

CWP No.19614 of 2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No.19614 of 2015 (O&M)

Date of Decision: 30.09.2021

Smt. Rubina & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH  
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Arvind Chauhan, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with  
Ms. Kushaldeep Kaur, Advocate, for the respondents.

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AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 11.11.2002 (Annexure P-4) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 07.11.2003 (Annexure P-5) issued under Section 6 of the 1894 Act and the award dated 31.10.2005 (Annexure P-6) 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').

2. Counsel for the petitioners asserts that the petitioners are the owners of land measuring 5 kanals 7¼ marla comprised in Rectangle No.119, Killa No.11 min (0-4), 12 min (7-12), 13 min west (5-15), 18 min west (6-8), 19 min (5-6), 22 min (3-0), 23 min west (6-17), and Rectangle No.136, Killa No.2 min (0-13), 3 min west (3-15) situated at Patti Kaisth Seth, Tehsil and District Kaithal. The said land was purchased by the

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petitioners vide sale deed dated 19.09.2000/22.09.2000, on the basis of which mutation has been sanctioned in their favour.

Counsel states 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/paid, would render the land of the petitioners acquired vide award dated 31.10.2005 (Annexure P-6) liable to be released, especially when the land of the petitioner is surrounded by many residential as well as commercial buildings and a boundary wall has been constructed by the petitioners over the land in question which has never been objected to by the respondents. It is, thus, submitted that the land acquisition proceedings under 1894 Act would lapse.

Counsel for the petitioners further submits that petitioner No.1 had submitted a representation dated 11.08.2014 (Annexure P-7) and also served a notice through counsel dated 18.02.2015 (Annexure P-8) for release of their land but no action thereon has been taken. He further submits that some other landowners, whose land was also acquired under the same impugned notifications, approached this Court by filing CWP No.19996 of 2003, which was disposed of by this Court vide order dated 16.07.2015 (Annexure P-9) with liberty to them to file an appropriate petition-cum-application under Section 24 (2) of the 2013 Act before the Land Acquisition Collector within a period of two months from the date of the order with a direction to the Land Acquisition Collector to decide the same in accordance with law within a period of four months. Counsel for the petitioners submits that the petitioners are also similarly situated

landowners and on this basis, asserts that the notifications dated 11.11.2002 (Annexure P-4) and 07.11.2003 (Annexure P-5) as also the award dated 31.10.2005 (Annexure P-6) deserve to be quashed.

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, is that 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 the Land Acquisition Collector, Urban Estate, Panchkula, dated 14.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.285, dated 31.10.2005. It has further been asserted that out of the total amount of the award of ₹9,39,49,758/-, an amount of ₹4,00,93,086/- has already been disbursed and rest of the amount is lying available for disbursement. So far as the amount of compensation qua the land in question in this case is concerned i.e. ₹5,55,890/-, petitioners have not received the same and are at liberty to receive/collect the same. It has further also mentioned that the land in question was vacant at the time of issuance of notification under Section 4 of the 1894 Act.

4. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in Aflatoon & others Vs. Lt. Governor of Delhi & others 1975 (4) SCC 285 to contend that the petitioner cannot be allowed to raise this plea when the notifications under Sections 4 and 6 have never been challenged nor has the validity of the award been attacked. There being dilatory tactics on the part of the petitioner, the writ petition is liable to be dismissed on the ground of delay and laches on the part of the petitioner. Similarly, reliance has been placed upon the another judgment of the Hon'ble Supreme Court in Northern Indian Glass Industries Vs. Jaswant Singh & others 2003 (1) SCC 335, where writ petition was filed after almost 17 years after finalization of the acquisition proceedings when the said proceedings have not been challenged earlier and it being the settled proposition of the law that after the passing of the award and after taking possession of the land, the acquired land vests with the Government free from all encumbrances. Delay and laches is itself a good ground for dismissing the writ petition.

5. His further contention is that despite the objections having been filed by the petitiones under Section 5-A of 1894 Act, their land was acquired as the same was vacant at the time of issuance of notification under Section 4 and affects the site of green belt and part of road, the land in question, thus, 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.285, dated 31.10.2005, 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 various judgments passed by the Hon'ble Supreme Court.

7. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 11.11.2002 (Annexure P-4) and 07.11.2003 (Annexure P-5) respectively, leading to the passing of the award dated 31.10.2005 (Annexure P-6). Petitioners are asserting themselves to be the owner of land measuring 5 kanals 7¼ marla comprised in Rectangle No.119, Killa No.11 min (0-4), 12 min (7-12), 13 min west (5-15), 18 min west (6-8), 19 min (5-6), 22 min (3-0), 23 min west (6-17), and Rectangle No.136, Killa No.2 min (0-13), 3 min west (3-15) situated at Patti Kaisth Seth, Tehsil and District Kaithal and 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 Roznamacha No.285, dated 31.10.2005, 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.

8. As regards the compensation amount is concerned, it has been specifically averred in the reply that the entire award amount was tendered at the time of announcement and was available with the Land Acquisition Collector for disbursement. Out of the total amount of the award of ₹9,39,49,758/-, an amount of ₹4,00,93,086/- has already been disbursed and rest of the amount is lying available for disbursement. So far as the amount of compensation qua the land, which is the subject matter of this writ petition is concerned i.e. ₹5,55,890/-, the petitioners have not received the same and are at liberty to receive/collect the same. It has further been mentioned that the land in question was vacant at the time of issuance of notification under Section 4 of the 1894 Act. Merely because the petitioners have not collected/received the amount of compensation, it would not entitle the petitioners to assert that the compensation has not been disbursed to them.

9. 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).

10. Further, in the light of the judgments of the Hon'ble Supreme Court in the cases of *Aflatoon & others* (supra) and *Northern Indian Glass Industries* (supra), the present petition is not maintainable as the impugned notifications under Sections 4 and 6 of the 1894 Act have never been challenged by the petitioner and the present petition has been filed after about 10 years after the finalization of the acquisition proceedings. It appears to be the delaying tactics on the part of the petitioner to continue in illegal possession when the land stands vested in the Government free from all encumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and latches.

11. With regard to the plea of the petitioners that they are similarly placed as the landowners whose land was acquired under the same very notifications and award, who had approached this Court by filing CWP No.19996 of 2003, which was disposed of by this Court vide order dated 16.07.2015 (Annexure P-9) with liberty to file an appropriate petition-cum-application under Section 24 (2) of the 2013 Act before the Land Acquisition Collector within a period of two months from the date of the order with a direction to the Land Acquisition Collector to decide the same in accordance with law within a period of four months, we are of the considered view that these are only bald assertions as the petitioners have not disclosed whether the land of the said landowners was released or not.

It has also not been disclosed by the petitioners as to how their land is

similar to that of those landowners as nothing has been placed on record to show the similarities between the lands. Merely because the land of the petitioners and that of some other persons was acquired by the same notifications and award, it could not be said that the land was of similar nature.

The case of the petitioners, therefore, is covered against them by the judgment of the Hon'ble Supreme Court in the case of **Shanti Sports Club & another Vs. Union of India & others** {2009 (5) SCC (Civil) 707} wherein, in a similar matter where plea of discrimination had been taken, the Hon'ble Supreme Court has dealt with the aspect of the plea of discrimination and violation of Article 14 of the Constitution of India and had held that this Article can be invoked for seeking a direction to the respondents to withdraw from the acquisition of the land in question in case the asserting person is able to prove that he has been subjected to invidious or hostile discrimination. The concept of equality enshrined in Article 14 is a positive concept and the Court can command the State to equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegally or pass wrong orders because in another such case an illegality has been committed or wrong orders have been passed. Article 14 of the Constitution cannot be invoked for perpetuating illegalities and irregularities.

12. It may be added here that the plea of the petitioners that there is a boundary wall has been constructed by them over the land in question, would be of no help as the said boundary wall has been constructed after the issuance of notification under Section 4 of the 1894 Act as has been

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admitted by them in para 3 of the writ petition. That apart, since the land in question affects the site of green belt and part of road, the same, in any case, cannot be released as it would directly affect the planning.

13. In view of the above, we do not find any merit in the present writ petition and therefore, dismiss the same.

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CM-8664-CWP-2016

In the light of the latest judgment of the Hon'ble Supreme Court in Indore Development Authority Vs. Manoharlal and others 2020 (AIR) SC 1496, the prayer made in these application cannot be accepted.

These applications, therefore, stand dismissed.

(AUGUSTINE GEORGE MASIH)  
JUDGE

30.09.2021  
Harish

(MEENAKSHI I. MEHTA)  
JUDGE

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