

CWP No.1115 of 2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1115 of 2018

Date of Decision: 17.08.2021

Dalip Kumar and 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. Parveen Chauhan, Advocate, for
Mr. Divya Sarup Sharma, Advocate
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

Petitioners have approached this Court for setting aside the impugned order dated 18.08.2017 (Annexure P-19) passed by the Administrator-cum-Additional Director, Urban Estate, Haryana – respondent No.5, whereby the representation of the petitioners for release of their land as per Section 24 (2) of the Right of Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'), has been rejected.

2. Counsel for the petitioners asserts that the land of the petitioners was acquired by notification dated 02.12.1982 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') followed by notification dated 04.07.1984 issued under Section 6 of the 1894 Act and award dated 16.09.1986. He asserts 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 have the compensation amount been disbursed, would render the land of the petitioners 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. A plea has been raised that the petitioners belong to the poor strata of the society and have small houses, therefore, the land may be released to them. Counsel for the petitioners, on this basis, asserts that the impugned order dated 18.08.2017 (Annexure P-19) cannot sustain and deserves to be set aside.

3. 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 , Panchkula, dated 12.08.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.31, dated 16.09.1986 and the same was handed over to the concerned department. It has further been asserted that out of the total amount of the award of Rs.80,72,786/-, an amount of Rs.78,54,415/- has already been disbursed. Rest of the amount is available for disbursement. It has further been submitted that qua the land in question, an amount of Rs.85,536/- was

available for disbursement and the amount of Rs.59,468/- has already been paid vide Banker Cheque No.654191-2000, dated 01.10.1992. The balance amount of Rs.26,068/- is pending, which the petitioners are at liberty to receive.

4. His further contention is that the land of the petitioners affects the area earmarked for commercial purpose 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 No.31, dated 16.09.1986, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

5. 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).

6. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 02.12.1982 and 04.07.1984 respectively, leading to the passing of the award dated 16.09.1986. Petitioners are seeking lapsing of acquisition of their land 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 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 Roznamacha No.31, dated 16.09.1986, 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.

7. 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 Rs.80,72,786/-, an amount of Rs.78,54,415/- has already been disbursed. Rest of the amount is available for disbursement. It has further been submitted that qua the land in question, an amount of Rs.85,536/- was available for disbursement and the amount of Rs.59,468/- has already been paid vide Banker Cheque No.654191-2000, dated 01.10.1992. The balance amount of Rs.26,068/- is pending, which the petitioners are at liberty to receive. 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.

8. 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).

9. Plea of discrimination is being sought to be pressed but the same cannot be accepted as earlier a writ petition was preferred by the petitioners i.e. CWP No.4871 of 1988 challenging the acquisition and the award, which was dismissed by this Court vide order dated 22.09.2011 on the ground that the land of the petitioners was lying vacant at the time of issuance of notification under Section 4 of the 1894 Act. The question of discrimination as raised was also discarded. SLP preferred by the petitioners against the said order i.e. SLP (C) No.4115 of 2012 was also dismissed vide order dated 16.03.2012. The acquisition having been finalized upto the Hon'ble Supreme Court, the petitioners cannot claim any benefit in the present writ petition.

Be that as it may, the plea of discrimination as is sought to be raised by the petitioners is not acceptable when seen that the said land, qua which it has been asserted to have not been acquired, has no connection with the land of the petitioners. Discrimination, if any, had to be shown as hostile and merely because some constructed area has been left out of an acquisition, cannot, in itself, be ground for asserting that the others are entitled to the same benefit unless the fact(s) is/are demonstrated positively, so as to assert that there has been indeed discrimination. We do not find any such aspect which would substantiate the assertion of the petitioners.

10. The contention as has been raised that the petitioners belong to the poor strata of the society and have small houses and therefore, the land may be released to them, cannot be accepted as the land which is involved in the present case would affect the area earmarked for commercial purpose.

11. In view of the above, finding no merit the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

17.08.2021
Harish

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