

CWP No.7735 of 2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7735 of 2021

Date of Decision: 30.09.2021

Gurcharan Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Akshit Aggarwal, Advocate, for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate, for the respondents.

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged notification dated 30.05.2005 (Annexure P-8) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 22.05.2006 (Annexure P-9) issued under Section 6 of the 1894 Act and the 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. It has been pointed out by the learned counsel for the parties that due to some mistake, the factum of issuance of notice of motion could not be recorded in the order dated 15.09.2021 passed by this Court and the same can be now recorded.

Notice of motion. On the asking of the Court, Mr. Ankur

Mittal, Addl. A.G., Haryana, accepts notice on behalf of the State of Haryana. Short reply by way of an affidavit of the Land Acquisition Collector, Urban Estate, Panchkula, dated 28.09.2021 has already been filed.

3. Counsel for the petitioner asserts that the petitioner had purchased land measuring 100 square yards comprised in Khewat No.20, Khatoni No.240 and Khasra No.10//20/3, Hadbast No.404, situated at Mauja Gulab Nagar, Tehsil Jagadhri, District Yamuna Nagar, vide sale deed No.11047 dated 11.01.2005 (Annexure P-1). He states 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 has the compensation amount been disbursed/paid, would render the land of the petitioner acquired vide award dated 16.07.2007 liable to be released, especially when the petitioner has constructed a house on the land in question and is residing therein. He has placed reliance upon the photographs (Annexure P-3), electricity bills (Annexures P-4 to P-6) and House Tax Assessment Bill (Annexure P-7) to contend that the petitioner had raised construction of his house prior to the issuance of notification under Section 4 of the 1894 Act and possession of the land in question is still with him. It is, thus, submitted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioner, on this basis, asserts that the notifications dated 30.05.2005 (Annexure P-8) and 22.05.2006 (Annexure P-9) as also the award dated 16.07.2007 deserve to be quashed.

4. On the other hand, learned counsel for the respondents 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, is that 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 the Land Acquisition Collector, Panchkula, dated 28.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.1996, dated 16.07.2007 and mutation was entered into in favour of beneficiary department i.e. HSVP vide mutation No.2544, dated 24.07.2014. It has further been asserted that the entire award amount was tendered at the time of announcement and was available with the Land Acquisition Collector for disbursement. Out of the total amount of award i.e. ₹20,87,22,222/-, an amount of ₹17,85,89,081/-, has already been disbursed and the rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹58,329/-, he has not received the same and he is at liberty to receive/collect the said amount. It has further been mentioned that the land in question was vacant at the time of issuance of notification under Section 4 of the 1894 Act.

5. 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 good ground for dismissing the writ petition.

6. Contention has also been made that at the time of survey conducted before issuance of notification under Section 4, there were four structures existing in Khasra No.10//20, out of which Structures No.159, 160 and 161 belonged to Kumar Furnitures, Banshi and Joginder respectively and Structure No.158 belonged to some unknown person and that was found not in use. Except for Structures No.160 and 161, all other structures were acquired. So far as the plea of the petitioner that his structure existed prior to issuance of notification under Section 4 of 1894 Act, counsel states that as per the record, no structure was existing at that time. He submits that even the pleadings itself would show that the construction on the land in

question was raised after the issuance of notification under Section 4 of 1894 Act, dated 30.05.2005 (Annexure P-8) as the petitioner purchased the land just before issuance of the said notification i.e. on 11.01.2005 and the electricity bills and other bills which have been annexed with the writ petition are pertaining to the years 2012 and 2013 i.e. after the announcement of award on 16.07.2007. It is also submitted that the petitioner did not file any objection under Section 5-A of 1894 Act. Therefore, the plea of the petitioner that construction over the land already existed, cannot be accepted.

7. His further contention is that the land in question was acquired for development of residential and commercial area of Sectors 22, 23 and 24, Jagadhri and therefore, the land of the petitioner cannot be released. 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.

8. 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.

9. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 30.05.2005 (Annexure P-8) and 22.05.2006 (Annexure P-9) respectively, leading to the passing of the award dated 16.07.2007. Petitioner is asserting

himself to be the owner of land measuring 100 square yards comprised in Khewat No.20, Khatoni No.240 and Khasra No.10//20/3, Hadbast No.404, situated at Mauja Gulab Nagar, Tehsil Jagadhri, District Yamuna Nagar 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 Roznamcha 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 Roznamcha 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 Roznamcha 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 entire award amount was tendered at the time of announcement and was available with the Land Acquisition Collector for disbursement. Out of the total amount of award i.e. ₹20,87,22,222/-, an amount of ₹17,85,89,081/-, has already been disbursed and the rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹58,329/-, he has not received the same and he is at liberty to receive/collect the said amount. It has further been mentioned that the land in question was vacant

at the time of issuance of notification under Section 4 of the 1894 Act. Further, the petitioner did not file any objection under Section 5-A of the 1894 Act. 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. With regard to the plea of the petitioner that he has already raised construction over the land in question and is residing therein, it has been specifically stated in para 4 of the affidavit of Land Acquisition Collector, Panchkula, dated 28.09.2021 that at the time of survey conducted before issuance of notification under Section 4, there were only four structures existing in Khasra No.10//20, out of which Structures No.159, 160 and 161 belonged to Kumar Furnitures, Bansi and Joginder respectively

and Structure No.158 belonged to some unknown person and that was found not in use. Except for Structures No.160 and 161, all other structures were acquired. It has further been mentioned that as per the record, no structure was existing on the land of the petitioner at the time of issuance of notification under Section 4. Even the pleadings itself show that the construction on the land in question was raised after the issuance of notification on 30.05.2005 under Section 4 of 1894 Act as the petitioner had purchased the land on 11.01.2005 just before issuance of the said notification. The electricity bills (Annexures P-4 to P-6) are of the years 2012 and 2013 as also the House Tax Assessment Bill (Annexure P-7) is of the year 2014 i.e. much after the announcement of award. The petitioner did not file any objection under Section 5-A of 1894 Act after the issuance of notification under Section 4 of 1894, which fact shows that there was no construction on the land in question because if there was construction on the land, petitioner would have filed the objections under Section 5. The petitioner has not placed on record any documentary evidence to show that the construction was raised prior to issuance of notification under Section 4 of the 1894 Act or there was any structure existed at the time of issuance of said notification. Therefore, this plea of the petitioner is not accepted.

13. 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 laches.

14. That apart, since the land in question was acquired for development of residential and commercial area of Sectors 22, 23 and 24, Jagadhri, the same, in any case, cannot be released as it would directly affect the planning.

15. 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

(MEENAKSHI I. MEHTA)
JUDGE

30.09.2021

Harish

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