

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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**CWP No. 5339 of 2014 (O&M)
Date of Decision: 17th November, 2020**

Ram Chander and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

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

Present: Mr. Sidharth Goyal, Advocate for Mr. Sandeep Sharma,
Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. The challenge in the present petition is to a notification dated 20th April, 1990 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), a declaration dated 18th April, 1991 under Section 6 of the LAA and an Award passed on 23rd March, 1993 for acquisition of the land in village Kanhai, District Gurugram, Haryana. The Petitioners also seek release of the land stated to be owned by them under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

2. The Petitioners are stated to be owners in possession of the land in Mustil No. 34, Killa nos. 19/1/2 (3-18), 19/2 (0-12), 20/2 (5-16), 29 (0-18), 30 (0-8), 23/1 (3-0), situated in village Kanhai, Tehsil and District Gurugram, Haryana. It is stated in the petition that the Petitioners constructed shops in 1985 on the aforesaid land. It is further stated that the Petitioners "have taken compensation of this land" and that they are "ready to deposit the compensation with interest as per law".

3. It is further stated in the petition that the Petitioners filed objections under Section 5A LAA, specifically mentioning that they raised constructions on the land in question more than 10 years prior to the issuance of the notification under Section 4 LAA. It is averred that the declaration under Section 6 LAA

was issued without intimating the Petitioners about the fate of their Section 5A LAA objections. In para 14 of the petition, it is stated that the surrounding lands of 8 other persons was released. The Petitioners are stated to have approached the authorities a number of times after coming to know of instances of releases. It is averred that the Respondents have discriminated against the Petitioners in releasing adjoining lands of other persons, while acquiring the land in question.

4. While directing notice of motion to issue in the present petition on 9th April, 2014, demolition of the structures existing on the land in question was stayed. On 20th January, 2016, while adjourning the petition *sine die* awaiting the orders of the Supreme Court in Civil Appeal No. 4835 of 2015 (***State of Haryana v. Maharana Partap Charitable Trust***), it was directed that *status quo* as regards possession shall be maintained.

5. A written statement was filed by the Land Acquisition Collector (LAC), Gurugram way back on 11th July, 2014. It is stated therein that possession of the land in question was taken and handed over to the representatives of the Haryana Urban Development Authority ('HUDA') on the date of the Award itself i.e. on 23rd March, 1993 by Rapat No. 425. Further, in para 3 of the written statement, it is stated that "the petitioners have already received the compensation of Rs. 12,49,074.10/- of acquired land vide cheque No. 0204488 dated 10.05.1993 and Rs. 92,867.95 vide cheque No. 204748 dated 1.12.1993".

6. As regards the Petitioners' averment concerning non-release of the land in question, it is stated that the objections under Section 5A LAA were duly considered and pursuant thereto a report of the Joint Inspection Committee was prepared. It is stated that based on such report and the report of the LAC, a decision to release the constructed area in Khasra Nos. 34//20//2 min (0-15), 19/1/2 (0-5), was taken. Reliance has been placed on a series of judgments of the Supreme Court including ***Yadu Nandan Garg v. State of Rajasthan 1997 (1) LAC 451 SC*** and ***M/s Anand Buttons Ltd v. State of Haryana AIR 2005 SC 565***, to contend that no pick and chose policy has been adopted and that

the Petitioners cannot claim release of the land in question based on the principle of negative equality.

7. It is now settled after the judgment of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496*** that for a declaration of deemed lapsing in terms of the proviso to Section 24 (2) of the 2013 Act to be granted, both negative conditions concerning possession and non-payment of compensation, must be satisfied. The admitted position is that the Petitioners have already received compensation. The sole ground on which relief under Section 24 (2) of the 2013 Act is sought is that the Petitioners continue to remain in physical possession of the land in question. This ground clearly stands negated in light of the stand of the Respondents that constructive possession was taken on the date of the Award itself. This legal position has been made explicit by the following observations of the Constitution Bench 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 is 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.”

8. Another aspect of the matter is that the present petition challenging the land acquisition proceedings has been filed on 20th March, 2014 i.e. more than two decades after the Award. No explanation for this inordinate delay is forthcoming. The petition is thus clearly barred by delay and laches.

9. As far as the Petitioners’ claim concerning discrimination in release of the land in question is concerned, having perused the specific response on this aspect in the written statement of the LAC, the Court is not convinced that any case of discriminatory treatment has been made out. The scope of interference with orders declining release of land has been settled by the Supreme Court in *Anand Buttons Ltd. (supra)* in the following terms:

“13. It is trite law that not only land but also structure on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with the satisfaction of the concerned authorities. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief.”

10. For all the aforementioned reasons, the Court sees no merit in the present petition and dismisses it as such. 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