

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No. 12413 of 2014 (O&M)
Date of Decision: 17th November, 2020

Ashok Kumar and another

....Petitioners

VERSUS

State of Haryana and others

....Respondents

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

Present: Mr. Jitender K. Sehrawat, Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana

Dr. S. Muralidhar, J.

1. The challenge in the present petition is to the acquisition proceedings that commenced with the notification dated 16th December, 1988 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), a declaration dated 13th December, 1989 issued under Section 6 of the LAA and an Award dated 28th March, 1990 acquiring land in the revenue estate of village Garhi Brahman, District Sonapat, Haryana, which included the land stated to be owned by the Petitioners. The Petitioners also seek a declaration of deemed lapsing of the land acquisition proceedings in terms of the proviso to Section 24 (2) of the of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act'). A further direction is sought to the Respondents to release their land in terms of Section 24 (2) of the 2013 Act.

2. The case of the Petitioners is that they have not been paid compensation and that the compensation amount is lying in the treasury. Extensive reliance has been placed on the decision of the Supreme Court in ***Pune Municipal Corporation v. Harakchand Misrimal Solanki (2014) 3 SCC 183*** to contend that the deposit of the compensation amount in the government treasury would not amount to payment of compensation to the landowners. It

is accordingly averred that one of the conditions under the proviso to Section 24 (2) has been satisfied. It is further stated that while issuing the declaration under Section 6 LAA, “residential houses, Farm Houses, Poultry farm, Defunct Cold Storage of certain influential persons have been left out, although, the same was part of the notification under Section 4 of the Act”. It is stated that physical possession of the land remains with the Petitioners, that the land has not been utilized for any purpose and is lying vacant.

3. When notice of motion was issued in this petition by this Court on 2nd July 2014, status quo as regards the land in question was directed to be maintained. On 7th January 2016, the petition was directed to be adjourned *sine die*, awaiting the decision of the Supreme Court in Civil Appeal No. 4835 of 2015 (***State of Haryana v. Maharana Partap Charitable Trust***). Subsequently, the said order was modified and the petition was directed to be listed for hearing by an order dated 13th October, 2017. On 14th May, 2018, the petition was again adjourned *sine die* to await the decision of the Constitution Bench of the Supreme Court, which has since been delivered in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***.

4. In the reply filed on 19th April, 2015 by the Land Acquisition Collector, it has been stated in paras 2.1 and 2.2 as under:

“2.1 That the State of Haryana issued notification dated 16th December, 1988 under Section 4 of the Act of 1894 for acquiring land measuring 422.72 acres land for a public purpose, namely, for the development of Sector 23, Sonipat by Haryana Urban Development Authority. After considering the report of the Land Acquisition Collector (hereinafter referred to as the LAC), on the objections filed by the land owners under Section 5-A of the Act of 1894, the State Govt. notified 420.10 acres of land vide declaration u/s 6 dated 13.12.1989. Subsequently, the LAC announced the award of land measuring 385.56 acres on 28.03.1990 and the possession of land was handed over to Estate Officer, HUDA, Sonipat vide rapat no. 510 dated 21.04.1990 of village Garhi Brahman, Kalupur and Jamalpur Khurd.

2.2 The total amount of compensation of awarded land measuring 385.56 acres worked out to Rs. 5,60,60,491/- out of the total compensation amount, the LAC had already disbursed an amount of Rs. 5,45,68,718/- to the land owners, which constitutes 97.33% of the total award amount. The balance

amount of Rs. 14,91,773/- in respect of which the landowners did not come forward to receive the payment, is lying deposited in the account of the LAC.”

5. With the LAC having taken the above stand in its written statement, which has not been disputed by the Petitioners, the Court is unable to see how any of the grounds on which the land acquisition proceedings have been challenged survive, particularly after the judgment of the Constitution Bench in ***Manoharlal*** (*supra*). As regards the non-fulfillment of the condition of possession of the land not having been taken, 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.”

6. As regards the Petitioner’s contention that compensation has not been paid to them and remains in the government’s treasury, it is no longer open to the Petitioners to contend, by relying on the decision of the Supreme Court in ***Pune Municipal Corporation*** (*supra*), that this would fulfil the condition of non-payment of compensation in terms of the proviso to Section 24 (2) of the 2013 Act, in view of the following observations in ***Manoharlal*** (*supra*):

“362. Resultantly, the decision rendered in Pune Municipal Corporation & Anr. (supra) is hereby overruled and all other decisions in which Pune Municipal Corporation (supra) has been followed, are also overruled. The decision in Shree Balaji Nagar Residential Association (supra) cannot be said to be laying down good law, is overruled and other decisions following the same are also overruled. In Indore Development Authority v. Shailendra (Dead) through L.Rs. and Ors., (supra), the aspect with respect to the proviso to Section 24 (2) and whether ‘or’ has to be read as ‘nor’ or as ‘and’ was not placed for consideration. Therefore, that decision too cannot prevail, in the light of the discussion in the present judgment.

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.

7. With none of the negative conditions under the proviso to Section 24 (2) of the 2013 Act standing fulfilled, the Court is unable to grant the relief of declaration of deemed lapsing in terms of the said provision of the 2013 Act to the Petitioners.

8. As regards the Petitioners' grievance in para 5 of the writ petition that the land of certain influential persons has been left out, no particulars as such have been set out to enable this Court to require the Respondents to respond to that issue. Therefore, no case whatsoever for release of the land in question has been made out in the writ petition.

9. The petition 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