

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No. 4192 of 2015

Date of Decision: 17th November, 2020

Diwan Chand and others

....Petitioners

VERSUS

State of Haryana and others

....Respondents

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

Present: Mr. Arvind Kashyap, Advocate for the Petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Lokesh Sinhal, Advocate for the Respondents No. 2 and 3.

Dr. S. Muralidhar, J.

1. The Petitioners seek the quashing of a notification dated 27th March, 2001 issued under Section 4 of the Land Acquisition Act, 1894 ('LAA'), a declaration dated 26th March, 2002 under Section 6 of the LAA and an Award passed on 22nd March, 2004, in respect of land in village Nada, Tehsil and District Panchkula, Haryana. The Petitioners seek a declaration of deemed lapsing of the land acquisition proceedings in terms of the proviso to Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act').

2. The Petitioners claim to be the joint owners in joint possession of the land in Khewat No. 57, Khatauni No. 120, Khasra No. 383 measuring 0-14 *biswas*, Hadbast No. 199 in village Nada, Tehsil and District Panchkula. It is claimed that the predecessors-in-interest of the present Petitioners i.e. Babu Ram and Lal Chand "had constructed their dwelling units over the said land for many years". It is stated that "it is for this reason that the said land is Abadi Deh". The *jamabandi* stated to be "reflecting the nature of the land" has been enclosed with the writ petition as Annexure P-1.

3. The Petitioners themselves state in para 6 of the petition that on 22nd March 2004, the Respondents took symbolic possession of the land in question with the actual physical possession remaining with the Petitioners. It is further stated in para 6 that since their land in *khasra* No. 383 did not find mention in the declaration issued under Section 6 LAA, the Petitioners were under the impression that it stood released from acquisition.

4. It is averred in para 8 of the petition that when the Petitioners in 2006 sought to raise construction over the land in question, “the defendants raised obstruction to the construction being raised”. According to the Petitioners, the officials from the Revenue Department and the Haryana Urban Development Authority (‘HUDA’), came to the spot and the land was demarcated. It is stated that in the demarcation report dated 18th June, 2006 it was noted that the land in Khasra No. 383 was exempt from acquisition proceedings.

5. The Petitioners aver that fearing that they would be dispossessed from the land in question, they filed a suit in the Court of Civil Judge (Junior Division), Panchkula. By a judgment dated 30th November, 2011 the learned Civil Judge dismissed the said suit, on the ground that the Petitioners had failed to prove that they were the owners of the property, besides failing to demonstrate the purpose for which the said property was being used. The appeal filed by the Petitioners in the Court of the District Judge, Panchkula against the said judgment was by an order dated 26th February, 2013 dismissed by the District Judge.

6. Thereafter, the Petitioners filed a second appeal being RSA No. 2770 of 2013 in this Court. On 2nd February 2015, the said appeal was dismissed by a learned Single Judge of this Court by the following order:

“Learned counsel for the appellants-plaintiffs seeks permission of this Court to withdraw the suit as well as the appeal in order to challenge the Award and Rapat Roznamcha where khasra No. 383 has been incorporated though according to him this khasra no. was not mentioned in the Notification under Section 6 of the Land Acquisition Act, 1894.

In view of the request made by the learned counsel for the appellants-plaintiffs, the suit is ordered to be withdrawn with a

liberty to approach the appropriate Forum, if permissible, in accordance with law.

Accordingly, the present appeal is also ordered to be dismissed as withdrawn.”

7. Thereafter, the present petition was filed on 8th March 2015, seeking the reliefs mentioned hereinbefore. Notice of motion was directed to issue in the petition on 18th March, 2015. Thereafter, by an order dated 9th April, 2015 status quo was directed to be maintained. By an order dated 3rd October, 2019, the petition was adjourned *sine die*, awaiting the decision of the Supreme Court. Since then, a Constitution Bench of the Supreme Court has on 6th March, 2020 delivered its judgment in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496***.

8. Pursuant to the notice of motion issued by the Court, a written statement has been filed on 22nd August, 2016 by the Estate Officer, HUDA, Panchkula on behalf of Respondent Nos. 2 and 3, wherein *inter alia* it is stated that the Petitioners did not file any objections under Section 5A of the LAA and that in view of the decision of the Supreme Court in ***Delhi Administration v. Gurdeep Singh Uban, AIR 1999 SC 3822***, the writ petition itself is not maintainable. It is stated in para 5 of the written statement that on the date of the Award i.e. 22nd March, 2004, possession of the land was taken over by the LAC and handed over to HUDA by *Rapat Roznamcha Vakayati* No. 462.

9. In para 6 of the written statement it is stated as under:

“6. That the present petition has been filed in respect to khasra No. 383 of village Nadda. In this regard, it is submitted that the Petitioners were not the owners of the land in question, therefore, they have no locus standi to challenge the acquisition or seek lapse of acquisition. As per revenue record, the land comprised in Khasra No. 383 of village Nadda was in name of abadi deh. It is further submitted that this land was uninhibited. The writ petition is liable to be dismissed on this ground alone.”

10. In para 8 of the written statement, it is sought to be explained that the omission of Khasra No. 383 in the declaration issued under Section 6 LAA was on account of “*bona fide* clerical mistake”. It is further pointed out that

when a similar issue arose concerning a khasra number having been left out inadvertently in a notification issued under Section 4 LAA, this Court by an order dated 3rd February, 2011 in CWP No. 4992 of 2010 (*The Hill View Co-operative and House Building Society Ltd., Pinjore v. State of Haryana*) held it to be a genuine mistake which did not invalidate the acquisition proceedings.

11.As regards the payment of compensation, it is stated in para 16 of the written statement as under:

“16. That as regards the compensation, the total compensation amount for village Nada was Rs. 6,32,91,532/- out of which Rs. 6,20,19,772/-was disbursed by the LAC to the claimants who came forward and collected their amount of compensation. That as such an amount of Rs. 6,20,19,772/- compensation has already been paid and mere Rs. 12,71,760/-is pending as interested persons failed to take the said compensation from office of the respondent No. 3. Qua the khasra no. 383, compensation comes to Rs. 3,42,103.77 which was lying pending in name of Abadi Deh as there was no claimant.....”

12. Although, the above written statement was filed way back on 22nd August 2016, till date no replication has been filed on behalf of the Petitioners to dispute the above facts. It is plain, therefore, that the Petitioners have not even able to establish their entitlement to any relief in respect of the land in question, which, admittedly, is shown as *abadi deh*. Moreover, with the Petitioners having failed to demonstrate their ownership and possession of the land in question in the proceedings instituted in civil court, the burden is on them to show that they are entitled to any of the reliefs prayed for *qua* the land in question. The Petitioners have, however, failed to discharge such burden.

13. The Petitioners’ assertion that they continue to remain in physical possession of the land in question is to no avail since on the Petitioners’ own showing, symbolic possession thereof was taken by the Respondents on the date of the Award. The legal position in this regard has been explained by the Constitution Bench of the Supreme Court in *Manoharalal (supra)*, in the following terms:

“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.”

14. As regards payment of compensation to the Petitioners, the unequivocal statement of the Respondents that compensation to all the claimants whose land in village Nada was acquired has been paid, as well as the assertion that compensation in respect of the land in question is “lying pending in name of Abadi Deh as there was no claimant”, has been unable to be disputed by the Petitioners. In that view of the matter, none of the negative conditions for a declaration of deemed lapsing in terms of Section 24 (2) of the 2013 Act stand fulfilled.

15. The writ petition is accordingly dismissed. The status quo order stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17th November, 2020
jk

Whether speaking/reasoned Yes/No

Whether reportable Yes/No