

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CWP No. 7140 of 2014 (O&M)

Date of Decision: 17th November, 2020

Kamlesh Rani

....Petitioner

VERSUS

State of Haryana and others

....Respondents

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

Present: Mr. P.C. Yadav, Advocate for the Petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. The prayer in the present petition is for quashing of notification dated 27th March, 2001 under Section 4 of the Land Acquisition Act, 1894 ('LAA'), the declaration dated 26th March, 2002 under Section 6 of the LAA and for a declaration of deemed lapsing of the land acquisition proceedings in view of the proviso to Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter the '2013 Act').
2. On 21st April, 2014, while directing notice of motion, status quo in respect of the land in question was directed to be maintained. The Petitioner's contention, as recorded in the said order, was that the houses/properties surrounding the Petitioner's plot, have already been released and, therefore, no public purpose would be served by acquiring the Petitioner's plot. It was also contended that since the Petitioner has never been dispossessed, the provisions of the 2013 Act would apply.
3. Subsequently, the petition was adjourned awaiting the judgment of Constitution Bench of Supreme Court, which has since been delivered in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496.***

4. It must be noted that pursuant to notice of motion being issued, a written statement dated 1st January, 2015 had been filed by Respondent Nos. 3 and 6 i.e. District Town Planner, Panchkula. A separate written statement has been filed by the Estate Officer, Haryana Urban Development Authority (HUDA) on behalf of Respondent Nos. 4 and 7. A third written statement dated 22nd November, 2016 has been filed by the Land Acquisition Collector (LAC), Panchkula on behalf of Respondent Nos. 1 to 3 and 5.
5. Despite the lapse of nearly 4 years after the filing of the above written statements, no replication has been filed by the Petitioner.
6. The case of the Petitioner is that she had purchased the land admeasuring 3 Biswas comprising in Khasra No. 200 Hadbast No.199 in the revenue estate of village Nada, District Panchkula vide sale deed dated 3rd July, 1995 and mutation was also carried out in the relevant record prior to the notification issued under Section 4 of LAA. It is further stated that due to the unavoidable circumstances “which has been caused by nature”, Petitioner could not file objections under Section 5-A of LAA. Reference is made to the pendency of civil suit filed by one Smt. Vidyawati (Civil Suit No. 104 of 1997), which came to be dismissed on 23rd April, 1999 and the ill-health of the Petitioner and her husband.
7. It is further stated that Petitioner could not raise construction over the land but “the DPC level was raised prior to the notification under Section 4 of the LAA on 27th March, 2001”.
8. The Petitioner claims to have made several representations to the Respondents, which are stated to have been rejected. It is stated that land admeasuring 32.70 acres out of 117.52 acres sought to be acquired under the above notifications, was left out after the Section 6 of LAA notification and therefore, the Petitioner was discriminated against.
9. The Petitioner states so representation made on 19th March, 2004 and 19th April, 2004, reference was made to the reply sent on 23rd November,

2004 by Land Acquisition Officer, Urban Estate, Panchkula to the Director, Urban Estate Department, Panchkula, stating that the land of the Petitioner comprising of 3 Biswas in Khasra No.200 of village Nada has in fact notified under Section 4 and 6 of LAA and the award has also been made and the possession had been delivered to HUDA. It was attached with the released plot No.1 shown in red colour in the *sajra* plan and since the land was vacant, could not be released. Asserting that she continued to be in physical possession of the land in question and further claiming that no compensation has been paid, the above prayers have been made in this Court.

10. In the written statements filed by the Respondents, it is stated at the outset, that the Petitioner has raised unauthorized construction of DPC over the plot/land in question in violation of Sections 5 and 11 of the Punjab New Capital (Periphery) Control Act, 1952 without obtaining change of land use permission.
11. Secondly, it is stated that writ petitions filed in this Court CWP No. 2958 of 2011 decided on 23rd March, 2011, CWP Nos. 7711 of 2009 and batch (*Cambridge International Public School v. State of Haryana and another*) were dismissed on 5th April, 2011, holding that in case, constructions were raised without obtaining change of land use permission or without building plan being sanctioned, no relief under Article 226 of the Constitution could be granted.
12. Thirdly, the issue of petition being barred by delay and laches has been raised. It is pointed out that acquisition proceedings, which culminated in award No.14 dated 22nd March, 2004 have been challenged only in 2014 i.e. nearly 10 years thereafter and no satisfactory explanation has been given for the delay. It is pointed out that Petitioner did not file any objections under Section 5-A of LAA apart from raising an unauthorized construction of DPC over the plot without obtaining requisition permissions/sanctions.
13. Likewise, the other Respondents have, in their respective replies, raised similar objections. It has also been pointed out that all the notifications

were duly publicized and published as required by law. It is pointed out how possession of the acquired land was taken over by HUDA on the date of Award itself i.e. 22nd March, 2004. It is pointed out that Petitioner had applied for enhancement of the compensation under Section 18 of the LAA before learned District Judge, Panchkula and by order dated 21st December, 2009, learned Additional District Judge enhanced the compensation. The enhanced compensation was paid to the LAC for onward disbursement. It is categorically stated in para 3.3 of the reply filed by Respondent Nos. 4 and 7 that both the original compensation as well as enhanced compensation have been released to the Petitioner.

14. As already noticed, no replication has been filed by the Petitioner to dispute the above facts.

15. As regards the release of the adjoining land, it is pointed out by Respondents in their reply as under:

“The contention of the Petitioner that since against notified land of 118.46 acres, land measuring 84.82 acres was acquired so notifications are illegal etc. is liable to be rejected. In the award itself, it was explained that area measuring 13.71 acres was left out of acquisition as it is Nadi namely Nada Choe and area measuring 18.99 acres was left out as it formed part of the abadi.”

16. Moreover, as held by Supreme Court in *M/s Anand Buttons Ltd v. State of Haryana AIR 2005 SC 565*:

“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.”

17. Today, Mr. P.C. Yadav, learned Counsel for the Petitioner, sought further time to file a replication. Considering that the replies have been on

record for more than 4 years, the Court is not inclined to accede to this request of the Petitioner.

18. After the judgment of the Supreme Court in *Indore Development Authority v. Manoharlal* (*supra*), once it is shown in the official record that the possession has been handed over to HUDA on the date of Award itself, the Petitioner's claim that she continues to remain in possession can only mean that she has encroached upon land that stands vested in the Respondents and therefore, is in unauthorized possession thereof. Further the admitted position is that the Petitioner has received both original compensation as well as enhanced compensation. The observations in this regard of the Supreme Court in *Manoharlal* (*supra*), are as under:

“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.”

19. Further, the position as far as payment of compensation to the Petitioner is concerned, is that both original as well as enhanced compensation have been paid to the Petitioner. The position as regards the fulfillment of the condition of non-payment of compensation, as clarified by the Supreme Court in *Manoharlal* (*supra*), is as under:

“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.”

20. It is plain, therefore, that neither of the two conditions, which are required to be satisfied for the relief of deemed lapsing of land acquisition proceedings under Section 24 (2) of 2013 Act to be granted, stand satisfied.

21. The Court also finds no ground for quashing the notification under Section 4 LAA and declaration under Section 6 LAA. It has been held by the Supreme Court in ***Delhi Administration v. Gurdeep Singh Uban AIR 1999 SC 3822***, that the relief of quashing of the acquisition proceedings under the LAA cannot be granted in an instance where objections under Section 5A of the LAA have not been filed. With the Petitioner, admittedly, not having filed such objections, the prayer for the quashing the notification under Section 4 LAA and the declaration under Section 6 LAA, cannot be granted.

22. The Petitioner’s case that there has been discrimination on the part of the Respondents in not releasing the land in question, is also not made out considering that the Petitioner had raised unauthorized constructions on it without obtaining proper sanctions. It is seen that in the instances where portions of the land notified for acquisition were released, constructions had been raised prior to the issuance of the notification under Section 4 of the

LAA. The non-release in the present instance is therefore distinguishable and the Petitioner can claim no parity in treatment.

23. For all the aforementioned reasons, there is no merit in this writ petition and it is dismissed as such. The interim order stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

17th November, 2020
Sachin M.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No