

CWP No.3804 of 2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3804 of 2021

Date of Decision: 16.09.2021

Tejpal

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged notification dated 30.05.2005 (Annexure P-17) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') and notification dated 22.05.2006 (Annexure P-18) issued under Section 6 of the 1894 Act as well as award dated 16.07.2007, with a prayer for release of his land as per Section 24 (2) of the Right to 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 impugned notifications, liable to be released, especially when the petitioner has constructed their house thereon and is residing therein. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the notifications 30.05.2005 (Annexure P-17) and dated 22.05.2006 (Annexure P-18) and the award dated 16.07.2007 cannot sustain and deserve to be quashed.

3. On the other hand, learned counsel for the respondents submits that for applicability of Section 24 (2) of 2013 Act, which would entitle the petitioners 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 the reply which has been filed by way of an affidavit of Land Acquisition Collector, Urban Estate Department, Panchkula, dated 16.03.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.1996, dated 16.07.2007. It has further been asserted that out of the total amount of the award of ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed. So far as the amount of compensation due to the petitioners is concerned, the same is available for disbursement and the petitioner is at liberty to receive the same.

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 laches 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 encumbrances. Delay and laches is itself a ground for dismissing the writ petition.

5. His contention is that since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.1996, dated 16.07.2007, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

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 the various judgments passed by the Hon'ble Supreme

Court.

7. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 30.05.2005 and 22.05.2006 respectively, leading to the passing of the award dated 16.07.2007. Petitioner is claiming himself to be the owner of 113 square yards of land and is seeking lapsing of acquisition 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 taking of possession through Rapat Roznamacha entry has been held to be a valid mode of taking possession of land. 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.1996, dated 16.07.2007, 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 compensation amount is concerned, it has been specifically averred in the reply that out of the total amount of the award of ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed.

So far as the amount of compensation due to the petitioners is concerned, the

same is available for disbursement and the petitioner is at liberty to receive the same. Merely because the petitioners have not collected the amount of compensation, it would not entitle them to assert that the compensation has not been disbursed to them.

9. 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).

10. Further, in the light of the judgments of the Hon'ble Supreme Court in the cases of *Aflatoon & others* (supra) 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 14 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 encumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and latches.

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

16.09.2021
Harish

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