

CWP-12654-2018

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

CWP No.12654 of 2018

Date of Decision: 06.09.2021

Subedar Sardara Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Ashish Gupta, Advocate,
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged notification dated 08.08.2002 (Annexure P-2) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 08.08.2003 (Annexure P-4) issued under Section 6 of the 1894 Act and the award dated 05.08.2005 (Annexure P-6) as also the impugned order Annexure P-17 passed by the Secretary-cum-Director General, Urban Estate Department, Haryana – respondent No.1, whereby the claim of the petitioner for release of his land in the light of the order passed by this Court in CWP No.10040 of 2014 (Annexure P-16), has been considered and rejected, 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. Counsel for the petitioner asserts that the petitioner is the owner in possession of residential house measuring 10 marla comprised in Khasra No.83/2 falling in the revenue estate of village Pati Kaisth Seth i.e. Plot No.33-A, Ward No.27, Tehsil and District Kaithal. He submits 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, would render the land of the petitioner acquired vide award dated 05.08.2005 (Annexure P-6) liable to be released, especially when the petitioner has constructed his house thereon and is residing.

It is further asserted that the proposed bye-pass road has been shifted from the existing location to another site which is approximately one kilometer away from the land in question. He, therefore, asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the impugned order (Annexure P-17) 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 29.01.2021, wherein it has been stated that the possession of the land in question was taken vide Rapat No.735, dated 05.08.2005, after passing of the award dated 05.08.2005.

4. So far as the compensation amount is concerned, counsel for the respondents submits that the petitioner has himself admitted in para 10 of the writ petition that the compensation amount is lying deposited in the account of the Land Acquisition Collector. He submits that the compensation amount is very much available for disbursement but the petitioner has not lifted the same. He, therefore, contends that merely because the petitioner has not collected the amount of compensation, it would not entitle him to assert that the compensation has not been disbursed/paid to him.

5. As far as the assertion of the learned counsel for the petitioner that bye-pass road has been shifted from the existing location to another site which is approximately one kilometer away from the land in question, learned counsel for the respondents contends that there is no merit in the said assertion as 75 meter road and 100 meter green belt are still to be constructed as per the approved layout plan dated 18.12.2006 and the land

in question affects the site of 75 meter road; in front of the land in question, some portion of green belt and 8 meter metal portion has been constructed 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.735, dated 05.08.2005, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

6. 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).

7. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 08.08.2002 and 08.08.2003 respectively, leading to the passing of the award dated 05.08.2005 (Annexure P-6). Petitioner has asserted himself to be the owner of a residential house measuring 10 marla comprised in Khasra No.83/2 falling in the revenue estate of village Pati Kaisth Seth i.e. Plot No.33-A, Ward No.27, Tehsil and District Kaithal 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 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.735, dated 05.08.2005, 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, the acquisition would not lapse

8. As regards the compensation amount is concerned, the petitioner has himself admitted in para 10 of the writ petition that the compensation amount is lying deposited in the account of the Land Acquisition Collector and therefore, the compensation amount is very much available for disbursement to the petitioner but he has not lifted the same. Merely because the petitioner has not collected the amount of compensation, it would not entitle him to assert that the compensation has not been disbursed/paid to him.

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

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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. That apart, since the land of the petitioner affects the 75 meter road and 100 meter green belt which are still to be constructed as per the approved layout plan dated 18.12.2006 and some portion of green belt and 8 meter metal portion has been constructed in front of the land in question, the land of the petitioner, in any case, cannot be released as it would directly affect the approved planning.

10. 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

06.09.2021

Harish

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