

CWP No.20371 of 2015

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

CWP No.20371 of 2015

Date of Decision: 16.09.2021

Jogindro Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: None for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court praying for issuance of an appropriate writ declaring the acquisition proceedings lapsed 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') with a further prayer for release of her land measuring 155 square yards comprised in Khewat No.147, Khatauni No.172, Khasra No.17//24/1, Hadbast No.404, situated in village Gulabnagar, Tehsil Jagadhari, District Yamuna Nagar.

2. It has been pleaded that notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') was issued on 30.05.2005 (Annexure P-2) for acquiring 561.38 acres of land situated in the revenue estate of Jagadhari, Jaroda, Gulab Nagar and

Bohotali, for development and utilization as residential and commercial area for Sector 22, 23 and 24, Jagadhari. Thereafter, under Section 6 of the 1894 Act was issued on 22.05.2006 (Annexure P-3) followed by Award dated 16.07.2007 (Annexure P-4). It has been stated in the writ petition 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 petitioner acquired vide award dated 16.07.2007 (Annexure P-4) liable to be released, especially when the petitioner has constructed his house thereon and is residing therein. It is asserted that the land acquisition proceedings under 1894 Act would lapse. On this basis, it has been pleaded that notifications dated 30.05.2005 (Annexure P-2) and dated 22.05.2006 (Annexure P-3) as also Award dated 16.07.2007 (Annexure P-4) 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 filed by the Land Acquisition Collector, Urban Estate Department, Panchkula, dated 11.01.2017, wherein it has been stated that the possession of the land was taken vide Rapat No.1995, dated 16.07.2007 and the same was handed over to HUDA (now HSVP) on the same date. It has further been asserted that out of the total amount of the award of ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed, as such 85.56% of compensation amount has already been disbursed to the landowners. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹48,607/-, the same has not been obtained by her despite due offer of compensation as is apparent from the fact that other landowners have obtained compensation amount. The payment of compensation is lying deposited in the designated account of Land Acquisition Collector and because the petitioner has not given her consent in writing to receive the compensation and other relevant documents to prove her ownership. The compensation amount is available for payment immediately on demand of landowner.

4. His further contention is that the at the time of issuance of notification under Section 4 of the 1894 Act, no construction was found at the land in question. The land of the petitioner affects the site of road of 40 meter and shopping centre-2 and therefore, the land of the petitioner 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.1995, dated 16.07.2007, 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 respondents and with his 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, are not in dispute. Notifications under Sections 4 and 6 of the 1894 Act were issued on 30.05.2005 and 22.05.2006 respectively, leading to the passing of the award dated 16.07.2007. Petitioner's land measuring 155 square yards comprised in Khewat No.147, Khatauni No.172, Khasra No.17//24/1, hadbast No.404, situated in village Gulabnagar, Tehsil Jagadhari, District Yamuna Nagar, qua which she is asserting 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.1995, dated 16.07.2007, 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 ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed., as such 85.56% of compensation amount has already been disbursed to the landowners. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹48,607/-, the same has not been claimed/obtained by her despite due offer of compensation as is apparent from the fact that other landowners have obtained compensation amount. The payment of compensation is lying deposited in the designated account of Land Acquisition Collector and because the petitioner has not given her consent in writing to receive the compensation and other relevant documents to prove her ownership. The compensation amount is available for payment immediately on demand of landowner. Merely because the petitioner has not collected the amount of compensation, it would not entitle her to assert that the compensation has not been disbursed to her.

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).

That apart, since the land of the petitioner was vacant at the time of issuance of notification under Section 4 of the 1894 Act and it affects the site of road of 40 meter and shopping centre-2, the land of the petitioner, in any case, cannot be released as it would directly affect the planning.

9. 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

16.09.2021
Harish

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