

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6923-2016

Date of Decision: 10th November, 2020

Raj Bala and others

....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr.Sushil K.Sharma, Advocate for the Petitioners.

Mr.Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. The prayer in the present petition is for a declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter, '2013 Act') and for quashing the notification dated 20th August, 1980 under Section 4 of the Land Acquisition Act ('LAA'), the declaration dated 13th July, 1982 issued under Section 6 of the LAA and the Award dated 14th September, 1986, by which the land of the Petitioners in village Garhi Mundo, Tehsil Jagadhri, District Yamunanagar stood acquired.

2. Earlier, the Petitioners had filed CWP No.7471 of 1993 which by an order dated 15th January, 2015 stood dismissed as withdrawn, while granting liberty to the Petitioners to file an appropriate petition invoking Section 24(2) of the 2013 Act.

3. It is averred in the present petition that the Petitioners continue to be in possession of the land and compensation under Section 31 LAA remains unpaid. It is further averred that the even though there were constructions on the land in question prior to the issuance of the notification under Section 4

have “adopted a pick and choose policy” by leaving out of acquisition portions of surrounding land, on which there were constructions.

4. When the present petition was heard on 27th July, 2016, notice of motion was issued and a status report from the Land Acquisition Collector (‘LAC’) was called for.

5. On 16th January, 2017 the LAC filed a status report, wherein it is stated that the Section 5A LAA objections of the Petitioners were duly heard and it was decided that the Petitioners’ land “could not be released because it could not be adjusted within the layout”.

6. It is further stated that possession of land in question was taken on 14th September, 1986 itself under *rapat roznamcha* No.1073 and handed over to the Haryana Urban Development Authority (HUDA).

7. With possession of the land in question stated to have been taken in the terms noted above, the Petitioners’ assertion that they continued to remain in possession of the land is legally untenable. The legal position in this regard stands settled by the Constitution Bench of the Supreme Court in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496*** 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.”

8. Even as regards the Petitioners' assertion of non-payment of compensation, the Court is unable to accept the same in view of what is stated by the LAC in paras (v) and (vi) of the status report which read thus:

“(v) That the amount of compensation was awarded on 14.09.1986 and has been tendered to the land owners. That the total awarded amount of the acquired land for village Garhi Mundo is Rs.47,79,964.81/- which was paid by the HUDA to the Land Acquisition Collector and collector offered the entire compensation for payment to all the land owners out of which the compensation amount Rs.42,57,027/- has already been obtained by the land owners. That as such 89.05% of compensation amount has already been paid to the other land owners. Therefore, majority of the land owners have already obtained their compensation. This show that the amount of compensation was duly offered to all the land owners.

(vi) That the petitioners were owner of land measuring 42 bigha 7 biswa including 19 biswa in khasra no.340/275/2 and 5 biswa in khasra no.650/286/4 situated in village Garhi Mundo, Tehsil Jagadhri. That the petitioner has already taken the compensation amount of Rs.8,37,534/- vide cheque no.234385 dated 30.10.1986 for khasra nos.637/268 min, 640/269 min, 643/271, 642/270, 650/286, 655/286 min, 646/340/275, 658/289 min total comprising of 42 Bigha-7 Biswa. That the compensation amount of Rs.24,406/- for khasra no.340/275/2 and 650/286/4 is unpaid and lying deposited in the designated account of LAC because the petitioner did not provide his consent in writing to receive the compensation and other relevant documents to prove their ownership and undisbursed amount is available for payment immediately on demand of land owner. That the notice under section 12(2) was also issued on 27.09.1986.”

9. Accordingly, none of the negative conditions for granting of relief under Section 24(2) of the 2013 Act stand fulfilled in the present case. There is no merit in the present petition and it is dismissed as such. The interim order, if any, hereby stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10th November, 2020

Davinder Kumar

Whether speaking/reasoned Yes/No

Whether reportable Yes/No