

**202-39 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 10546 of 2016 (O&M)
Date of Decision : 25th August, 2020

Smt. Birwati Choudhary and others ...Petitioners

Versus

State of Haryana and others ...Respondents

**CORAM : HON'BLE MR. JUSTICE S. MURLIDHAR
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Chetan Mittal, Sr. Advocate with
Mr. Mohinder Singh Nain, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana.

Mr. Amit Jain, Advocate for respondent No.8.

Dr. S. Muralidhar, J.

1. This is a writ petition challenging the acquisition proceedings which commenced with a notification dated 17th December, 1981 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), a notification dated 27th April, 1988 under Section 6 of the LAA and culminated in an Award dated 28th April, 1987, in respect of land acquired for the development of industrial area in Sector-25 (Part-I), Faridabad for the Haryana Urban Development Authority ('HUDA').

2. This is the fourth round of litigation concerning these land acquisition proceedings. In the first round, the Petitioners had filed CWP No.960 of 1990, which was dismissed by this Court on 3rd August, 2010. The Special

Leave Petition ('SLP') filed by the Petitioners against the aforesaid order of this Court stood dismissed by the Supreme Court on 15th April, 2011.

3. In the second round, CWP No. 9243 of 2012 was filed by the Petitioners aggrieved by the rejection of their representation to the Respondents for release of their land. The aforesaid writ petition was dismissed by this Court on 9th September, 2013. While the SLP (Civil) No. 12156 of 2014 filed by the Petitioners against the abovementioned order dated 9th September, 2013 was pending in the Supreme Court, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, '2013 Act') came to be passed. On 23rd January, 2015, while dismissing SLP No. 12156 of 2014, the Supreme Court passed the following order :

“Heard.

We see no reason to interfere with the order impugned. The special leave petition is accordingly dismissed.

This order shall not however prevent the petitioners from seeking any redress under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, 2013 as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 in accordance with law.

We make it clear that we express no opinion as to the merits of any such claim which the petitioners may make before any court or authority.”

4. The Petitioners subsequently filed CWP No. 2893 of 2015 (O&M), which came to be dismissed by this Court by an order dated 31st August, 2015, granting liberty to the Petitioners to withdraw the petition and make a representation to the Respondents under Section 24 (2) of the 2013 Act.

It was further directed that pending a decision in the Petitioner's representation status quo would be maintained.

5. Thereafter, the representation made by the Petitioners for release of the land in view of the Section 24 (2) of the 2013 Act was dismissed by the Chairperson-cum-Zonal Administrator, HUDA by a speaking order dated 17th May, 2016. Aggrieved by the rejection of their representation, the present writ petition was filed where the prayer is for quashing of the order dated 17th May, 2016.

6. This Court has heard the submissions of Mr. Chetan Mittal, learned Senior Counsel appearing for the Petitioners and Mr. Ankur Mittal, Additional Advocate General, Haryana appearing for the Respondents-State.

7. When this petition was first listed for hearing on 25th May, 2016, notice of motion was issued. On 22nd October, 2019, the petition was adjourned *sine die*, awaiting the decision of the Constitution Bench ('CB') of the Supreme Court.

8. The Constitution Bench of the Supreme Court has on 6th March, 2020 delivered its judgment in ***Indore Development Authority v. Manoharlal and Ors., etc. AIR 2020 1496*** answering a number of questions concerning the interpretation of Section 24 (2) of the 2013 Act and, in that context, the relevant provisions of LAA as well.

9. As a result, this petition was directed to be listed before this Court and submissions have been heard on the various aspects arising from the judgment of the Constitution Bench of the Supreme Court in ***Manoharlal (supra)***.

10. Mr. Chetan Mittal, learned Senior Counsel appearing for the Petitioners has drawn the attention of the Court to the Award passed in the instant case way back on 28th April, 1987. In particular, he referred to the portion of the Award concerning mode of payment of compensation which states that “the payment will be made to the land-owners and other interested persons according to their shares entered in the record of rights for the village Jhar Santli, Hadbast No. 44” and that “in case of any dispute, the amount of compensation shall be kept in a revenue deposit till the parties come to an amicable settlement or dispute is settled in accordance with law”.

11. Mr. Chetan Mittal then drew the Court’s attention to paragraph 134 of the judgment in *Manoharlal* (*supra*) where it has been observed that the question of whether in individual cases, compensation in respect of a majority of the land holdings was not paid to the land owners or whether 80% of the compensation amount was not handed over to the concerned Land Acquisition Collector (‘LAC’), would have to be “gauged in individual cases and then decided”. According to him, in the present case, it is incumbent on the LAC to disclose to the Court whether as on the date of passing of the Award, sufficient funds were available with the LAC to disburse the compensation amount.

12. The Court notices that there is no averment in the present petition, which was filed in 2016, to the effect that as on the date of the passing of the Award, sufficient funds were not available with the LAC for disbursement of compensation. In the absence of such an averment, it is not possible for this Court to examine such question and require the Respondents to demonstrate that in fact such funds were available. In

terms of the information made available to this Court by the Respondents, compensation amount of Rs. 1,60,269/- is lying deposited with the Chief Controller Finance, HUDA i.e. Haryana Shahari Vikas Pradhikaran ('HSVP').

13. Even as regards taking of possession, Mr. Chetan Mittal urged that it is incumbent on the Respondents to show that the standing orders in respect of drawing up of the Panchnama was followed and only that could show whether possession was taken in terms of the Award dated 28th April, 1987. Here again, the Court finds that there is no specific averment in the writ petition that such procedure was not followed in the present case. On the side of the Respondents, it is stated that the *Rapat Roznamcha* (Rapat No. 245) was drawn on 28th April, 1987 itself when possession was taken.

14. This is a case where there have been four rounds of litigation and repeated challenges to the land acquisition proceedings by these very Petitioners have failed. Clearly, in terms of the judgment in *Manoharlal (supra)* and, in particular, paragraph 363 (9) thereof, where it has been held that already concluded proceedings are not meant to be reopened under the 2013 Act, even if the order dated 28th January, 2015 of Supreme Court granted liberty to the Petitioners to make a representation to the Respondents under Section 24 (2) of the 2013 Act, it is not possible to permit the Petitioners to reopen the challenge to the acquisition proceedings. In other words, given the above background the question of granting a declaration of deemed lapsing of the land acquisition proceedings under Section 24 (2) of the 2013 Act in the present case does not arise.

15. Finally, it is pointed out by Mr. Ankur Mittal, Additional Advocate General, Haryana that after the clarification in *Manoharlal* (*supra*) in paragraph 363 (2) thereof, the Award has to be passed within a window of a period of 5 years, excluding the period covered by the interim order of this Court for the proceedings to continue, in terms of Section 24 (1) (b) of the 2013 Act, under the LAA, as if it had not been repealed. In the present case, with the status quo order of this Court continuing till 3rd August, 2010 and the 2013 Act coming into force on 1st January, 2014, even this condition is not satisfied.

16. For all the aforementioned reasons, the Court finds that there are no grounds to interfere with the order dated 17th May, 2016 of the Chairperson-cum-Zonal Administrator, HUDA. The petition is accordingly dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

25th August, 2020
Manpreet

Whether speaking/reasoned Yes/No

Whether reportable Yes/No