

CWP No.17734 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17734 of 2017

Date of Decision: 16.09.2021

Ashwani Gupta & 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 27.08.2004 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 24.08.2005 (Annexure P-2) issued under Section 6 of the 1894 Act and award dated 21.03.2007 (Annexure P-3) with a prayer for release of their 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') in the light of the judgment dated 27.10.2016 (Annexure P-9) passed by this Court in a bunch of cases, one of which was CWP No.2115 of 2014, titled as 'Pritam Kumar Goel & others Vs. State of Haryana & others'.

2. It has been pleaded in the writ petition that the petitioners had submitted their objections under Section 5-A of the Land Acquisition Act, 1894, dated 22.09.2004, but without deciding the same, notification dated 24.08.2005 (Annexure P-2) issued under Section 6 of 1894 Act. Thereafter, notice under Section 9 of the 1894 Act was issued, to which the petitioners again filed objections but without considering the same, award dated 21.03.2007 (Annexure P-3) has been passed. Thereafter, petitioners approached this Court by filing CWP No.16416 of 2006, which was disposed of vide order dated 31.10.2013 (Annexure P-7) upholding the notifications dated 27.08.2004 (Annexure P-1) and dated 24.08.2005 (Annexure P-2). Assailing the said order dated 31.10.2013 (Annexure P-7), petitioners had approached the Hon'ble Supreme Court by filing SLP (C) No.8891 of 2014, which also stood dismissed vide order dated 01.05.2017 (Annexure P-8), however, liberty was granted to the petitioners to take their remedies in accordance with law, if they have any grievance about lapsing of proceedings which may require adjudication of a disputed question of fact.

In the meantime, similarly situated landowner approached this Court for quashing the acquisition proceedings in the light of Section 24 (2) of 2013 Act, by filing CWP No.2115 of 2014, titled as 'Pritam Kumar Goel & others Vs. State of Haryana & others', which has been decided with eight other similar case vide judgment dated 27.10.2016 (Annexure P-9) granting the benefit of Section 24 (2) of 2013 to the landowners.

3.. Counsel for the petitioners asserts that in the light of the above

judgment of this Court and keeping in view 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 petitioners acquired vide award dated 21.03.2007 (Annexure P-3) liable to be released, in view of Section 24 (2) of 2013 Act. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, submits that the notifications dated 27.08.2004 (Annexure P-1) and dated 24.08.2005 (Annexure P-2) as also award dated 21.03.2007 (Annexure P-3) cannot sustain and deserve to be set aside.

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 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 07.09.2021, wherein it has been stated that the possession of the land in question was taken vide Rapat No.1247-48, dated 21.03.2007. It has further

been asserted that the entire award amount was tendered at the time of announcement and was very much available with LAC for disbursement. Out of the total amount of the award of ₹25,24,49,039/-, an amount of ₹2,81,68,698/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. ₹11,17,43,658/- (as per respective share of the petitioners), the said amount was available with the LAC at the time of announcing the award, which the petitioners have not been received and they are at liberty to receive the same.

5. His further contention is that the land in question affects the site of 25 body building shops, 32 convient shops, 6 godowns, 12 small booking agencies, 2 roads of 24 meter, Electric sub-station site, Union office, R.B. Site, Fire sub-station, 56 SCOs, PUS, released structure under Section 5-A, Police Post, two Parking sites, 30 meter wide green belt including 12 meter wide service road and therefore, the land of the petitioners 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 Nos.1247 and 1248, dated 21.03.2007, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply.

6. Contention has also been made that the petitioners have filed a reference under Section 18 of the 1894 Act before the learned Additional District Judge, Yamuna Nagar, which is pending consideration and therefore, they cannot claim lapsing of the acquisition proceedings under

Section 24 (2) of the 2013 Act in the light of the observation made by the Hon'ble Supreme Court in para 363 (5) of the judgment passed in *Indore Development Authority's* case (supra), where, it has been held that the landowners who have filed reference for higher compensation, cannot claim lapsing of acquisition proceedings under Section 24 (2) of the 2013 Act. He, thus, submits that the present writ petition deserves dismissal.

7. 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 judgment passed by the Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

8. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 27.08.2004 and 24.08.2005 respectively, leading to the passing of the award dated 21.03.2007. Petitioners are 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 No.1247, dated 21.03.2007 for village Tejli and Rapat No.1248

dated 21.03.2007 for village Gadhi Mundo, 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.

9. 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 ₹25,24,49,039/-, an amount of ₹2,81,68,698/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. ₹11,17,43,658/- (as per respective share of the petitioners), the said amount was available with the LAC at the time of announcing the award, which the petitioners have not been received and they are 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.

10. 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).

11. So far as the judgment passed by this Court in CWP No.2115 of 2014, titled as 'Pritam Kumar Goel & others Vs. State of Haryana & others' is concerned, on which reliance has been placed by the petitioners, the said judgment is of no help to the petitioners in the light of the judgment of the Hon'ble Supreme Court in *Indore Development Authority's* case (supra), where it has been categorically held 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. It may be added here that both these contingencies have been complied with in the present case and therefore, the land acquisition proceedings cannot be held to be lapsed under Section 24 (2) of 2013 Act.

12. That apart, since the land in question affects the site of 25 body building shops, 32 convient shops, 6 godowns, 12 small booking agencies, 2 roads of 24 meter, Electric sub-station site, Union office, R.B. Site, Fire sub-station, 56 SCOs, PUS, released structure under Section 5-A, Police Post, two Parking sites, 30 meter wide green belt including 12 meter wide service road, the same, in any case, cannot be released as it would directly affect the planning.

13. It may also be added here that the petitioners have filed a

reference under Section 18 of the 1894 Act for enhancement of compensation amount before the learned Additional District Judge, Yamuna Nagar, which is pending consideration. The Hon'ble Supreme Court, in para 363 (5) of the judgment in *Indore Development Authority's* case (supra), has held that the landowners who have filed a reference for higher compensation, cannot claim lapsing of acquisition proceedings under Section 24 (2) of the 2013 Act and therefore, the petitioners cannot be held eligible for claiming the acquisition proceedings to be lapsed under Section 24 (2) of the 2013.

14. Since the earlier writ petition preferred by the petitioners i.e. CWP No.16416 of 2006, challenging the same very notifications and award stands dismissed by this Court vide order dated 31.10.2013 (Annexure P-7) and SLP (C) No.8891 of 2014 preferred against the said order has also been dismissed by the Hon'ble Supreme Court vide order dated 01.05.2017 (Annexure P-8), the prayer made by the petitioners in the present writ petition cannot be accepted in the light of the observations of the Hon'ble Supreme Court in *Indore Development Authority's* case (supra), where, in paras 359 and 363 (9), it has been held that if the acquisition of land had earlier been challenged and the same has been upheld, the proceedings having been concluded, the umbrella of protection provided under Section 24(2) of the 2013 Act, cannot be invoked and it does not revive stale and time barred claims especially when it has been held in the earlier part of the judgment that after passing of the award, possession of the land has been taken vide Rapat Nos.1247 and 1248 dated 21.03.2007 and the amount of

CWP No.17734 of 2017

compensation has already been deposited with the Land Acquisition Collector, leading to the land having been vested in the State in accordance with law.

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

(ASHOK KUMAR VERMA)
JUDGE

16.09.2021
Harish

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