

CWP No.33725 of 2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.33725 of 2019

Date of Decision: 17.08.2021

Som Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Ajay Jain, Advocate,
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged the notification dated 28.06.1989 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 29.06.1989 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 26.06.1991 (Annexure P-3) with a prayer for release of his 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').

2. Counsel for the petitioner asserts that in the light of the provisions as contained in Section 24 (2) of 2013 Act, respondents having neither taken physical possession of the land nor have the compensation amount been disbursed, would render the land of the petitioner acquired vide award dated 26.06.1991 liable to be released, in view of Section 24 (2) of

2013 Act, especially when the petitioner has constructed his house thereon and is residing with his family members. It is asserted that the land acquisition proceedings under 1894 Act would lapse.

Another plea which has been taken by the petitioner in this writ petition is discrimination which is alleged to have been meted out to the petitioner especially in the light of the fact that the land which is being sought to be acquired of the petitioner is meant for the green belt of the road and is not, therefore, be said to be an area forming part of the sector road. This argument of the petitioner's counsel is based upon the order dated 19.12.2011 passed by this Court in CWP No.10676 of 1989, titled as 'Smt. Rani Devi & others Vs. Secretary to Government, Haryana & others', wherein the Director General, Urban Estate Department, Government of Haryana, had categorically stated in his communication to the Advocate General Office that the Government has decided to release thickly built-up area measuring 1.304 acres (excluding the area forming part of the sector road). The site plan was also produced, which was taken on record.

3. The above plea which has been sought to be pressed into service has been rebutted by the counsel for the respondents by referring to para No.4 of the affidavit dated 22.01.2021, which has been filed by the Land Acquisition Collector, Urban Estates, Haryana, Panckula, where it has been stated that the statement which has been given to the Court in CWP No.10676 of 1989 specifically mentioned that the thickly built-up area measuring 1.304 acres out of the total 2.13 acres would be released and rest of the land was acquired which affected the green belt and 12 meter wide road. It has further been pointed out that the plea of discrimination which

has been pressed into service by the petitioner would not be sustainable and is rather misplaced as the acquisition proceedings were neither challenged by the petitioner prior in time nor has the release order passed by the Government of Haryana qua the land of the built-up area which falls in 1.304 acres, has been challenged. The said claim, if any, which has been projected in the present writ petition barred by the delay and latches.

4. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Aflatoon & others Vs. Lt. Governor of Delhi & others** 1975 (4) SCC 285 to contend that the petitioner cannot be allowed to raise this plea when the notifications under Sections 4 and 6 have never been challenged nor has the validity of the award been attacked. There being dilatory tactics on the part of the petitioner, the writ petition is liable to be dismissed on the ground of delay and latches on the part of the petitioner. Similarly, reliance has been placed upon the another judgment of the Hon'ble Supreme Court in **Northern Indian Glass Industries Vs. Jaswant Singh & others** 2003 (1) SCC 335, where writ petition was filed after almost 17 years after finalization of the acquisition proceedings when the said proceedings have not been challenged earlier and it being the settled proposition of the law that after the passing of the award and after taking possession of the land, the acquired land vests with the Government free from all incumbrances. Delay and latches is itself a ground for dismissing the writ petition. It has, in any case, been pressed by the counsel that the land of the petitioner is essential for green belt, which is the part of the planning of the road and the same would be effected.

This plea of the counsel for the respondents carries weight.

5. Learned counsel for the respondents further 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. To substantiate this contention, counsel for the respondents has referred to para 3 of the reply, wherein it has been stated that the possession of the land was taken vide Rapat No.344, dated 26.06.1991.

6. 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 various judgments, on which reliance has been placed by the counsel for the respondents.

7. The plea with regard to the discrimination aspect as raised by the petitioner by asserting that his claim is covered by the judgment of this Court in CWP No.10676 of 1989, titled as 'Smt. Rani Devi & others Vs. Secretary to Government, Haryana & others' (supra) is not acceptable in the light of the statement which has been given to the Court in CWP No.10676 of 1989, where it has been specifically stated that the thickly built-up area measuring 1.304 acres out of the total 2.13 acres would be released and rest of the land was acquired which affected the green belt and 12 meter wide road. The plea of discrimination which has been pressed into service by the

petitioner is not acceptable nor sustainable as the acquisition proceedings were neither challenged by the petitioner prior in time nor has the release order passed by the Government of Haryana qua the land of the built-up area falling in 1.304 acres. It is the settled proposition of the law that after the passing of the award and after taking possession of the land, the acquired land vests with the Government free from all incumbrances.

8. Further, in the light of the judgments of the Hon'ble Supreme Court in the cases of *Aflatoon* and *Northern Indian Glass Industries* (supra), the present petition is not maintainable as the impugned notifications under Sections 4 and 6 of the 1894 Act have never been challenged by the petitioner and the present petition has been filed after about 29 years after the finalization of the acquisition proceedings. It appears to be the delaying tactics on the part of the petitioner to continue in illegal possession when the land stands vested in the Government free from all incumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and laches.

9. Petitioner is seeking lapsing of acquisition of his land with the aid of Section 24 (2) of 2013 Act. 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* No.344, dated 26.06.1991, 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.

10. As regards the compensation amount is concerned, it has been specifically averred in the reply that the amount of compensation qua the claimed land i.e. Rs.4292/- has not been lifted by him and the same is lying deposited in the account of the Land Acquisition Collector. Merely because the petitioner has not collected the amount of compensation, it would not entitle the petitioner to assert that the compensation has not been disbursed to him.

11. 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).

12. That apart, since the land of the petitioner affects the green belt and 12 meter wide road, the land of the petitioner, in any case, cannot be

released as it would directly affect the planning.

13. 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