

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
211**

CWP No. 11537 of 2014

Date of Decision: 17th November, 2020

Chander and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

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

Present: Ms. Anita Balyan, Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. The prayer in this petition is for quashing the notification dated 17th April, 2002 issued under Section 4 of the Land Acquisition Act 1894 ('LAA'), a declaration dated 10th April, 2003 issued under Section 6 of the LAA and an Award dated 25th June, 2004, "on the ground of" Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act') *qua* 523.87 acres of land in village Ballaur, Tehsil Bahadurgarh, District Jhajjar, Haryana. The Petitioners claim to be the owners and in cultivating possession of the aforesaid land.

2. In para 2 of the writ petition, it is stated that the predecessors-in-interest of Petitioner Nos. 4 to 12 had earlier filed CWP No. 9281 of 2004 in this Court, which stood dismissed by an order dated 11th February, 2008. It is stated that while the predecessors-in-interest of those Petitioners did not file an SLP in the Supreme Court against the said decision within time, the SLP filed by the Petitioner Nos. 4 to 12 in 2011 was dismissed on 7th December, 2011 by the Supreme Court. In other words, the challenge to the acquisition proceedings by the Petitioner Nos. 4 to 12 attained finality.

3. In para 10 of the petition, it is stated that the Government has adopted a "pick and choose policy" in releasing the land of "influential persons", while

leaving out the Petitioners' land. Reliance has been placed on the decision of this Court in CWP No. 2308 of 2004 (***Reshma Footwear Limited v. State of Haryana***) (annexed as Annexure P-8 to the petition), wherein the Court is stated to have, in respect of the same acquisition proceedings, quashed the notification under Section 4 LAA and declaration under Section 6 LAA, "on the ground of discrimination".

4. When this petition was listed for hearing on 18th January 2018, the Court while issuing notice of motion, noted that notwithstanding the fact that an earlier challenge by some of the Petitioners was negated by this Court and the Supreme Court, in this round of litigation the Petitioners were seeking to invoke Section 24 (2) of the 2013 Act on the ground that the compensation amount was neither paid nor deposited and that possession of the land in question continued to remain with the Petitioners. On 22nd May, 2018, the Court adjourned the petition *sine die*, awaiting the decision of the Constitution Bench of the Supreme Court, which since then has been delivered in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***.

5. Mr. Ankur Mittal, Additional Advocate General, Haryana, has placed on record details concerning status of possession of the land in question and payment of compensation. It is seen that possession of the land was taken on 25th June, 2004 i.e. the date of the Award itself, by Rapat No. 1318. As far as compensation is concerned, it is stated that 73.84% of the compensation, in relation to the land acquired by the aforesaid Award, has been disbursed. Specific to the Petitioners, it is stated that the compensation *qua* their land is lying in the account of the LAC.

6. In view of the stand of the Respondents and the judgment of the Constitution Bench of the Supreme Court in ***Manoharlal (supra)***, none of the grounds on which a declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act has been sought, are tenable. In respect of the Petitioners' assertion that the possession of the land in question remains with them, the following observations in ***Manoharlal (supra)*** are relevant:

“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. The Court is also unable to see how the claim of the Petitioners that compensation has not been paid to them is tenable in light of the following observations of the Constitution Bench in *Manoharalal* (*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.”

8. There is yet another aspect to the matter. Admittedly, an earlier challenge to the instant acquisition proceedings, by some of the Petitioners, stood negatived not only by this Court, but also by the Supreme Court. That Section 24 (2) of the 2013 Act does not give rise to a new cause of action has been made unequivocally clear in *Manoharlal (supra)*, in the following terms:

“363. (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.”

9. In that view of the matter, none of the negative conditions in terms of Section 24 (2) of the 2013 Act stand fulfilled. Accordingly, the Court rejects the Petitioners’ prayer for a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act.

10. The decision in *Reshma Footwears (supra)* is distinguishable inasmuch as the Petitioners therein had sought release of land on the basis of a 1991 policy of the State of Haryana which permitted release from acquisition of land on which construction had been made prior to the issuance of the Section 4 LAA notification. Admittedly, the prayer of the Petitioners here is not predicated on such policy, but on Section 24 (2) of the 2013 Act.

11. For all the aforementioned reasons, the writ petition is dismissed. The status quo order, if any, hereby stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17th November, 2020
jk

Whether speaking/reasoned Yes/No

Whether reportable Yes/No