

CWP No.17678 of 2017

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

CWP No.17678 of 2017

Date of Decision: 16.09.2021

M/s Ashwani Udyog & another

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Avnish Mittal, Advocate
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged the notification dated 27.08.2004 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 24.08.2005 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 21.03.2007 (Annexure P-3) 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') in the light of the judgments dated 27.10.2016 (Annexures P-9 and P-10) passed by this Court in CWP No.2115 of 2014, titled as 'Pritam Kumar Goel & others Vs. State of Haryana & others'.

2. Counsel for the petitioners submits that petitioner No.1 (M/s Ashwani Udyog) is owner in possession of land measuring 5 bigha and 14 biswas comprised in Khasra Nos.84, 85, part of khasra No.44, situated in the revenue estate of village Tejli, Tehsil Jagadhri, District Yamuna Nagar, where a saw mill and cement trading business are being run. Petitioner No.2 (M/s Ajay Enterprises) is owner in possession of land measuring 22 bigha and 12 biswas comprised in Khasra No.87, 88, 96, 97 and part of Khasra No.89, 90, 92, 94, 41 and 42 in the same revenue estate of village Tejli, Tehsil Jagadhri, District Yamuna Nagar, where a saw mill and other allied activities are being run. He submits that the petitioners have neither claimed nor received any compensation in pursuance to the impugned award dated 21.03.2007 (Annexure P-3). 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 the compensation amount been disbursed, would render the land of the petitioners acquired vide award dated 21.03.2007 (Annexure P-3) liable to be released, especially when the petitioners are running saw mill and other business activities thereon. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the notifications dated 27.08.2004 (Annexure P-1), 24.08.2005 (Annexure P-2) and award dated 21.03.2007 (Annexure P-3) cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for the respondents submits that after considering the objections filed by the petitioners under Section 5-A of 1894 Act, constructed area along with proportionate area of

petitioner No.1 measuring 1613 square yards comprising in Khasra No.84-85 consisting of office room, store-3, labour quarter, cattle shed, store and toilet out of 4B-14B was left out from acquisition and constructed area along with proportionate area measuring 2470 square yards comprising in Khasra No.87, 88, 89, 90, 92 and 94 consisting labour quarter-3, industrial shed-4, office room-1, temple and room out of 22B-12-B of petitioner No.2 was released from the acquisition and only their vacant land was notified for acquisition under Section 6 of the 1894 Act.

4. Counsel for the respondents further submits that the petitioners had challenged the acquisition proceedings earlier also by filing CWP No.16402 of 2006, where dispossession of the petitioners was stayed by this Court on 16.10.2006. Thereafter, the said writ petition was disposed of with a bunch of writ petition upholding the acquisition proceedings and directing respondents to conduct a fresh survey of the area where the constructions were found in existence at the time of issuance of notification under Section 4 of 1894 Act.

In Compliance with the said direction, a Joint Inspection Committee was constituted, which conducted the fresh survey and submitted its report dated 24.04.2014, according to which it was found that built up area on the land of the petitioners was 676.91 square meters at the time of issuance of notification under Section 4 but petitioner No.1 had added additional construction. It was also noticed therein that an area measuring 1613 square yards has already been released after considering the objections under Section 5-A of 1894 Act and therefore, no further

recommendation for release of land was made. So far as petitioner No.2 is concerned, after considering the constructed area along with the proportionate open space has already been left out from acquisition, no further recommendations for release was made. He, therefore, submits that in the light of fact that the acquisition proceedings have already been upheld by this High Court, which have attained finality upto the Hon'ble Supreme Court in SLP (C) No.8893 of 2014, the petitioner cannot challenge the same again before this Court.

5. Counsel for the respondents further 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 07.09.2021, wherein it has been stated that the possession of the land in question could not have been taken in the light of the stay order granted in favour of the petitioners, however, rest of the land dispossession of which was not stayed, was taken into possession vide Rapat No.1247-48, dated 21.03.2007, after the passing

of the award dated 21.03.2007. It has further been asserted that out of the total amount of the award of Rs.25,24,49,039/-, an amount of Rs.2,81,68,698/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. Rs.1,63,68,660/- due to petitioner No.1 and Rs.1,61,71,044/- due to petitioner No.2, the same was available with the Land Acquisition Collector at the time of announcing the award, which they have not received and they are at liberty to receive the same.

6. His further contention is that the land of the petitioners affects the site of 5 nos. of Godowns, 1 police post, 1 petrol pump, 56 nos. of SCO, 1 no. of parking and therefore, the land of the petitioners cannot be released. Since the compensation amount has been duly deposited with the Land Acquisition Collector, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

7. 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).

8. The facts, as have been narrated above, are not in dispute. Notifications under Sections 4 and 6 of the 1894 Act were issued on 27.08.2004 and 24.08.2005 respectively, leading to the passing of the award dated 21.03.2007. Petitioners are claiming themselves to be the owner of land measuring 5 bigha and 14 biswas comprised in Khasra

Nos.84, 85, part of khasra No.44, and 22 bigha and 12 biswas comprised in Khasra No.87, 88, 96, 97 and part of Khasra No.89, 90, 92, 94, 41 and 42 in the revenue estate of village Tejli, Tehsil Jagadhri, District Yamuna Nagar and are seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

9. 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.25,24,49,039/-, an amount of Rs.2,81,68,698/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. Rs.1,63,68,660/- due to petitioner No.1 and Rs.1,61,71,044/- due to petitioner No.2, the same was available with the Land Acquisition Collector at the time of announcing the award, which they have not received and they are at liberty to receive the same.

10. 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).

11. Further, an assertion has been made by learned counsel for the petitioner that the petitioners are still in physical possession of the land in question and are running saw mill and other business activities thereon and therefore, acquisition proceedings have lapsed under Section 24 (2) of the 2013. The said assertion cannot be accepted in the light of the fact that the petitioner had filed CWP No.16402 of 2006, where dispossession of the petitioners was stayed by this Court on 16.10.2006, which continued up till 31.10.2013 when the said writ petition was dismissed. The said dismissal order of this Court was challenged by the petitioners before the Hon'ble Supreme Court by filing SLP (C)No.8893 of 2014, which was dismissed vide order dated 01.05.2017. Immediately thereafter, the present writ petition has been preferred challenging the same very acquisition proceedings. Therefore, it cannot be said that the respondents had not taken the possession of the land in question, rather it is the petitioners who got the stay order in their favour in writ petition and thereafter, filed an appeal before the Hon'ble Supreme Court. It will not be out of way to mention here that the other land, which has been acquired in the same acquisition proceedings, has been taken into possession vide Rapat No.1247-48, dated 21.03.2007.

12. Another aspect which requires to be stated here is that the petitioners have filed a reference for enhancement of compensation amount under Section 18 of the 1894 Act before the Hon'ble Additional

District Judge, Yamuna Nagar, which is pending consideration. The Hon'ble Supreme Court, in para 363 (5) of the judgment in *Indore Development Authority's* case (supra), has held that the landowners, who have filed a reference for higher compensation, cannot claim lapsing of acquisition proceedings under Section 24 (2) of the 2013 Act and therefore, the petitioners cannot be held eligible for claiming the acquisition proceedings to be lapsed under Section 24 (2) of the 2013 Act. Therefore, the petitioners cannot take the benefit by asserting that there is a lapse of proceedings.

13. It is pertinent to mention here that since the earlier writ petition i.e. CWP No.16402 of 2006, challenging the same very notifications and award stands dismissed by this Court vide order dated 31.10.2013 and SLP preferred against the said order has also been dismissed by the Hon'ble Supreme Court vide order dated 01.05.2017, the prayer made by the petitioners in the present writ petition cannot be accepted in the light of the observations of the Hon'ble Supreme Court in *Indore Development Authority's* case (supra), where, in paras 359 and 363 (9), it has been held that if the acquisition of land had earlier been challenged and the same has been upheld, the proceedings having been concluded, the umbrella of protection provided under Section 24(2) of the 2013 Act, cannot be invoked and it does not revive stale and time barred claims especially when it has been held in the earlier part of the judgment that after passing of the award, the amount of compensation has already been deposited with the Land Acquisition Collector and the reasons recorded for not taking into

possession of the land in question, leading to the land having been vested in the State in accordance with law.

14. That apart, since the land of the petitioners falls on the site of 5 nos. of Godowns, 1 police post, 1 petrol pump, 56 nos. of SCO, 1 no. of parking, their land, in any case, cannot be released as it would directly affect the planning.

15. 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

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