

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11217-2014 (O&M)

Date of decision:30.09.2021

**Rakesh Kumar and others**

**...Petitioner**

**V/s.**

**State of Punjab and others**

**....Respondents**

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

Present: Mr. Naresh Kaushal, Advocate for the petitioners.

Ms. Anu Pal, DAG, Punjab.

Mr. Chetan Mittal, Senior Advocate with  
Mr. Yogesh Putney, Advocate for respondent No.2.

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**Ritu Bahri, J.**

The petitioners are seeking to quash the impugned acquisition/notifications dated 18.08.2009 (Annexure P-11) dated 25.05.2010 (Annexure P-12) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short Act, 1894) respectively and the Award No. 1 dated 03.12.2013 (Annexure P-13) passed by the Land Acquisition Collector on the ground that the award had not been passed within two years from the date of declaration and by operation of Section 11-A of the above said Act, the entire proceedings of the acquisition have since lapsed.

The petitioners have further sought relief of releasing the residential houses and shops from acquisition and to extend the benefit of the relocation of plots as per policy dated 08.02.2014 (Annexure P-15) or in the alternate, to pay compensation under the new Act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013').

The petitioners have given details of their residential houses and shops which are situated in villages Jandla and Bhanupali, Tehsil Nangal, District Rup Nagar in para No. 2 of the writ petition.

After issuing notification under Section 4 dated 18.08.2009 of the Act, 1894 (Annexure P-11), a declaration under Section 6 of the Act, 1894 (Annexure P-12) was made on 25.05.2010. By invoking provisions of urgency of Section 17 of the Act, 1894 and without affording opportunity of hearing, the land owners were deprived of their legal and fundamental right to file objection under Section 5-A of the above said Act. The total land measuring 62 acres and 7 marlas of five villages namely Nangli, Bhanupali, Jandla, Daroli and Bhalowal, Tehsil Nangal, District Ropar has been acquired.

The grievance of the petitioners is that they are not being extended the benefit of relocation policy dated 08.02.2014 which has been placed on record as Annexure P-15.

On 29.05.2014 when notice of motion was issued, demolition of houses was stayed keeping in view that after issuing notification dated 18.08.2009, award was passed on 03.12.2013 i.e. after more than 3 years 7 months.

Reply by way of counter affidavit of Surabhi Malik, Sub Divisional Magistrate-cum Land Acquisition Collector, Nangal, District Rupnagar dated 11.11.2014 was filed on behalf of respondents No. 1 and 3. It is stated therein that petitioners had given their applications for enhancement of compensation under Section 18(1) of the Land Acquisition Act, 1894 in the office of respondent No.3 and the same had been forwarded to the concerned District Judge to adjudicate on the matter of compensation

awarded vide award No. 1 dated 03.12.2013 (Annexures R-11 to R-12). The land had been acquired for national importance by invoking urgency provisions under Sections 17(1) and 17(4) of the Act and after taking the possession, the same was handed over to the Railway Authorities on 18.08.2010 by tendering 80% amount of the compensation and all the petitioners except petitioner No. 9 have accepted their compensation and in view of Supreme Court judgment passed in ***Civil Appeal No. 3604 of 2011*** titled as ***Banda Development Authority, Banda Vs. Moti Lal Agarwal and others***, the acquisition proceedings cannot be challenged now. The provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force w.e.f. 01.01.2014. Therefore, the provisions of Act, 2013 are not applicable in the present case as the award was passed in this case on 03.12.2013. The respondents have placed on record Rapat Roznamacha Waqiyati No. 553 dated 18.08.2010 (Annexure R-13) of villages Nangali, Bhanupali and Darauli and Rapat Roznamacha Waqiyati No. 554 dated 18.08.2010 (Annexure R-14) of villages Jandla and Bhalowal, the possession of which was handed over to the Railway Authorities on 18.08.2010. As per the entries of jamabandi (Annexure R-15) and Rapat Roznamacha Waqiyati (Annexure R-14) details of the shareholders have been given. The relocation policy dated 08.02.2014 (Annexure P-15) is only applicable to the land which is acquired by Housing and Urban Development Department of State of Punjab. There is no policy framed by Central Government in the cases of acquisition of land for the Railway Department and hence the plea of the petitioners to adjust them to some other place is not sustainable.

The petitioners had filed replication to the above said reply. In

the replication, it is reiterated that the award had been passed beyond the period prescribed under Section 11A of the Land Acquisition Act, 1894 and it is bound to lapse. It is again reiterated that Act, 2013 came into force on 01.01.2014 and deliberately the award was passed in December, 2013 to deprive the benefit of the Act, 2013.

On 29.11.2016, this Court had granted one last opportunity to the Railway Authority as well as State of Punjab to accommodate the petitioners under the relocation policy.

A short affidavit of Rakesh Kumar, P.C.S., Sub Divisional Magistrate District-cum-Land Acquisition Collector, Nangal, District Rupnagar dated 25.09.2017 was filed on behalf of respondents No. 1 and 3. In this affidavit, reference has been made to a memo No. 354 dated 12.04.2017 (Annexure R-1) in which it is mentioned that the matter was taken up with the Additional Chief Secretary, Revenue, Government of Punjab through Principal Secretary to Government of Punjab and Department of Public Works. The petitioners cannot be accommodated under the relocation policy dated 08.02.2014. The Department of Revenue Rehabilitation and Disaster Management had agreed with the proposal vide inter departmental letter dated 12.04.2017 (Annexure R-1/A). It has further been mentioned that after tendering 80% of estimated market value of land, possession of the same had been handed over to the Railway Authority on 18.08.2010 of the villages Nangali, Bhanupali and Darauli vide Rapat Roznamacha Waqati No. 553 dated 18.08.2010 (Annexure R-II) and of the villages Jandla and Bhalowal vide rapat roznamacha Waqati No. 554 dated 18.08.2010 (Annexure R-III). With regard to remaining 20%, Mustri Munadi had been repeatedly made and approximately 474 land owners had

received their amount of compensation. 114 reference cases had been filed by 381 land owners including the petitioners for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 and the reference Court had enhanced the compensation in respect of 53 reference cases concerning 182 land owners and the compensation had been enhanced to Rs.77 lacs per acre. Further additional compensation as severance allowance @15% of the land compensation had been awarded to each claimant. Further for super structures, each claimant is entitled to Rs. 5 lacs in lump sum by the Court of Additional District Judge, Rupnagar vide order dated 14.03.2017 (Annexure R-IV). Petitioners No. 11 and 12 namely Ashwani Kumar and Charanjit Singh filed CM-3118-CWP-2019 for withdrawing their names from the proceedings. The application was allowed vide order dated 11.04.2019.

On 22.07.2021, CM-9916-CWP-2021 was filed by respondent No.2 for preponing the hearing. Respondent No.2 has also placed on record google map (Annexure A-2) showing the connectivity pattern of the new Railways project between Bhanupali in Punjab to Beri in Himachal Pradesh (63 Km). It is further stated that this is the project of national importance and actual work done has been reflected in Annexure A-4 and present possession i.e.100 meters which is the subject matter of the present writ petition, has been placed on record as Annexure A-3. The judgment passed by the Supreme Court in ***New Okhla Industrial Development Authority Vs. Harkishan (Dead) through LRs and others*** has been placed on record as Annexure A-5 on the proposition that if land has been acquired by invoking provisions of urgency then Section 11A of the Land Acquisition Act is not attracted and, therefore, acquisition proceedings would not lapse on failure

to make award within the period prescribed therein.

On merits, learned counsel for the petitioners stated that the physical possession of the land is still with the petitioners and the relocation policy dated 08.02.2014 framed by the Government of Punjab should be extended to them, even if the land had been acquired for Railway Authority. This benefit cannot be denied on the ground that the acquisition is done by the Central Government.

Learned counsel for the petitioners has referred to judgment passed by the Supreme Court in the case of ***Laxmi Devi Vs. State of Bihar and others***, 2015(10) SCC 241. The Supreme Court had discussed the entire issue on the inclusion of Section 5A of the Act and introduction of Sections 11A and 6 of the Act, 1894 including the urgency provision of Section 17. The Supreme Court held that the provision of Section 11A will also apply to acquisition of which Section 17 has been resorted to.

The judgment referred to by the respondents of ***New Okhla Industrial Development Authority's case (supra)*** is also distinguishable as in that case the land was acquired way back in the year 1990 and the notification was issued on January 5, 1991. There were three rounds of litigation in which passing of the award had been upheld. In the first round of litigation, validity of Sections 4 and 6 had been upheld. However liberty was granted to the respondents (land owners) to make representation to the State Government for releasing of their land under Section 48(1) of the Act, 1894. This representation was rejected by the State Government vide order dated 03.12.1999. In the second round of litigation, order dated 03.12.1999 was again challenged by filing writ petitions which were dismissed by the High Court and upheld by the Supreme Court. In the third round of

litigation, the respondents challenged the validity of the award passed in the year 1996 on the ground that the award was passed beyond the period of two years as per Section 11 of the Act. However, the Supreme Court had upheld the land acquisition proceedings by observing that challenging the validity of the award was barred by the provisions of Order 2 Rule 2 of CPC 1908. The judgment of *Laxmi Devi's case (supra)* was not considered in this case. He has further referred to judgment passed by this Court in *Karam Singh Vs. State of Punjab* 2002(3) PLR page 773 in which acquisition proceedings were quashed under Section 11A of the Act, 1894, as the respondent-department took possession of the land by invoking the urgency provisions under Section 17 of the Act, 1894. However, the award was not passed within two years from the date of declaration of Section 6 of the Act. In that case, the Division Bench had further directed that from the date of taking of possession, damages @ Rs.4,000/- per acre shall be paid and petitioners were given liberty to seek **higher damages before the appropriate forum.**

Learned counsel for the respondents in the present case, has argued that rehabilitation policy dated 08.02.2014 (Annexure P-15) is not applicable as this policy is applicable to the land which is acquired by Housing and Urban Development Department of State of Punjab. It is not a Central Government policy and hence is not applicable to Railway Department. The land had been acquired prior to policy dated 08.02.2014 and hence this policy cannot be made effective retrospectively. He has further argued that judgment of *Laxmi Devi's case (supra)* cannot be applied to the facts of the present case as in that case, the notifications had been lapsed from time to time as the first notification was issued on

18.11.1987, then on 16.09.1999, 13.08.2001 and yet again in 2004.

He has further referred to the judgment passed by the Supreme Court in ***Satendra Prasad Jain & Others V/s. State of UP & Others***, AIR 1993 SC 2517 on the proposition that provisions of Section 11A is not applicable in the case of acquisition under Section 17 of the Land Acquisition Act whereby urgency provision are invoked to acquire the land as the land vests in the Government. He has finally referred to the judgment passed by the Supreme Court in ***Indore Development Authority Vs. Manoharlal & Others***, 2020(8) SCC 129 in which the Supreme Court had again reiterated the view taken in ***Satendra Prasad Jain's case (supra)*** that while invoking Section 17 of the Act, if 80% of the estimated compensation has not been paid before taking possession, it could not mean that possession was taken illegally or that the land would not vest in the State.

After hearing learned counsel for the parties and going through the entire record of the case, this writ petition deserves to be dismissed. As far as ***Laxmi Devi's case (supra)*** is concerned, its facts cannot be applied to the facts of the present case as in that case, the first notification under Section 4 had been issued on 18.11.1987 and this notification had excluded provision of Section 5A of the Land Acquisition Act. There was another notification stating that the earlier notification dated 18.11.1987 had lapsed. A new notification under Section 4 was issued on 16.09.1999 and objections under Section 5A were filed by the land owners. Even the above said notification of the year 1999 had lapsed as declaration under Section 6 was not issued within one year. Thereafter, third notification was issued on 13.08.2001 and against this notification, objections were filed under Section 5A. This notification also lapsed. In 2004, fresh steps were initiated for

acquisition which expired for the same reason. However by invoking the urgency provisions under Section 17 of the Land Acquisition Act, notification was issued on 24.11.1987 and this notification was challenged on the ground that even though possession had been taken, 80% compensation had not been paid. When the matter went to the Supreme Court, the Supreme Court observed that after invoking urgency provisions, 80% of the estimated compensation had not been paid to the land owners and award had not been passed even after three decades. This payment should have been made before taking possession of the land. Since the possession had been taken wayback in the year 1987, appeal was allowed and direction was given to the respondents to initiate fresh acquisition proceedings or take any other action available to within six weeks.

In the facts of the present case, as per the photographs placed on record by way of CM-9916-CWP-2021, the respondents have placed on record google map (A-2) to show the connectivity patterns of railway line. This railway line is in between Bhanupali (Punjab) to Beri (Himachal Pradesh). It is 63 k.m. railway track and as per the respondents, only a stretch of 100 meters is required to be constructed and rest of work is complete. The present position is shown in map (Annexure A-3) and actual work done is reflected in Annexure A-4. As far as the constructed portion is concerned, there is no dispute that construction is existing on the land of the petitioners who have approached this Court. The petitioners in the replication filed on 25.08.2015 to the reply filed by respondent No. 3 have not denied that 80% compensation has been paid to them.

Alongwith reply filed by respondent No. 3 dated 11.11.2014, the respondents have placed on record applications for enhancement of

compensation under Section 18(1) of the Land Acquisition Act, 1894 in the office of respondent No.3 and the same had been forwarded to the concerned District Judge to adjudicate on the matter of compensation awarded vide award No. 1 dated 03.12.2013 (Annexures R-11 to R-12). The land had been acquired for national importance by invoking urgency provisions under Sections 17(1) and 17(4) of the Act and after taking the possession, the same was handed over to the Railway Authorities on 18.08.2010 by tendering 80% amount of the compensation and all the petitioners except petitioner No. 9 have accepted their compensation. The respondents have placed on record Rapat Roznamacha Waqiyati No. 553 dated 18.08.2010 (Annexure R-13) of villages Nangali, Bhanupali and Darauli and Rapat Roznamacha Waqiyati No. 554 dated 18.08.2010 (Annexure R-14) of villages Jandla and Bhalowal, the possession of which was handed over to the Railway Authorities on 18.08.2010. As per the entries of jamabandi (Annexure R-15) and Rapat Roznamacha Waqiyati (Annexure R-14) details of the shareholders have been given.

As per short affidavit dated 25.09.2017 filed on behalf of respondents No. 1 and 3 it is stated that after tendering 80% of estimated market value of land, possession of the same had been handed over to the Railway Authority on 18.08.2010 of the villages Nangali, Bhanupali and Darauli vide Rapat Roznamacha Waqiyati No. 553 dated 18.08.2010 (Annexure R-II) and of the villages Jandla and Bhalowal vide rapat roznamacha Waqiyati No. 554 dated 18.08.2010 (Annexure R-III). With regard to remaining 20%, Mustri Munadi had been repeatedly made and approximately 474 land owners had received their amount of compensation.

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petitioners for enhancement of compensation under Section 18 of the Land Acquisition Act, 1894 and the reference Court had enhanced the compensation in respect of 53 reference cases concerning 182 land owners and the compensation had been enhanced to Rs.77 lacs per acre. Further additional compensation as severance allowance @15% of the land compensation had been awarded to each claimant. Further for super structures, each claimant is entitled to Rs. 5 lacs in lump sum by the Court of Additional District Judge, Rupnagar vide order dated 14.03.2017 (Annexure R-IV). Petitioners No. 11 and 12 namely Ashwani Kumar and Charanjit Singh filed CM-3118-CWP-2019 for withdrawing their names from the proceedings. The application was allowed vide order dated 11.04.2019.

*In Satendra Prasad Jain & Others Vs. State of UP & Others, reported as AIR 1993 SC 2517*, wherein the Hon'ble Apex Court has held that when Section 17(1) is applied by reason of urgency, Govt. takes possession of the land prior to making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) stated so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the Act by which land statutorily vested in the Government can revert to the owner. The judgment in the case of *Satendra Prasad (supra)* has been consistently followed subsequently in the case of *Awadh Bihari Yadav & Others Vs. State of Bihar & Others, reported as [1995] 6 SCC 31* and in the case of *New Okhla Industrial Development Authority Vs. Harkishan (Dead) through Legal Representatives & Others, reported as*

**[2017] 3 SCC 588.**

In *New Okhla Industrial Development Authority's case (supra)*, the Supreme Court was considering a case where in the first round of litigation, validity of Sections 4 and 6 had been upheld. However liberty was granted to the respondents (land owners) to make representation to the State Government for releasing of their land under Section 48(1) of the Act, 1894. This representation was rejected by the State Government vide order dated 03.12.1999. In the second round of litigation, order dated 03.12.1999 was again challenged by filing writ petitions which were dismissed by the High Court and upheld by the Supreme Court. In the third round of litigation, the respondents challenged the validity of the award passed in the year 1996 on the ground that the award was passed beyond the period of two years as per Section 11 of the Act. However, the Supreme Court had upheld the land acquisition proceedings by observing that challenging the validity of the award was barred by the provisions of Order 2 Rule 2 of CPC 1908. With respect to provisions of Section 17(1) of the Act, the Supreme Court observed as under:-

“12. There is yet another serious infirmity in the impugned judgment. In the instant case, the land was acquired by invoking urgency clause under Section 17 of the Act and dispensing with the requirement of filing the objections under Section 5A of the Act. This action on the part of the Government was upheld by this Court in the first round of litigation. Once possession is taken under Section 17(1) of the Act, Section 11A is not even attracted and, therefore, acquisition proceedings would not lapse on failure to make award within the period prescribed therein. This is so held in *Satendra Prasad Jain & Ors. vs. State of Uttar Pradesh & Ors., 1993(3) R.R.R. 597: (1993) 4 SCC 369*, which view is

affirmed in *Awadh Bihari Yadav & Ors. v. State of Bihar & Ors.*, 1995(3) R.R.R. 445: (1995) 6 SCC 31.”

In *Banda Development Authority v. Moti Lal Agarwal*

2011(5) SCC 394, the Hon’ble Supreme Court has held as under:

“28. What should be the mode of taking possession of the land acquired under the Act? This question was considered in *Balwant Narayan Bhagde v. M.D. Bhagwat* (1976) 1 SCC 700. Untwalia, J. referred to the provisions contained in Order XXI Rules 35, 36, 95 and 96 of the Code of Civil Procedure, decisions of different High Courts and opined that even the delivery of so called “symbolical” possession is delivery of “actual” possession of the right, title and interest of the judgment-debtor. Untwalia, J. further observed that if the property is land over which there is no building or structure, then delivery of possession over the judgment-debtor’s property becomes complete and effective against him the moment the delivery is effected by going upon the land. The Learned Judge went on to say: “When a public notice is published at a convenient place or near the land to be taken stating that the Government intends to take possession of the land, then ordinarily and generally there should be no question of resisting or impeding the taking of possession. Delivery or giving of possession by the owner or the occupant of the land is not required. The Collector can enforce the surrender of the land to himself under Section 47 of the Act if impeded in taking possession. On publication of the notice under Section 9(1) claims to compensation for all interests in the land has to be made; be it the interest of the owner or of a person entitled to the occupation of the land. On the taking of possession of the land under Section 16 or 17(1) it vests absolutely in the Government free from all incumbrances. It is, therefore, clear that taking of possession within the meaning of Section 16 or 17 (1) means taking of possession on the spot. It is neither a possession on paper nor a “symbolical” possession as generally

understood in civil law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9(1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.

(emphasis supplied)

Bhagwati J., (as he then was), speaking for himself and Gupta, J. disagreed with Untwalia, J. and observed:

“.....We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land, since all interests in the land are sought to be acquired by it. There can be no question of taking “symbolical” possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by beat of drum or otherwise

would be sufficient to constitute taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it.” (emphasis supplied)

29. In ***Balmokand Khatri Educational and Industrial Trust v. State of Punjab (1996) 4 SCC 212***, the Court negated the argument that even after finalization of the acquisition proceedings possession of the land continued with the appellant and observed: “It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession”.

30. In ***P.K. Kalburqi v. State of Karnataka (2005) 12 SCC 489***, the Court referred to the observations made by Bhagwati, J. in *Balwant Narayan Bhagde v. M.D. Bhagwat* (supra) that no hard and fast rule can be laid down as to what act would be sufficient to constitute taking of possession of the acquired land and observed that when there is no crop or structure on the land only symbolic possession could be taken.

31. In ***NTPC v. Mahesh Dutta (2009) 8 SCC 339***, the Court noted that appellant NTPC paid 80 per cent of the total compensation in terms of Section 17(3A) and observed that it is difficult to comprehend that after depositing that much of amount it had obtained possession only on a small fraction of land.

32. In ***Sita Ram Bhandar Society v. Govt. of NCT, Delhi (2009) 10 SCC 501*** and ***Omprakash Verma v. State of Andhra Pradesh (2010) 13 SCC 158***, it was held that when possession is to be taken of a large tract of land then it is permissible to take possession by a properly executed panchnama. Similar view was expressed in the recent judgment in ***Brij Pal Bhargava v. State of UP 2011(2) SCALE 692***.

33. The judgment in ***Nahar Singh v. State of U.P.*** (supra) on which reliance was placed by the learned senior counsel for respondent No.1 is clearly distinguishable. In that case, the Court had found that possession of the acquired land had not been taken by the State and the award was not passed even after two years from the date of coming into force of the Land Acquisition (Amendment) Act, 1984 whereby Section 11A was inserted in the Act.

34. The principles which can be culled out from the above noted judgments are:

- i) No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
- ii) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of

possession.

iii) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

iv) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

v) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

35. In the light of the above discussion, we hold that the action of the concerned State authorities to go to the spot and prepare panchnama showing delivery of possession was sufficient for recording a finding that actual possession of the entire acquired land had been taken and handed over to the BDA. The utilization of the major portion of the acquired land for the public purpose for which it was acquired is clearly indicative of the fact that actual possession of the acquired land had been taken by the BDA.

36. Once it is held that possession of the acquired land was handed over to the BDA on 30.6.2001, the view taken by the High Court that the acquisition proceedings had lapsed due to

non-compliance of Section 11A cannot be sustained. In *Satendra Prasad Jain v. State of U.P.* (supra), this Court considered the applicability of Section 11A in cases involving acquisition of land under Section 4 read with Section 17 and observed:

“Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner.”

(emphasis supplied)”

Still further, the above said judgments were considered by the Hon’ble Apex Court in its later decision in the case of *Indore Development Authority Vs. Manoharlal & Others, reported as 2020 (8) SCC 129*,

wherein, in Para 135, the Hon’ble Apex Court has reiterated the view taken

in the case of *Satendra Prasad Jain & Others (supra)*. The relevant para of Indore Development Authority (*supra*) is reproduced as under:

“135. *In Satendra Prasad Jain & Ors. v. State of U.P & Ors, (1993) 4 SCC 369*, the concept of vesting under the Act of 1894 - 10 - had been taken into consideration. The Government cannot withdraw from acquisition under Section 48, once it has taken the possession. This Court has observed that once possession has been taken under Section 17(1), prior to the making of the award, the owner is divested of the title to the land, which is vested in the Government and there is no provision by which land can be reverted to the owner. This Court has observed thus: ”

14. There are two judgments of this Court, which we must note. In *Rajasthan Housing Board v. Shri Kishan, (1993) 2 SCC 84* it was held that the Government could not withdraw from acquisition under Section 48 once it had taken possession of the land. In *Lt. Governor of H.P. v. Avinash Sharma, (1970) 2 SCC 149* it was held that: (SCC p. 152, para 8) "... after possession has been taken pursuant to a notification under Section 17(1) the land is vested in the Government, and the notification cannot be cancelled under section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17(1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification."

15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to

say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse.

When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner." (emphasis supplied)

This Court further observed in *Satendra Prasad Jain (supra)* that even if compensation was not paid to the appellant under Section 17(3-A), it could not be said that possession was taken illegally. Vesting is absolute. This Court has observed thus: "17. In the instant case, even that 80 per cent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the first respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition officer dated June 27, 1990 shows, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that,

therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award."

Hence the law is very clear that if Section 17 of the Act is invoked to acquire the land in that situation Section 11A will have no application and even if award was passed after a period of three years, the acquisition proceedings would not lapse. Dispensing with the requirement of filing objections under Section 5A of the Act will not be a ground to set aside the acquisition proceedings. As far as the rehabilitation policy dated 08.02.2014 is concerned (Annexure P-15), it has been clarified that this policy is applicable only to the acquisition made by Housing and Urban Development Department of State of Punjab. It is not a Central Government policy and therefore it is not applicable to Railway Authority. No judgment has been cited by the petitioners to show that this policy can be made applicable to acquisition made by the Railway Authority. As far as ground of petitioners that their houses are constructed on the land is concerned, the Supreme Court in ***State of Haryana Vs. M/s. Vinod Oil And General Mills and Another***, 2014(15) SCC 410 held that even the factory and building was put up in the lands with the approval of the authority, still cannot be a bar for acquisition of the land. Public interest overrides individual's interests. In paras 8, 9 and 10, the Supreme Court observed as under:-

"8. Permission for change of land use and developing the area as an industry, in our view, has no relevance while considering the validity of acquisition. If we are to hold that once permission is granted for change of land use for developing the area as an industry and thereafter State cannot acquire it, then a situation may arise that for all time to come, the particular area cannot be acquired which may not be in the larger public interest. We are also unable to agree with the view taken by the

High Court that the action of the respondents/State in approving setting up of a factory and then acquiring the same is unreasonable. It is not as if the lands where factories are set up are immune from any acquisition. The only effect of permission for such change in land use and approval for construction and developing the area as an industry can be recognised as valid only to the extent as to confer right upon the land owners to recover the appropriate compensation.

9. The land was acquired for development and utilisation of the same for residential and commercial purposes in Sector 9 & 11, Hissar. So far as the purpose of acquisition of land is concerned, the High Court observed that 'the acquisition is not for essential public services such as development of infrastructure, railways, metro or the purpose related thereto, irrigation, water supply, drainage, road, communication etc.....'. High Court was not correct in observing that only development of infrastructure, railways or irrigation, water supply, drainage, road etc. are primary public purposes. Public purpose includes a purpose involving general interest of community as opposed to the interest of an individual directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.

10. The concept of 'public purpose' was dealt with in detail in ***Daulat Singh Surana & Ors v. First Land Acquisition Collector & Ors 2007(1) RCR (Civil) 260:(2007) 1 SCC 641***, in which this Court has held as under:-

“49. In ***United Community Services v. Omaha Nat. Bank (77 NW 2d 576, 585, 162 Neb 786)*** the Court observed that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment and the general welfare of all the inhabitants.

50. In ***People ex-rel Adamowski v. Chicago R.R. Terminal Authority (151 NE 2d 311, 314, 14 III 2d 230)*** the Court observed that public purpose is not static concept, but is flexible and is capable of expansion to meet conditions of

complex society that were not within contemplation of framers of the Constitution.

51. In ***Green v. Frazier (176 NW 11, 17, 44 ND 395)***, the Court observed that a public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business.

52. In the words of Lord Atkinson in ***Central Control Board v. Cannon Brewery Co. Ltd. {1919 AC 744: 88 LJCh 464: 121 LT 361 (HL)}*** the power to take compulsorily raises by implication a right to payment.

.....

59. In ***Somavanti v. State of Public (1963) 2 SCR 774: AIR 1963 SC 151*** the Court observed that public purpose must include an object in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. Public purpose is bound to change with the times and the prevailing conditions in a given area and, therefore, it would not be a practical proposition even to attempt an extensive definition of it. It is because of this that the legislature has left it to the Government to say what is a public purpose and also to declare the need of a given land for a public purpose.

60. The Constitution Bench of this Court in *Somavanti* observed that whether in a particular case the purpose for which land was needed was a public purpose or not was for the Government to be satisfied about and the declaration of the Government would be final subject to one exception, namely, that where there was a colourable exercise of the power the declarations would be open to challenge at the instance of the aggrieved party.

.....

73. Public purpose cannot and should not be precisely defined

and its scope and ambit be limited as far as acquisition of land for the public purpose is concerned. Public purpose is not static. It also changes with the passage of time, needs and requirements of the community. Broadly speaking, public purpose means the general interest of the community as opposed to the interest of an individual.”

In the present case, since the acquisition has been done by the Railway Authority for the public purpose and after completing the entire project, only 100 meters requires to be completed and it is being stalled only on account of the fact that petitioners are seeking release of their land. On account of the fact that construction has been done as per the reply filed by respondents and it has been further clarified that after tendering 80% of estimated market value of land, possession of the same had been handed over to the Railways Authorities on 18.08.2010 and with regard to remaining 20%, Mustri Munadi had been repeatedly made and approximately 474 land owners had received their amount of compensation.

With these observations, writ petition is dismissed.

Pending application (if any), stands disposed of.

**(RITU BAHRI)**  
**JUDGE**

**30.09.2021**

Divyanshi

**(ARCHANA PURI)**  
**JUDGE**

**Whether speaking/reasoned:**  
**Whether reportable:**

**Yes/No**  
**Yes/No**