

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CWP-9604-2016****Date of Decision: 10th November, 2020**

Jawantri Devi 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 Petitioners essentially seek quashing of the land acquisition proceedings which commenced with the issuance of a notification dated 20th August, 1980 under Section 4 of the Land Acquisition Act ('LAA'), followed by declaration dated 13th July, 1982 under Section 6 of the LAA and culminating with an Award dated 14th September, 1986 for the acquisition of land, including those belonging to the Petitioners situated at Village Garhi Mundo, Tehsil Jagadhri, District Yamunanagar, for the public purpose of development and utilization of land for residential and commercial area.

2. At the outset, it requires to be noticed that the Petitioners had earlier filed CWP No.7340 of 1993. The said petition was dismissed as withdrawn on 15th January, 2015 with liberty to challenge the acquisition proceedings in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Accordingly, the present petition has been filed, in which, while directing issuance of notice of motion on 17th May, 2016, the Court directed status quo as regards

possession to be maintained. The petition was adjourned *sine die* awaiting

the judgment of the Constitution Bench of the Supreme Court, which has since been delivered in ***Indore Development Authority v. Manoharlal AIR 2020 SC 1496.***

3. The Petitioners aver that they continue to remain in possession of the land in question and that compensation has not been paid to them. 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 LAA, the land was notified for acquisition. It is stated that the discriminatory treatment has been meted out to the Petitioners in including their land for acquisition when other surrounding land with constructions had been excluded.

4. In the status report filed on 6th February, 2017 by the Land Acquisition Collector (LAC), it is stated that possession of the land was taken and handed over to the Haryana Urban Development Authority (HUDA) on the date of Award itself i.e. 14th September, 1986, under *rapat roznamcha* No.1073.

5. The claim of the Petitioners that they continued to remain in actual physical possession of the land in question is no longer legally tenable. The legal position is explained in para 245 of the decision of the Constitution Bench of the Supreme Court in ***Manoharlal (supra)*** which reads 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.”

6. Even as regards the Petitioners’ claim as to non-payment of compensation, paras (v) and (vi) of the status report read as under:

“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 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.”

7. Consequently, none of the negative conditions for a declaration of deemed lapsing of land acquisition proceedings in terms of Section 24 (2) of the 2013 Act stand fulfilled. Thus, there is no merit in this petition and it is accordingly dismissed. The interim order, if any, hereby stands vacated.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10th November , 2020

Davinder Kumar