

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

CWP No. 11625 of 2021
Date of decision 02.07.2021

Ram Swaroop and anr.

...Petitioners

VS.

State of Haryana and ors.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Aman Bansal, Advocate, for the petitioners.

Ritu Bahri, J. (Oral)

This petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of mandamus seeking direction to respondents not to interfere with the continued, peaceful and complete possession of the petitioners, as the land in question has admittedly remained unutilized for a period of 5 years.

Issue notice of motion.

On asking of the Court, Mr. Ankur Mittal, Addl.A.G, Haryana accepts notice on behalf of the respondent-State.

Brief facts of the case are that as per copy of jamabandi for the year 2003-2004 (Annexure P-1), Ram Swaroop Gupta (petitioner No. 1) and late Sh. Mussadi Lal (both sons of Chandu Lal) are/were owners in possession of the land bearing Khasra No. 11/7/2 (6-1), 8/2 (7-8), 9/1/2/2

(3-16), 13/2 (7-12), 14 (2-18), total area 27K-15M in revenue estate of village Bindapur, District Gurugram. The aforesaid land along with lands of other landowners in other villages, became the subject matter of the compulsory acquisition proceedings notified, vide notification dated 15.05.1997 issued under Section 4 of the Land Acquisition Act, 1894 (for short '1894 Act'), for the development and utilization of land for residential, commercial and institutional area for Sector 51, Gurugram, as shown in the Development Plan under the Haryana Development Authority Act, 1977 by the Haryana Urban Development Authority in the area of village Wazirabad H.B. No. 75, Samaspur H.B. No. 92 Village Bindapur H.B. No. 93, Tehsil and District Gurugram (Annexure P-2). The said notification under Section 4 was followed by a declaration under Section 6 of the said Act, vide notification dated 14.05.1988 (Annexure P-3).

Respondent No. 2 assessed the land in question of the petitioners for awarding compensation, vide Award No. 6 of 2000 dated 13.05.2000 (Annexure P-4). Being aggrieved against aforesaid notifications issued under Sections 4 and 6 of 1894 Act, the petitioners filed CWP No. 5035-2000 before this Court, challenging the acquisition proceedings, in which notice of motion was issued and vide order dated 03.05.2000, it was ordered that the same shall come up along with CWP No. 4060 of 2000 and status quo with regard to possession was also granted in terms of the aforesaid case (Annexure P-6 colly). Thereafter, CWP No. 5035-2000 was admitted and the stay order dated 03.05.2000 was ordered to continue, vide order dated 25.05.2001 (Annexure P-7).

admitted till 2014 when an application i.e C.M. No. 14236-2014 was filed seeking for lapse of the said acquisition proceedings, vide aforesaid notifications issued under Section 4 and 6 of 1894 Act. The applications as well as main case i.e CWP No. 5035-2000 were disposed of vide order dated 05.08.2015 (Annexure P-8) and in para 4 and 5, it has been observed as under:-

“4. Learned counsel for the petitioners submitted that the petitioners are in physical possession of the land in dispute and no compensation has been paid to them. It was claimed that in such circumstances, in view of Section 24(2) of the 2013 Act, the notifications under Sections 4 and 6 of the Act had lapsed. It was further submitted that since no demand notice claiming the relief as claimed in respect of lapse of notifications has been filed with the respondents, the present writ petition be dismissed as withdrawn with liberty to the petitioners to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the present writ petition, however, direction be issued to the authority concerned to decide the representation expeditiously in a time bound manner in accordance with law. A prayer for interim relief was also made.

5. In view of the above, the present writ petition as well as the application are disposed of by granting liberty to the petitioners to file a detailed and comprehensive representation raising all the pleas as are available to them before the appropriate authority. It is directed that in the event of a representation being filed by the petitioners within a period of two months from today, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of four months from the date of receipt of representation. The petitioners shall be entitled to lead any evidence to substantiate their claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter”

In pursuance of order dated 05.08.2015, the petitioners filed a detailed representation along with supporting documents before respondent

No. 4 seeking declaration to the effect that the acquisition proceedings of their said land, have lapsed. Vide order dated 12.09.2016 (Annexure P-9), the said representation was rejected by respondent No. 4 wherein it has been observed that the physical possession of the above land in question remained with the petitioners on account of the stay order granted by this Court in the previous writ petition i.e CWP No. 5035-2000 on 25.05.2001 (Annexure P-7).

The petitioners then filed CWP No. 26993-2016 seeking that the acquisition proceedings have been lapsed in terms of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013') and also for setting aside order dated 12.09.2016. The writ petition was dismissed, vide order dated 12.10.2020 (Annexure P-10).

Learned counsel for the petitioners has argued that firstly when the award dated 13.05.2000 (Annexure P-4) was passed, the petitioners were neither tendered/offered the payment of compensation nor did they give consent to receive the same. Thus, the said amount was required to be deposited by respondent No. 2 in Civil Court/Reference Court, constituted under Section 2 (d) of the 1894 Act, in terms of provisions of Section 31 (2) of the 1894 Act. Further no notice under Section 9 (1) of 1894 Act was ever issued prior to the pronouncement of award.

The next argument of learned counsel for the petitioners is that the petitioners were not aware about order dated 12.10.2020 (Annexure P-10). The said order came to their knowledge on 16.06.2021, when the respondents tried to take the physical possession of the land in question.

Learned counsel for the petitioners has referred to Sections 100 and 101 A of Act of 2013 to contend that as per this Act, the State is duty bound to denotify the acquired land, as admittedly the public purpose for which the land was acquired remained unutilized.

Learned counsel for the petitioners has further argued that the respondents are governed by the policy/notification dated 14.09.2018 whereby Section 101-A of Act of 2013 was incorporated. Learned counsel submits that the land in question remained unutilized for 15 years, as the respondents had been restrained by this Court from dispossessing the petitioners, vide order dated 25.05.2001 (Annexure P-7).

At this stage, learned State counsel has argued that the petitioners had taken all the pleas with regard to lapsing of acquisition proceedings in CWP No. 26993-2016, which already stands dismissed on 12.10.2020. He has referred to this judgment, whereby this Court has relied upon the ratio of law laid down in ***Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496***, which interpreted Section 24 (2) of Act of 2013 and held that once the possession of the land has been taken, the land has vested in State and the land owner or whosoever has possession of the land would be considered as trespasser. The legality of the acquisition proceedings cannot be challenged in any mode.

Learned State counsel has further argued that once the petitioners have failed in the earlier round of litigation with respect to challenging of acquisition proceedings, they are now barred from questioning the legality of mode of deposit of compensation, to invalidate

acquisition proceedings. The acquisition proceedings have attained finality

and the petitioners now cannot seek any benefit 100 and 101 A of Act of 2013.

Reference has been made to a Division Bench judgment of this Court a case of '**Raghubir Singh and another vs. State of Haryana and others**', passed in CWP No. 22241-2016 and connected matter, decided on 01.10.2020 whereby this Court examined the provisions of Section 101 A of Act of 2013 and held that the power is discretionary and does not confer any corresponding legal right upon the individual land owner. Grant of such a liberty would mean commanding the Government to consider the case under Section 101 A of Act of 2013, which is though only an enabling provision, that too de-notifying the entire acquired land and not just a parcel of land, if in the opinion of the State Government 'the public purpose' for which the land was acquired has become unviable or non-essential, without giving any right to the land owners. Such grant of liberty is against the spirit of the decision given in **Indore Development's case (supra)**.

Learned State counsel has handed over notification dated 14.09.2018, which is taken on record as Mark 'A'. The notification has been issued by Revenue and Disaster Management Department whereby procedure for de-notifying land, acquired under the Land Acquisition Act, 1894 has been framed. As per Section 3 of the above policy, if the acquiring department is of the opinion that the land acquired under the Land Acquisition Act, 1894 is unviable or non-essential for the public purpose for which it has been acquired and that the land should be de-notified from acquisition, it will inform the Government about its opinion and seek

the provisions given herein after. As per Section 4, the opinion of the acquiring department after preliminary examination shall be referred to the concerned District Level Sub-Committee. Thereafter, as per Section 8, the District Level Sub-Committee after examining the matter will submit a report to the Administrative Secretary of the acquiring department who shall, after taking approval of the Government place the matter before the Ministerial Sub-Committee. As per Section 11, The report of the Ministerial Sub-Committee thereafter will be put up for consideration and decision by the Cabinet at the earliest possible. As per Section 12, the Cabinet upon consideration of the report of Ministerial Sub-Committee, can allow de-notification of the acquired land.

Heard.

Reference at this stage can be made to Section 101-A of the Act of 2013 which reads as under:-

*101-A **Power to denotify land**:- When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:*

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith

payment of damages, if any, as determined by the State Government.”

The provisions of Section 101-A of Act of 2013 are to be invoked only if the acquiring department is of the opinion that the land acquired under the Land Acquisition Act, 1894 is unviable or non-essential for the public purpose.

The above said notification dated 14.09.2018 (Mark 'A') did not give any right to the person whose land has been acquired. Further CWP No. 26993-2016 filed by the petitioners with respect to denotifying the land in question under Section 24 (2) of Act of 2013, had already been dismissed by this Court, vide order dated 12.10.2020 (Annexure P-10) by passing detailed order. The relevant portion of the order reads as under:-

*In view of the discussions made herein above and in terms of the judgment passed by the Constitutional Bench of the Supreme Court in **Indore Development Authority v. Manoharlal and others reported as AIR 2020 SC 1496**, decided on 06.03.2020, we hold as follows:*

I. Category I, cases are hereby dismissed being the ones wherein the lapse of the acquisition has been sought by the subsequent purchasers i.e. who has purchased the land issuance of notification under section 4 of the Land Acquisition Act, 1894, same being the void transaction since its inception. (Reference in this regard made to **Shiv Kumar and Anr v. Union of India and others 2019(10) SCC 229** and para 337 of the judgment in **Indore Development Authority v. Manoharlal and others (supra)**)

II. Category II, cases are dismissed on account that after excluding the period during which the dispossession of the

*landowners was stayed thereby preventing the authorities from taking the possession of the acquired land, the condition of the award having been passed before the period of five years commencing from the date of enactment of Act of 2013 as prescribed under section 24(2) of the Act of 2013 is not fulfilled. (Reference made to para 363(2) and (8) of **Indore Development Authority v. Manoharlal and others (supra)**)*

*III. Category III, cases are dismissed as the landowners/petitioners therein have sought to revive the stale claims and the concluded proceedings by invoking section 24(2) of the Act of 2013. Once the land owners have failed in the earlier round of challenge to the acquisition proceedings, they are barred from questioning the legality of mode of taking possession or mode of depositing the compensation in order to invalidate the acquisition proceedings. (Reference made to para 363 (9) of **Indore Development Authority v. Manoharlal and others (supra)**)*

*IV. Category IV cases are dismissed as in all these cases the possession of the land stands duly taken by recording rapat roznamcha and the compensation in the case where the same has not been received by the landowners, stands deposited either in the Court or in the account of Land Acquisition Collector, thereby implying that none of the contingencies as provided under section 24(2) survives and accordingly no lapse of the acquisition proceedings can be claimed. (reference made to para 363(4), (5) and (7) of **Indore Development Authority v. Manoharlal and others (supra)**).”*

Hence the period of stay granted by this Court in the present case has to be excluded and the petitioners cannot take benefit of the stay.

The petitioners now cannot say that the land was not utilized for 05 years

before this Court, challenging the acquisition proceedings. The stay was granted in this case on 25.05.2001 and finally the above writ petition was disposed of vide order dated 05.08.2015 (Annexure P-8). The petitioners then filed representation, which was rejected, vide order dated 12.09.2016 (Annexure P-9) by observing that the physical possession of the above land in question remained with the petitioners on account of the stay order granted by this Court in the previous writ petition i.e CWP No. 5035-2000 on 25.05.2001 (Annexure P-7). The petitioners then preferred another CWP No. 22241-2016, which was also dismissed on 01.10.2020 and the case of the petitioners now fell under category No. III reproduced above.

The claim of the petitioners has attained finality with regard to reopening of the case of acquisition under Section 24(2) of the Act of 2013. With respect to claim made for release of land under Section 101-A of the Act of 2013, the notification dated 14.09.2018 (Mark 'A') culled out the procedure to be followed by the Government in case the opinion is given by the acquiring department that the land acquired under the Land Acquisition Act is unviable or non-essential for the public purpose for which it has been acquired. No procedure has been laid down whereby a private person whose land has been acquired, can make the claim for denotifying the acquired land. Moreover, in ***Raghubir Singh's case (supra)***, this Court has examined this issue in detail and held that it is the Government, who has to denotify the land and such principle is not to be exercised on the asking of the person whose land stands acquired. As per proviso to Section 101-A of the Act of 2013, the land owner can compensated by providing alternative land along with payment of damages, if any, as determined by the State Government.

The notification dated 14.09.2018 (Mark A) lays down the procedure to be followed by the Government and hence the petitioners who had lost the case with respect to acquisition proceedings in the the earlier round of challenge, their acquisition proceedings stood upheld. Now the concluded proceedings cannot be reopened by taking an aid of Section 101-A of the Act of 2013.

No ground is made out for giving directions to the Government to consider the representation dated 20.06.2021(Annexure P-11) for release of land under Section 101-A of Act of 2013

The writ petition is dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

02.07.2021

G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No