

CWP No.22162 of 2019

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

CWP No.22162 of 2019

Date of Decision: 17.08.2021

Ajit Prasad Jain

...Petitioner

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Gaurav Mohunta, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana.

AUGUSTINE GEORGE MASIH, J.

Petitioner, who states himself to be a member of State Bank of India Employees' & Associate Cooperative House Building Society, Sector 5-C, MDC, Panchkula, has approached this Court for quashing of notification dated 16.03.1999 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 15.03.2000 (Annexure P-3) issued under Section 6 of the 1894 Act and the award dated 09.10.2003 (Annexure P-4) with a prayer for release of his plot as per Section 24 (2) of the Right of Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act').

2. Counsel for the petitioner asserts that the petitioner has been allotted a plot bearing No.22, measuring 200 square yards (8 marla), of which he has claimed release on the ground of discrimination asserting that 11 plots/houses existing in the said society had been released vide order dated 04.12.2018 (Annexure P-10). It is asserted that the physical

possession of the land is still with the petitioner and even compensation has not been deposited by the State Government despite the fact that five years has elapsed since the passing of the award. On this basis, prayer has been made for release of the plot of the petitioner and quashing the notifications 16.03.1999 (Annexure P-2) and dated 15.03.2000 (Annexure P-3) as also the award dated 09.10.2003 (Annexure P-4).

3. Reply to the writ petition has been filed by way of an affidavit of the Land Acquisition Collector, Urban Estate, Panchkula, dated 22.01.2021, wherein, in para No.3, factual aspect has been responded to by asserting that the petitioner has no *locus standi* to file the present writ petition as the owner of the acquired land is State Bank of India Employees' & Associate Cooperative House Building Society Limited (hereinafter referred to as 'Society') of which the petitioner is merely a member. The said Society had challenged the acquisition proceedings in CWP No.4028 of 2001, which has been now challenged in the present petition and the same was disposed of by this Court vide order dated 12.08.2011 with a direction to constitute a High Powered Committee. The High Powered Committee decided the representation filed by the Society vide order dated 10.11.2014, where directions were issued by the said High Powered Committee to re-survey the area of the Society and wherever the sites stood constructed and the owners were residing therein and the sites/buildings are in conformity with residential zone, such construction may be exempted from acquisition provided it does not affect the alignment of sector dividing road and if it does so, the same shall not be exempted.

In compliance with the aforesaid directions, built-up plots were released subject to the conditions prescribed therein vide order dated

04.12.2018. The release has been made of the plots on the basis of structure existing at the time of issuance of Section 4 notification as per the records. It has categorically been denied that the land has not been released on the basis of plot numbers as has been averred by the petitioner. It has further been clarified and asserted that the land has been released in the name of the State Bank of India Employees' & Associate Cooperative House Building Society, which is the owner and not for the individual members or plot holder. Thus, the plea of discrimination as sought to be raised by the petitioner deserves rejection.

4. In para 5 of the reply, it has been stated that the State Bank of India Employees' & Associate Cooperative House Building Society filed CWP No.21323 of 2015 and CWP No.10200 of 2020 claiming lapse of acquisition proceedings under Section 24 (2) of the 2013 Act and both these writ petitions have been dismissed by this Court vide order dated 01.12.2020 and 11.09.2020 respectively, thereby upholding the acquisition proceedings and thus, the petitioner has no right to claim the release of land. Since the petitioner is not the owner of the land, the writ petition itself would not be maintainable.

In para 6 of the reply, it has further been stated that the possession of the land was taken vide Rapat Nos.64 and 65 dated 09.10.2003. So far as the amount of compensation is concerned, the same has been assessed qua the land owned by the Society and Rs.4,93,408/-, is lying deposited in the account of the LAC, which can be claimed by the Society.

5. Learned counsel for the respondents submits that for applicability of Section 24 (2) of 2013 Act, which would entitle the

petitioner the benefit of release of land on the lapsing of the acquisition proceedings initiated under the 1894 Act, there should neither be physical possession taken nor compensation paid. If any of the two contingencies has been complied with, then the land acquisition proceedings under 1894 Act would not lapse. In this regard, counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC 1496.

6. His further contention is that the land in question affects the site of Medical College and Hospital of Sector 5, MDC, Panchkula and therefore, the plot of the petitioner cannot be released. Since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat Nos.64 and 65 dated 09.10.2003, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

7. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings as well as the judgment passed by the Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

8. Notifications under Sections 4 and 6 of the 1894 Act were issued on 16.03.1999 and 15.03.2000 respectively, leading to the passing of the award dated 09.10.2003. Petitioner is seeking lapsing of acquisition on the ground of discrimination with the aid of Section 24 (2) of 2013 Act.

It has been specifically stated by the respondents that the petitioner is not the owner of the land and is merely a member of the Society. The said society had challenged the acquisition proceedings in

CWP No.4028 of 2001, which was disposed of by this Court vide order dated 12.08.2011 with a direction to constitute a High Powered Committee. The High Powered Committee decided to re-survey the area of the Society and wherever the sites stood constructed and the owners were residing therein and the sites/buildings are in conformity with residential zone, such construction was exempted from acquisition provided it does not affect the alignment of sector dividing road and if it does so, the same shall not be exempted. In compliance with the aforesaid directions, built-up plots were released vide order dated 04.12.2018 subject to the conditions prescribed therein. The release was made of the land on the basis of structure existing at the time of issuance of Section 4 notification as per the records and the land has not been released on the basis of plot numbers as asserted and projected by the petitioner. Further, the same have been released in the name of the State Bank of India Employees' & Associate Cooperative House Building Society, which is the owner and not for the individual members or plot holder.

These facts, as stated in the reply filed by the respondents by way of an affidavit, are not controverted by the petitioner, thus, the plea of discrimination cannot be accepted.

9. The writ petition, as preferred by the petitioner, would not be maintainable in the light of the fact that he is not the owner of the land nor is he in possession thereof as it is the Society which is the owner of the land and petitioner is merely a member of it and therefore, he would have no *locus standi* to file the present writ petition.

In any case, the writ petitions which had been preferred by the Society, of which the petitioner is a member, have been dismissed by this

Court, where the acquisition proceedings were sought to have lapsed under Section 24 (2) of the 2013 Act. On this ground also, the present writ petition deserves to be dismissed.

10. Even otherwise, paras 244 and 245 of the judgment in *Indore Development Authority's* case (supra) deal with the vesting of the land in the State on taking of possession of the acquired land, for which the award has been passed free from encumbrances. The person retaining possession thereafter is to be treated as a trespasser as he does not have any right to continue in possession of the land, which has vested in the State. Possession of the land has been taken vide Rapat Roznamacha Nos.64 and 65, dated 09.10.2003, thus, fulfilling one of the conditions with regard to the possession having been taken over especially in the light of the fact that the possession through rapat roznamacha has been held to be valid mode of taking possession of the land.

11. As regards the compensation amount is concerned, it has been specifically averred in the reply that the compensation qua the land owned by the Society is Rs.4,93,408/-, which is lying deposited in the account of the LAC. Merely because the compensation amount is lying deposited in the account of the LAC and the Society has not collected the same, it would not entitle the petitioner to assert that the compensation has not been disbursed to him when he is not the owner.

12. Para 203 of the judgment in *Indore Development Authority's* case (supra) deals with the word 'paid' and it has been concluded in para 206 that when the amount has been tendered, the obligation has been fulfilled by the Collector. In case a person does not collect the amount, he cannot take the benefit of the same by asserting that the amount has not been paid to him

and as such, there is a lapse of proceedings. Apart from that, it has been held in para 224 of the said judgment that word 'paid' used in Section 24 (2) of 2013 Act does not include within meaning the word 'deposited', which has been used for proviso to Section 24 (2). It has, therefore, been concluded that the acquisition would not lapse, if the compensation amount is deposited with the Land Acquisition Collector, which is available for disbursement to the land owner(s). That apart, since the land/plot of the Society affects the site of Medical College and Hospital of Sector 5, MDC, Panchkula, the land of the Society, in any case, cannot be released as it would directly affect the planning.

13. In the light of the above uncontradicted factual position as explained by the respondents in the affidavit of the Land Acquisition Collector, Urban Estate, Panchkula, dated 22.01.2021, we do not find any ground for interfering in the writ petition not only on the aspect that the present petition would not be maintainable as the petitioner is not the owner of the land and secondly, the plea of discrimination as sought to be projected by the petitioner is not sustainable.

14. In view of the above, we do not find any merit in the present writ petition and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

17.08.2021
Harish

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No