

CWP No.25011 of 2019

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

CWP No.25011 of 2019

Date of Decision: 17.08.2021

Jai Bhagwan & others

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Avnish Mittal, Advocate,
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 19.07.2002 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 17.07.2003 (Annexure P-4) issued under Section 6 of the 1894 Act and award No.4 dated 16.07.2005 (Annexure P-5) qua the land measuring 6 kanal and 8 marla, comprised in Rect. No.38//17/2, 18/1, 23/1/3 and 58//3/1/2 situated in village Patti Gaddar, N.H.152, Bypass Road, Tehsil and District Kaithal, with a prayer for release of their land 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'). Petitioners have also pressed into service a plea of discrimination which is alleged to have been meted out to them as 85 properties were released vide various letters, copies of which have been

appended as Annexures P-7 and P-8.

2. Counsel for the petitioners asserts that the petitioners are owners of the land referred to above and are in continuous possession thereof till date. The land of the petitioners which has been acquired is 6 kanal and 8 marla qua which they have filed this writ petition. The facts with regard to the issuance of the notifications under Sections 4 and 6 as also the subsequent award passed thereon, as referred to above as also the deposit of the award amount and receipt thereof by the petitioners has not been disputed. However, it has been asserted that the amount of compensation qua this piece of land i.e. 6 kanal and 8 marla stands refunded. In support of this fact, reference has been made to the letter dated 22.09.2008 (Annexure P-6) issued by the Tehsildar, Kaithal.

He submits that earlier the petitioners had not challenged the acquisition and have now approached the Court by asserting the lapse of acquisition in the light of the provisions contained under Section 24 (2) of the 2013 Act and discrimination on the ground that the respondents have released large chunk of land relating to 85 properties, details of which have been appended as Annexures P-7 and P-8. A site plan has also been appended along with the writ petition as Annexure P-9 depicting the land of the petitioners measuring 6 kanal and 8 marla as red colour and the released area as yellow colour. Learned counsel for the petitioners, on the basis of these pleadings while referring to the site plan and the photographs, asserted that the petitioners have been discriminated against by non-release of the land in question. He, therefore, prays that the impugned notifications under Sections 4 and 6 of 1894 Act as also the award dated 16.07.2005 be quashed

and the land of the petitioners which is the subject matter of this writ petition be released.

3. On the other hand, learned counsel for the State has asserted that the land of the petitioners which they are claiming to be released, affects the planning of 100 meter green belt including 24 meter wide road as per approved layout plan. He asserted that the petitioners have already lifted their compensation amount as has been admitted by them and merely because they assert that they have redeposited the amount of compensation qua the land in question, cannot be accepted nor does it give them a right to take such a plea as there is no provision under the Land Acquisition Act, 1894, which would permit refund/re-deposit of such amount. That apart, in any case, it is asserted that the fact remains that the amount of compensation as assessed by the Award stands deposited with the Collector and was always available for disbursement to the petitioners, which they, as a matter of fact, had taken and therefore, as per the judgment of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC 1496, the claim of the petitioners cannot be accepted.

As regards the plea with regard to the discrimination, which has been taken by the petitioners, has been answered by observing that no ground for discrimination is made out as merely by referring to certain orders of release would not be enough to make out a case for discrimination and therefore, violative of Article 14 of the Constitution. The petitioners were required to make out a case that the land which has been released of the other persons was identical to the one of the petitioners and the reason given by the Government for refusing to release their land are irrelevant or

extraneous. He contends that the said details are not forthcoming. To support this contention, learned counsel for the respondents has referred to pleadings in para Nos.11 to 13 of the writ petition. A perusal of the said paras would indeed leave no manner of doubt that these are bald assertions made in the writ petition bereft of any details whatsoever what to say of making out a case of discrimination.

4. Learned counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Shanti Sports Club & another Vs. Union of India & others** {2009 (5) SCC (Civil) 707} to submit that this plea would not be sustained in the absence of pleadings.

5. 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 judgments passed by the Hon'ble Supreme Court in the cases of *Indore Development Authority* and *Shanti Sports Club* (supra).

6. Having heard the learned counsel for the parties and having gone through the pleadings, we are of the considered view that the plea of discrimination as sought to be raised by the petitioners is not spelt-out from the pleadings and these are merely bald assertions which have been made and that too about the area released. The details with regard to the land which has been released and given in Annexures P-7 and P-8 do not speak about its location, its similarity or the comparison thereof with that of the petitioners nor has it been spelt-out in the pleadings. In any case, the land, release of which the petitioners are seeking, if so released, would interfere and affect the planning of 100 meter green belt including 24 meter wide road as per approved layout plan, which has specifically been stated in para 6 of

the affidavit, which has been filed by the Land Acquisition Collector, Urban Estate, Haryana, Panchkula, dated 25.01.2021, rebuttal whereof has not been filed by the petitioners. Meaning thereby that the said aspect stands admitted by them.

The case of the petitioners, therefore, is covered against them by the judgment of the Hon'ble Supreme Court in the case of *Shanti Sports Club* (supra) wherein, in a similar matter where plea of discrimination had been taken, the Hon'ble Supreme Court has dealt with the aspect of the plea of discrimination and violation of Article 14 of the Constitution of India and had held that this Article can be invoked for seeking a direction to the respondents to withdraw from the acquisition of the land in question in case the asserting person is able to prove that he has been subjected to invidious or hostile discrimination. The concept of equality enshrined in Article 14 is a positive concept and the Court can command the State to equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegally or pass wrong orders because in another such case an illegality has been committed or wrong orders have been passed. Article 14 of the Constitution cannot be invoked for perpetuating illegalities and irregularities.

7. The another ground which has been taken by the petitioners for seeking release of their land with the aid of Section 24 (2) of 2013 Act is that the land in question is in their possession. The said ground cannot be accepted in the light of the judgment passed by the Hon'ble Supreme Court in the case of *Indore Development Authority's* as paras 244 and 245 of the said judgment 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 No.881, dated 16.07.2005, 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.

8. As regards the amount of compensation is concerned, it has been submitted that out of the total amount of award of Rs.19,90,63,703/-, an amount of Rs.16,23,03,019 has been disbursed and rest of the amount is lying deposited in the account of the Land Acquisition Collector. So far as the amount of compensation is concerned i.e. Rs.4,83,922/-, petitioners have lifted the said amount.

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 the person who has filed a reference cannot claim that the compensation was not paid to him. The said para 224 be read as follows:-

“224. Thus, in our opinion, the word "paid" used in Section 24(2) does not include within its meaning the

word deposited, which has been used in the proviso to Section 24(2). Section 31 of the Act of 1894, deals with the deposit as envisaged in Section 31(2) on being prevented from making the payment even if the amount has been deposited in the treasury under the Rules framed under Section 55 or under the Standing Orders, that would carry the interest as envisaged under Section 34, but acquisition would not lapse on such deposit being made in the treasury. In case amount has been tendered and the landowner has refused to receive it, it cannot be said that the liability arising from non-payment of the amount is that of lapse of acquisition. Interest would follow in such a case also due to non-deposit of the amount. Equally, when the landowner does not accept the amount, but seeks a reference for higher compensation, there can be no question of such individual stating that he was not paid the amount (he was determined to be entitled to by the collector). In such case, the landowner would be entitled to the compensation determined by the Reference court.”

Even if the petitioners have re-deposited the amount of compensation qua the land in question, that would not give them a right to take a plea that the provisions of the 2013 Act would give them the benefit of Section 24 (2) of the said Act especially when there is no provision under the 1894 Act, which would permit refund/re-deposit of the compensation amount which has been received by the land-owner(s) unless so ordered by the Competent Court.

9. That apart, since the land in question affects the planning of 100 meter green belt including 22 meter wide road as per the approved plan,, the same, in any case, cannot be released as it would directly effect the

planning.

10 In any case, the present writ petition as has been preferred by the petitioners after an inordinate delay of more than 14 years since the passing of the award dated 16.07.2005, they cannot now at this stage come forward with a plea of challenge the said notifications and the award and the non-release of their land on the ground of discrimination since the award dated 16.07.2005 had been accepted by them, which is apparent from the fact that they had even received the amount of compensation, although they have refunded a part thereof relatable to the land which has been sought to be released from the acquisition in the present writ petition, which is not permissible in law as the said land stands vested with the Government as laid down in *Indore Development Authority's* case (supra).

11. 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

(ASHOK KUMAR VERMA)
JUDGE

17.08.2021

Harish

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