

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

CWP-5856-2021

Date of Decision:-**07.05.2021**

Parshotam Dass

... Petitioner

Versus

State of Haryana and Another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. B.S. Malik, Advocate
for the petitioner.

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

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The petitioner has filed this petition seeking writ of mandamus
declaring that the entire acquisition proceedings have lapsed under Section
11A of the Land Acquisition Act, 1894 (in short 'Act of 1894') and that the
acquisition proceedings have also lapsed under Section 24 of the Right to
Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013 (in short 'Act of 2013') and declaration that he is the owner in possession of the subject land and in case the respondents want to acquire the subject land, it has to be acquired in accordance with the procedure prescribed under Act of 2013, by assessing compensation at the current market rate along with all other statutory benefits.

The case of the petitioner in brief is that he along with one Raghunandan Dass and Dinesh Kumar are the owners and in possession of the land bearing Khewat No.87/127, Killa No.6//9/2 (4 Kanals 16 Marlas) situated in revenue estate of village Manakpur, Tehsil Jagadhari, District Yamunanagar, being Muafidars. Actually the predecessors in interest of the petitioner were inducted as Muafidars in the aforesaid land at the time of first settlement, by the provincial Government. The Haryana Government decided to acquire land in the area of village Manakpur, Tehsil Jagadhari, District Yamunanagar, for establishment of industrial area vide notification dated 08.09.1993 under Section 4 of the Act of 1894. Thereafter, declaration under Section 6 of the Act of 1894 was made vide notification dated 06.07.1994 and finally award dated 08.10.1997 (Annexure P-1) was passed by the Land Acquisition Collector. The petitioner filed application dated 18.11.1997 to get the compensation of his acquired land, but his request was not considered. On this, the petitioner issued legal notice dated 01.06.1998 (Annexure P-2) to the Land Acquisition Collector. However, no response was given to it, by the Land Acquisition Collector. The aforesaid acquisition proceedings lapsed as per the provisions of Section 11A of the Act of 1894,

as the award (Annexure P-1) was not passed within the statutory period of two years from the date of publication of declaration.

In the petition, it was further pleaded that in the award (P-1), it was stated as under:-

“..However, Khasra No.6//9/2 measuring 4-Kanals, 16 Marlas included in the notification of declaration under Section 6, already belongs to the State Government hence, this much area is excluded from the purview of the present award.”

So, as per petitioner no award was passed qua the land in question bearing Khasra No.6//9/2 (4 Kanals-16 marlas).

The petitioner had further pleaded that the land acquisition proceedings qua the subject land have also lapsed in view of Section 24 of the Act of 2013 as neither any compensation was paid nor the possession was taken by the Government, within the stipulated period of five years of the commencement of the said Act.

It was also pleaded case of the petitioner that Raghunandan Dass (co-sharer), filed the Civil Suit for declaration regarding ownership of the subject land but the same was dismissed on 16.12.2004. Aggrieved by the same, the petitioner and other co-sharers filed appeal which was allowed vide judgment and decree dated 24.08.2005 by the Court of Additional District Judge, copy whereof is Annexure P-5. As per annexure P-5, the petitioner and other co-sharers were declared owners of the subject land, they being occupancy tenants and the State Government was directed to get

the value of the land assessed from the Land Acquisition Collector within a period of three months and to pay the same to all the co-sharers including the petitioner as per law and if needful was not done then the petitioner and other co-sharers were entitled to file suit for possession with consequential relief of mesne profits. The Government had failed to take any action within the stipulated period of three months. The Land Acquisition Collector neither announced any fresh award nor determined the compensation in accordance with the Act of 1894. The Government without affording any opportunity of hearing to the petitioner, calculated the value of land on the basis of award dated 08.10.1997 (Annexure P-1). The aforesaid procedure followed by the Government was totally illegal and on the basis of the said calculation total amount of ₹1,72,505/- was deposited by the Government in the Civil Court. Out of the said amount, petitioner received sum of ₹38,334/- under protest against voucher dated 26.03.2008 (Annexure P-8).

It was further pleaded that actually, the petitioner was entitled to get compensation at least at the rate of ₹30,00,000/- (Thirty Lakhs) per acre as has been assessed by the Court of Additional District Judge, Yamunanagar in its judgment dated 20.04.2015 with regard to another land situated in village Manakpur, Tehsil Jagadhari District Yamunanagar, which was acquired vide award dated 10.07.2009.

Mr. Ankur Mittal, learned Additional Advocate General, who was having advance copy of writ petition, was asked to assist the Court.

We have heard the counsel for the parties and gone through the entire record.

Counsel for the petitioner during his arguments reiterated the entire facts detailed in the writ petition, summary of which has already been reproduced above. The main thrust of the arguments raised by the counsel for the petitioner is that the subject land was excluded from award, Annexure P-1 and thereafter, one of the co-sharers filed Civil Suit which was decreed in favour of the co-sharers of the subject land by the Appellate Court vide judgment and decree dated 24.08.2005. Counsel for the petitioner further, contended that as per the said judgment and decree, the value of the subject land was to be assessed by the Land Acquisition Collector at prevalent market rate and thereafter compensation was to be paid to all the co-sharers including the petitioner, within a period of three months. However, the Government failed to do so. It was further contended that paltry compensation, if any, paid by the Government was received by the petitioner only under protest. It is further contended that award Annexure P-1, had lapsed as the same was not passed within the prescribed period of two years as provided under Section 11A of the Act of 1894. The said award and land acquisition proceedings have also lapsed as neither proper compensation was paid nor possession was taken within the fixed period of five years as prescribed under Section 24(2) of the Act of 2013. The counsel for the petitioner further contended that in case the subject land is required by the Government, it should take necessary steps under the Act of 2013 to take its possession by paying appropriate compensation by assessing the value of the subject land at prevalent market rate.

On the other hand, the State Counsel submitted that as per the revenue record the subject land was owned by the State Government and as such, while passing award, Annexure P-1, the same was excluded from its purview by the Land Acquisition Collector. The State Counsel further submitted that the subject land was required by the Government for establishment of industrial area at Jagadhari. The possession of the same was taken by the State Industrial Development Corporation, at the time of passing of above said award.

The State Counsel further argued that the civil suit relating to the ownership of the subject land was decreed in favour of the petitioner and other co-sharers by the Appellate Court. Thereafter, the compensation was paid to the petitioner and the same was received by him vide voucher, Annexure P-8 and the execution application moved by the petitioner was dismissed as fully satisfied. The petitioner filed second execution application but the same was dismissed by the Court concerned on 18.03.2017. The appeal filed against the said order was dismissed as withdrawn on 24.12.2020. The State Counsel while concluding his arguments submitted that the present writ petition being totally misconceived, deserves to be dismissed.

We have considered the submissions made by the counsel for the parties.

Admittedly, the subject land is bearing Killa No. 6/9/2 (4 Kanals 16 Marlas) and is situated in village Manakpur, Tehsil Jagadhari, District Yamunanagar. The said land was included in notification dated 08.09.1993

under Section 4 of the Act of 1894. Thereafter, notification under Section 6 dated 06.07.1994 was issued and finally award dated 08.10.1997, (Annexure P-1) was passed. In the said award, it was specifically mentioned that Killa No. 6//9/2 (4 Kanal 16 Marlas) included in notification of declaration under Section 6, already belongs to State Government, hence this much area is excluded from the purview of the present award. From the above said it appears that as per the official record the land in question was already recorded to be owned by the Government and as such there was no need to acquire the same. Otherwise, said land was required for the establishment of industrial area at Jagadhari. From the perusal of the award, Annexure P-1, it appears that during pendency of the acquisition proceedings some of the land owners approached this Court and dispossession was stayed and in CWP No. 16790/1994, order of status quo was passed and as such acquisition proceedings remained stayed for 413 days w.e.f. 24.11.1994 to 10.01.1996. This fact has not been denied by the petitioner. As per respondents the award was to be passed latest by 10.10.1997, as earlier to that stay order as referred above was operating. Even the petitioner has admitted this fact in para No.14 of the petition. Admittedly, award Annexure P-1, was passed on 08.10.1997. So, it cannot be said that award, Annexure P-1 had lapsed as per the provisions of Section 11-A of the Act of 1894.

Admittedly, one of the co-sharers namely Raghunandan Dass filed civil suit seeking declaration to the effect that he along with petitioner and one Dinesh Kumar are owners of the land in question with consequential

relief of permanent injunction restraining the government agencies from interfering into their possession over the said land. The suit was dismissed vide judgment dated 16.12.2004 (Annexure P-3) by the Court of Additional Civil Judge (Sr. Divn.), Jagadhari. However, the appeal filed by the petitioner and other co-sharers was allowed by the Appellate Court vide judgment and decree dated 24.08.2005 (Annexure P-5). The operative part of the same reads as under:-

“ It is ordered that the appeal is accepted and the impugned judgment and decree are set aside. Suit of the plaintiff for declaration of his ownership, as well as, of defendant No. 4 and 5 on the basis of being occupancy tenants is decreed. However, the suit of the plaintiff to the effect that the defendant No. 3 was not tenant fails and is dismissed. In the circumstances of the case it is ordered that the State Government shall get the value of the land assessed from the Land Acquisition Collector within a period of three months and will pay the same to the plaintiff, defendant No. 4 and 5, as well as, to defendant No.3 as per law including other benefits as provided under Land Acquisition Act within three months. If the needful is not done, then the plaintiff or defendants No. 4 and 5 shall be entitled to file suit of possession with consequential relief of mesne profit”.

Admittedly, petitioner and other decree holders filed an application for execution of aforesaid decree. The State Government deposited amount of ₹1,72,505/- in the Court concerned. Out of which petitioner received ₹38,334/- vide voucher, Annexure P-8, dated 26.06.2008 to the extent of his share. From the perusal of the copy of the order dated

18.03.2017 passed by the Court of Civil Judge, Senior Division, Jagadhari, Yamunanagar (Annexure P-10), it is clear that second execution application was filed by the petitioner on 02.03.2013 for execution of aforesaid decree passed by the Appellate Court. However, the same was dismissed on the ground that the earlier execution application was dismissed being fully satisfied on 31.10.2007. There is no doubt regarding the fact that petitioner filed appeal against the order, Annexure P-10, but the same was dismissed as withdrawn on 24.12.2020 vide order (Annexure P-13) by the Court of Additional District Judge, Jagadhari.

Earlier to the present writ petition, another writ petition bearing No. 21107/2020 was filed by the petitioner but the same was withdrawn with liberty to file fresh on the same cause of action.

Award dated 08.10.1997 (Annexure P-1) had already attained finality. From the perusal of the judgment (Annexure P-5) of the Appellate Court, it is clear that while allowing the appeal, the Court concerned held that in case of default on the part of the government authorities, the petitioner and other co-sharers shall be entitled to file suit for possession with consequential relief of mesne profits. So, it could be easily inferred that even at the time of passing of the judgment and decree dated 24.08.2005 (Annexure P-5), the petitioner and other co-sharers were not in possession of the land in question. It being so, the petitioner cannot take any benefit of the provisions of Section 24(2) of the Act of 2013.

Undisputedly no appeal was filed by any of the parties against the judgment and decree (Annexure P-5), so it has attained finality. The

remedy available with the petitioner was to seek execution of the said decree in accordance with law. From the perusal of the record, it transpires that he has already availed the said remedy and his execution application was disposed of being fully satisfied on 31.10.2007 by the Court concerned and the second application for execution of decree was dismissed vide order (Annexure P-10). The appeal filed against the said order was withdrawn by the petitioner on 24.12.2020 vide order (Annexure P-13). In the instant petition none of the aforesaid orders passed by the Civil Courts, have been challenged by the petitioner.

In the light of the aforesaid discussion, we are of the view that no case for interference is made out. Consequently, the present writ petition is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

07.05.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No