7-8) and 19/1/1 (1-16) admeasuring 31 kanal 19 marlas situated in the revenue estate of village Adampur District Gurugram. It is stated in para 9 (ii) that the fact that the Petitioners are in cultivating possession of the land in question would entitle them "get their land released". It is stated that the Petitioners are yet receive compensation *qua* the aforesaid land.

3. When this petition was first listed for hearing on 30th May, 2014, notice of motion was issued. On 14th January, 2016, while adjourning the petition *sine die*, to await the decision of the Supreme Court in Civil Appeal No. 4835 of 2015, *status quo* as regards possession was directed to be maintained.

4. On 21st October, 2015 a written statement was filed by the Land Acquisition Collector, Urban Estate, Gurugram on behalf of the Respondent Nos. 1 and 2 on 21st October, 2015. It is stated in para 2 of the written statement that possession of the acquired land was handed over to the representative of the HUDA vide Rapat No. 217 dated 29th December, 2005 i.e. the date of the Award itself. As regards the Petitioners' averment concerning release of the land in question, reference has been made to the decision of the Supreme Court in ***Yadu Nandan Garg v. State of Rajasthan, 1997 (1) LAC 451 SC*** to point out that merely because some acquired land may have been wrongly released in favour of some parties, it would not give a right to the other land owners to seek release of their lands.

5. As regards compensation, it is stated in para 4 of the written statement as under:

“4...the compensation of the acquired land announced by the LAC was not paid to the petitioners because they did not provide their consent in writing to prove their ownership and undisbursed amount is lying deposited in the account of the LAC, and is available for payment immediately on demand of landowners.”

6. The Court is unable to see how any of the grounds averred in the present petition survive after the decision of the Constitution Bench of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***. As far as the present case is concerned, possession is stated to have been taken on the date of the Award itself i.e. on 29th December, 2005. It is therefore not, in terms of the following observations in ***Manoharlal (supra)***, open to the Petitioners to urge that they remain in authorized possession of the land in question:

“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.”

7. As far as non-payment of compensation is concerned, the Court does not find such condition in terms of the proviso to Section 24 (2) of the 2013 Act to have been satisfied in view of the stand taken by the LAC in its written statement and 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.

(9) Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of

land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”

8. As regards the further ground raised in the present petition that there was discrimination in the matter of release of the land in question, although in the course of arguments it was contended that the land in question ought to be released, there is no prayer to that effect in the writ petition. Furthermore, the Petitioners have not set out any concrete details in the writ petition of instances of release of the land acquired by the Award in question, to substantiate in any manner their claim of discrimination.

9. There is no merit in this writ petition and it is accordingly dismissed. The status quo order hereby stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17th November, 2020
jk

Whether speaking/reasoned Yes/No

Whether reportable Yes/No