

CWP No.23482 of 2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23482 of 2015

Date of Decision: 16.09.2021

Ram Singh & 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. A.P. Bhandari, Advocate, for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have approached this Court praying for issuance of a writ in the nature of *mandamus* directing the respondents to release their land measuring 6 kanals and 15 marlas as they are still in actual and physical possession of the same and no compensation has been paid to them qua the acquisition of their land.

2. It has been pleaded that the respondents had issued a notification dated 08.02.1989 (Annexure P-1) under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') for acquisition of 222.27 acres of land followed by notification dated 07.02.1990 (Annexure P-2) for acquisition of 211.29 acres of land and thereafter, award was passed on 23.01.1992. Aggrieved against the said award, some of the landowners had filed CWP No.1219 of 1992 before this Court, which was allowed along with a bunch of cases vide order dated 23.07.1993 (Annexure P-3). Thereafter, another notification under Section 4 of 1894 Act was

issued on 10.11.2000 (Annexure P-4) for acquisition of 88.18 acres of land followed by notification under Section 6 issued on 08.11.2001 (Annexure P-5). It has been stated that land of the petitioners i.e. 20//7/2 and 8/1 was not included in the notification dated 10.11.2000 (Annexure P-4).

3. Counsel for the petitioners asserts that in the light of the provisions as contained in 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'), respondents having neither taken physical possession of the land nor have the compensation amount been disbursed, would render the land of the petitioners acquired vide award dated 23.01.1992 liable to be released especially when impugned notifications dated 08.02.1989 (Annexure P-1) dated 07.02.1990 (Annexure P-2) and award was passed on 23.01.1992 stand quashed by this Court vide order dated 23.07.1993 (Annexure P-3). It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the claim of the petitioners be accepted and land of the petitioners be released.

4. On the other hand, learned counsel for the respondents submits that after the issuance of notification, objections under Section 5-A of the 1894 Act were invited, in pursuance whereof petitioners had filed the objections but since the land was vacant at the time of issuance of notification under Section 4 of 1894 Act, same was recommended for acquisition and subsequently, acquired vide notification under Section 6 on 07.02.1990 and award dated 23.01.1992 was passed. He 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 08.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.261, dated 23.01.1992. It has further been asserted that entire award amount was tendered at the time of announcement of award and the same was available with the Land Acquisition Collector for disbursement. out of the total amount of the award of ₹2,85,60,842/-, an amount of ₹2,01,90,129/- 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. ₹1,04,714/-, the said amount has not been collected by the petitioners and they are at liberty to receive/collect the same.

5. His further submission is that the petitioners have never challenged the acquisition proceedings until the filing the present petition. Even CWP No.1219 of 1992 which has been allowed by this Court vide order dated 23.07.1993 (Annexure P-3), on which reliance has been placed by the petitioners, was allowed on the ground that the objections filed by the

said landowners under Section 5-A were not heard properly and it is an admitted position that the petitioner had never challenged the acquisition proceedings earlier at that point of time and now after about 25 years of issuance of declaration under Section 6 of the 1894 Act, petitioners cannot claim any parity with those landowners who challenged the same at an earlier point of time. In support of this contention, reliance has been placed on the judgment of the Hon'ble Supreme Court in **Om Parkash vs. Union of India** 2010 (4) SCC 17.

6. 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. 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 ground for dismissing the writ petition.

7. His further contention is that the land of the petitioners affects the site of three roads of 10 meter and sixteen plots of 14 marla 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.261, dated 23.01.1992, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

8. 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.

9. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 08.02.1989 and 07.02.1990 respectively, leading to the passing of the award dated 23.01.1992. Petitioners are claiming themselves to be the owners of land measuring 6 kanals and 15 marlas comprised in Khasra No.20//7/2, 8/1 situated in village Shahpur, Tehsil Ambala Cantt., District Ambala and are seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

10. 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.261, dated 23.01.1992, 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.

11. As regards the compensation amount is concerned, it has been specifically averred in the reply that entire award amount was tendered at the time of announcement of award and the same was available with the Land Acquisition Collector for disbursement. Out of the total amount of the award of ₹2,85,60,842/-, an amount of ₹2,01,90,129/- 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. ₹1,04,714/-, the said amount has not been collected by the petitioners and they are at liberty to receive/collect the same. Merely because the amount of compensation has not been received by the petitioners, they cannot claim that the compensation amount has not been disbursed to them.

12. 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).

13. So far as the plea of the petitioner that their land be released on the ground of the parity, the same cannot be accepted in the light of the judgment passed by this Hon'ble Supreme Court in *Om parkash's* case (supra) as they have never challenged the acquisition proceedings until the filing the present petition. Even CWP No.1219 of 1992 which has been allowed by this Court vide order dated 23.07.1993 (Annexure P-3), on which reliance has been placed by them petitioners, was allowed on the ground that the objections filed by the said landowners under Section 5-A were not heard properly and it is an admitted position that the petitioners had never challenged the acquisition proceedings earlier at that point of time and now after about 25 years of issuance of declaration under Section 6 of the 1894 Act, they cannot claim any parity with those landowners who challenged the same at an earlier point of time.

14. 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 petitioners and the present petition has been filed after about 23 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.

15. In any case, the land, release of which the petitioners are

seeking, if so released, would interfere and affect the site of three roads of 10 meter and sixteen plots of 14 marla, which has specifically been stated in para 7 of the affidavit, which has been filed by the Land Acquisition Collector, Urban Estate, Panchkula, dated 08.09.2021, rebuttal whereof has not been filed by the petitioners. Meaning thereby that the said aspect stands admitted by the petitioners.

16. 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