

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

Date of decision: 30.07.2021

1. CWP No.19246 of 2017 (O&M)

Rajesh Malik ...Petitioner

Vs.

State of Haryana and others ...Respondents

2. CWP No.910 of 2018 (O&M)

Ramesh Kumar and others ...Petitioners

Vs.

The State of Haryana and others ...Respondents

3. CWP No.1155 of 2018 (O&M)

Kishore Kumar Kaul ...Petitioner

Vs.

State of Haryana and others ...Respondents

4. CWP No.1156 of 2018 (O&M)

Ramesh Raina ...Petitioner

Vs.

State of Haryana and others ...Respondents

5. CWP No.1168 of 2018 (O&M)

Kishore Kumar Mattoo ...Petitioner

Vs.

State of Haryana and others ...Respondents

6. CWP No.1188 of 2018 (O&M)

Jai Narayan ...Petitioner

Vs.

State of Haryana and others ...Respondents

7. CWP No.1207 of 2018 (O&M)

Rajiv Tikoo ...Petitioner

Vs.

State of Haryana and others ...Respondents

8. CWP No.1660 of 2018 (O&M)

Vijay Laxmi ...Petitioner

Vs.

State of Haryana and others ...Respondents

9. CWP No.1661 of 2018 (O&M)

Sangeeta ...Petitioner

Vs.

State of Haryana and others ...Respondents

10. CWP No.1662 of 2018 (O&M)

Jagdish ...Petitioner

Vs.

State of Haryana and others ...Respondents

11. CWP No.1741 of 2018 (O&M)

Jagdish and others ...Petitioners

Vs.

State of Haryana and others ...Respondents

12. CWP No.1756 of 2018 (O&M)

Sangeeta ...Petitioner

Vs.

State of Haryana and others ...Respondents

13. CWP No.1770 of 2018 (O&M)

Rajpal ...Petitioner
Vs.

State of Haryana and others ...Respondents

14. CWP No.1833 of 2018 (O&M)

Sumitra ...Petitioner
Vs.

State of Haryana and others ...Respondents

15. CWP No.1834 of 2018 (O&M)

Sangeeta ...Petitioner
Vs.

State of Haryana and others ...Respondents

16. CWP No.1663 of 2018 (O&M)

Sunila ...Petitioner
Vs.

State of Haryana and others ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Vikrant Hooda, Advocate,
for the petitioner(s).

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

Ritu Bahri, J.

This judgment shall dispose of CWP Nos.19246 of 2017, 910, 1155, 1156, 1168, 1188, 1207, 1660, 1661, 1662, 1741, 1756, 1770, 1833, 1834 and 1663 of 2018 together as common questions of law and facts are involved in all the petitions. For reference, facts are being taken from CWP No.19246 of 2017.

17.04.2002 (Annexure P-5) & 10.04.2003 (Annexure P-6) issued under Sections 4 and 6, respectively, of the Land Acquisition Act, 1894 and impugned award dated 25.06.2004 keeping in view the judgments passed in CWP-2308-2004 (Annexure P-8) and SLP (C) Nos.10857-10878 of 2011 (Annexure P-9) and also in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition and Re-settlement Act, 2013 (hereinafter referred to as '2013 Act').

Petitioner (in CWP-19246-2017) is owner in possession of land measuring 30/208 share out of total land measuring 10 Kanals 8 Marlas, comprised in Khewat No.169/127, Khata No.237, Khasra Nos.48M/3/2 (6-2), 4 (4-6) in village Sarai Aurangabad, Tehsil Bahadurgarh, District Jhajjar (Haryana). Copies of sale deed dated 30.08.1999 and mutation dated 01.10.1999 showing ownership of petitioner, are attached as Annexures P-1 and P-2. Copy of recent electricity bill along with receipt dated 08.06.2017 is annexed as Annexure P-3. Case of the petitioner is that despite issuance of notifications dated 17.04.2002 and 10.04.2003 (Annexures P-5 and P-6 respectively) under Sections 4 and 6 of 1894 Act and award dated 25.06.2004 (Annexure P-7), possession has not been taken till date. The other land owners had challenged the acquisition proceedings by filing CWP-13229-2004 before this Court. As per notification under Section 4 of the Act (Annexure P-5), land measuring 398.84 acres was to be acquired, however, after issuance of notification under Section 6 of the Act (Annexure P-6), the Government has acquired 340.68 acres of land. A chunk of land measuring 58.16 acres has been left out. Since the Government had adopted pick and choose policy, some land owners filed CWP No.2308 of 2004, titled as **Reshma Footwears (P) Ltd. vs. State of Haryana and others,** which was allowed by this Court vide judgment dated 21.06.2010 (Annexure P-8) and costs of Rs.10,000/- was imposed upon the respondents. Against the said

dismissed on 07.05.2012 (Annexure P-9) on the ground of delay. SLP (C) Nos.10857-10878 of 2011 filed by HUDA were also dismissed vide judgment dated 11.05.2016 (Annexure P-9). In para No.8 of the writ petition, petitioner has given details of the land, regarding which, acquisition proceedings had been quashed on 21.04.2014. Grievance of the petitioner is that till date, he has not received the compensation awarded to him and it has been more than 15 years since the notification under Section 4 of the Act has been issued. He is very well in possession of the land. In this backdrop, he is seeking release of the land as per Section 24 (2) of 2013 Act. Petitioner has placed reliance on the judgment dated 29.08.2012 passed by Hon'ble the Supreme Court in **State of Haryana and others vs. Lehri Singh and others**, (Annexure P-10), whereby SLP filed by State of Haryana has been dismissed by observing that the petitioners were poor farmers and their land and buildings had been put under acquisition, whereas, by releasing vacant land, about 100 acres, relief had been granted to the other land owners, who were similarly situated. Reference had been made to the policy dated 26.10.2007 of the State Government, as per which, residential houses cannot not be put under acquisition. While referring to the judgment passed in **Hari Ram vs. State of Haryana**, (1983) 1 SCC 193, it was held that the State could not discriminate in the matter of release of the acquired land.

Upon notice, stand taken by respondent Nos. 1 and 3, in their short reply, is that as per the judgment passed by Five Judge Bench of the Hon'ble Supreme Court in **Indore Development Authority vs. Manoharlal and others**, AIR 2020 SC 1496, possession taken through mode of *Panchnama* and *Rapat Roznamcha* is a valid possession and once the possession is taken, the land vests absolutely in the State and cannot be given back. Since, possession in the present case, has been duly taken vide *Rapat* No.456 dated 25.06.2004, therefore, the possession is of the

beneficiary department only. It is further stated that the award amount was duly tendered at the time of announcement of the award and the same was available with LAC. Even out of the total amount of Rs.72,57,04,098/-, amount of Rs.53,59,11,899/- has been disbursed and as far as compensation amount of Rs.2,97,863/- in respect of Killa No.48/3/2 (6-2) is concerned, same is available for disbursement. The landowners are at liberty to receive the compensation and as per the judgment given in **Indore Development Authority's** case (supra), once the amount is deposited, liability to pay interest under Section 24 of the Act shall continue. Hon'ble the Supreme Court has observed that if the rule of interpretation with respect to two negative conditions qualified by "or" is used, then "or" should be read as "nor" or "and". Therefore, if, possession is already taken, there can be no lapse in the acquisition qua the land of the petitioner(s), even if, payment of compensation has not been taken by the land owners. The observations of Hon'ble the Supreme Court in para Nos.99 to 101 have been referred to. It has been further clarified that for lapse of acquisition proceedings under the old law and under Section 24 (2) of 2013 Act, **if both the steps have not been taken i.e. neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse.** Since in the present case, possession has been taken; *Rapat Roznamcha* has already been entered in favour of the State Government; major amount of compensation has already been released and only amount of compensation in respect of Killa No.48/3/2 (6-2) is available for disbursement, the acquisition proceedings do not lapse.

Reference has been made to a judgment passed by a Division

Bench of this Court in **Sehdev Singh and others vs. State of Haryana and**

others, CWP-8878-2018 (decided on 11.11.2020), whereby while referring to the judgment passed in **Indore Development Authority's** case (supra) and examining Section 24 (2) of 2013 Act, it has again been held that once the possession has been taken under Section 16 of the Act after the award is passed, the land will vests in the Government and there can be no lapse in the acquisition proceedings. It has been further clarified that in the present case, while issuing notification under Section 4 of the Act, total area notified was 1326.04 acres, out of which 87.89 acres was released under Section 5-A after hearing the objections to the said notification. Thereafter, the land measuring 1238.15 acres was notified under Section 6 of the Act of 1894. The award was passed with respect to the area measuring 1227.13 acres. With respect to the judgment passed in **Reshma Footwear's** case (supra), only 40 acres of land was released. Further, 85 acres and 200 acres of land was released in pursuance to the judgments passed in CWP No.11412 of 2004 and CWP No.17412 of 2004 respectively. Finally, majority of the land stood acquired and against the acquired land 74% of the compensation amount stands paid to the land owners. Reference has been made to the judgment passed by Hon'ble the Supreme Court in **V. Chandrasekaran Vs. Administrative Officer**, 2012 (12) SCC 133 on the question that if, a petitioner does not challenge the acquisition proceedings earlier in time, he cannot take benefit of the order quashing the acquisition proceedings qua other land owners, who approached the Court well in time. The decision will go against the land owners, who challenged the acquisition proceedings after a considerable delay. Under Section 48 of the 1894 Act, the State had discretion to release the land acquired, of which, possession had not been taken. However, keeping in view the judgment passed in **Indore**

Development Authority's case (supra), once possession of the land has been taken, the land will vest in the State free from all encumbrances and there cannot be any divesting. Rapat Roznamcha in this case, has been entered on 25.06.2004 and the State cannot exercise its power under Section 48 of the Act for release of the land.

Mr. Ankur Mittal, Addl. A.G., Haryana, has referred to the judgments passed by this Court in **Ganga Devi and others vs. State of Haryana and others**, CWP-9100-2017 (decided on 25.02.2021); **Chander and others vs. State of Haryana and others**, CWP-11537-2014 (decided on 17.11.2020); **Taqdir Singh and another vs. Union of India and others**, 9617-2014 (decided on 13.11.2017) and **Sehdev Singh's** case (supra) on the proposition that once the proceedings of acquisition have been completed by issuing notification under Sections 4 and 6 of 1894 Act, followed by an award, even if possession is with the land owners, the acquisition proceedings will not lapse in view of Section 24 (2) of 2013 Act. Hon'ble the Supreme Court in **Indore Development Authority's** case (supra) has held that if, the amount of compensation is lying deposited in the account of Land Acquisition Collector, then all the conditions of land acquisition proceedings are fulfilled and the petitioners cannot invoke the provisions of Section 24 (2) of 2013 Act to get the land released on the ground that the land has not been utilized for the purpose for which, it has been acquired for the last five years.

Learned State counsel has further referred to the judgment passed by Hon'ble the Supreme Court in **Om Pakash vs. Union of India and others**, 2010 (4) SCC 17, wherein it has been held that if, the writ petitions challenging the acquisition proceedings have been allowed and

benefit of land release has been extended, then the other land owners cannot seek the same benefit, who had not approached the Court or who might have gone into slumber. He has referred to another judgment passed in **V. Chandrasekaran and another vs. Administrative Officer and others**, 2012 (4) RCR (Civil) 588, on the proposition that if, the acquisition proceedings have been challenged by one person after approaching the Court when the cause of action has arisen, the said decision cannot be made basis of other persons to seek the same benefit, who failed to file writ petition challenging those proceedings in time. Once, the possession is taken, then the proceedings cannot be withdrawn under Section 48 of the Act or Section 21 of the General Clauses Act, 1897. Learned State counsel refers to another judgment passed in **Shanti Sports Club and another vs. Union of India and others**, AIR 2010 SC 705, wherein Hon'ble the Supreme Court had examined a case on the question that even if, in acquisition proceedings, the State Government has released some land, which was wrong and illegal, the same benefit of release cannot be given to other landowners. If a Government takes a wrong or illegal decision in respect of certain persons, Court cannot direct it to commit another wrong or illegality in respect of other persons. Article 14 of the Constitution of India cannot be invoked for perpetuating irregularities or illegalities. In a recent decision given in **Sehdev Singh's** case (supra), this Court has examined in detail, the applicability of Section 24 (2) of the 2013 Act on the ground that if, the land is not utilized for the purpose, for which, it has been acquired, whether the acquisition proceedings would lapse? While referring to the judgment passed in **Indore Development Authority's** case (supra), the Division Bench of this Court has analysed as under:-

- “1. What is the meaning of the expression paid'/tender' in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013) and Section 31 of the Land Acquisition Act, LA (Act of 1894)? Whether non-deposit of compensation in Court under Section 31 (2) of the Act of 1894 results into lapse of acquisition under Section 24 (2) of the Act of 2013. What are the consequences of non-deposit in Court especially when compensation has been tendered and refused under Section 31 (1) of the Act of 1894 and Section 24 (2) of the Act of 2013? Whether such persons after refusal can take advantage of their wrong/conduct?**
- 2. Whether the word 'or' should be read as conjunctive or disjunctive in Section 24 (2) of the Act of 2013?**
- 3. What is the true effect of the proviso, does it form part of sub Section (2) or main Section 24 of the Act of 2013?**
- 4. What is mode of taking possession under the Land Acquisition Act and true meaning of expression the physical possession of the land has not been taken occurring in Section 24 (2) of the Act of 2013?**
- 5. Whether the period covered by an interim order of a Court concerning land acquisition proceedings ought to be excluded for the purpose of applicability of Section 24 (2) of the Act of 2013?**
- 6. Whether Section 24 of the Act of 2013 revives barred and stale claims? In addition, question of per incuriam and other incidental questions also to be gone into...”**

With respect to the first question, it was held that if, there was Failure to make payment of compensation before taking possession of the land, then under the Act of 2013, acquisition proceedings will not lapse. As soon as possession is taken after passing of the award, vesting of rights of

land takes place in favour of the State. If, no compensation has been paid, then as per Sections 31 and 34 of 1894 Act, benefit of interest is to be given, which for the first year is 9% and thereafter, 15% per annum. Even if, the landowner refuses to receive the compensation and files a reference under Section 18 of the 1894 Act, lapsing of acquisition is not the consequence. With respect to the second and third questions, Hon'ble the Supreme Court in **Indore Development Authority's** case (supra) has observed that the word 'paid' does not include deposit and in case the amount has been ended, the obligation to pay is fulfilled and the non-deposit of money carries interest as provided under Section 34 of the Act of 1894. As per Section 24 (2) of the Act of 2013, if the compensation is not deposited by the Collector with respect to the majority of the landholdings, all the beneficiaries are entitled for higher compensation. Provisions of Section 24 (2) of the Act of 1894 cannot be used as a tool to revive the concluded proceedings and especially the ones, which concluded way back in 1960's, 1970's and 1980's as the landowners cannot wake from deep slumber and challenge the acquisition.

With respect to question No.4, physical possession is taken when entry in the *Rapat Roznamcha* is made. It has been held that once possession has been taken under Section 16 of the Act, land vests in the State and acquisition proceedings do not lapse. With respect to question No.5, it has been held that while computing the gap of five years between the date of award and commencement of the Act of 2013, any interim order subsisting is to be excluded which means that after excluding the interim order, the pre-requisite gap period of 5 years is not there, the provisions of Section 24 (2) cannot be invoked. On question No.6, it has been held that if, acquisition of land had earlier been challenged and the acquisition was

upheld, proceedings stood concluded and the umbrella protection of Section 24 (2) of the Act of 2013 cannot be invoked as it does not revive stale and time barred claims. It has been clarified that the provisions of Section 24 (2) of the Act of 2013 are meant to be invoked by the beneficiaries i.e. landowners who were recorded so at the time of issuance of notification under Section 4 of the Act of 1894. Any subsequent purchaser, POA holder or otherwise, cannot invoke the provisions of Section 24 (2) of the Act of 2013.

In the facts of the present case, as per the details given in the written statement, when notification under Section 4 of the Act was issued, total area notified was 1326.04 acres, out of which, 87.89 acres were released under Section 5-A of the Act and thereafter, area measuring 1238.15 acres was notified under Section 6 of the Act of 1894. The award was announced for the area measuring 1227.13 acres. Petitioner(s) cannot claim parity of release of land as per the judgment passed in **Reshma Footwears (P) Ltd.'s** case (supra). The writ petition (CWP No.2308 of 2004), in that case, was filed way back in the year 2004, which was allowed on 21.06.2010. The petitioners, in the present petitions, have approached this Court in the year 2017 and as per the judgment passed in **Indore Development Authority's** case (supra), once the *Rapat Roznamcha* has been entered, possession would be with the State Government. Even if, possession has been taken and compensation has not been deposited, then the benefit of Section 24 (2) of the Act cannot be invoked by the landowners.

All the present petitions relate to quashing of the notifications dated 17.04.2002 and 10.04.2003 (Annexures P-5 and P-6) issued under

Sections 4 and 6 of the Act of 1894 and award dated 25.06.2004. The petitioners are seeking benefit of release of their land as per the judgment passed in **Reshma Footwears'** case (supra), which has been upheld by Hon'ble the Supreme Court vide judgment dated 07.05.2012 passed in SLP (C) Nos.10857-10878 of 2011 (Annexure P-9).

These writ petitions had been adjourned to await the decision of Hon'ble the Supreme Court in **Indore Development Authority's** case (supra). Since Hon'ble the Supreme Court (in **Indore Development Authority's** and **Sehdev Singh's** cases) has clarified, in detail, the provisions of Section 24 (2) of the Act of 2013, no case is made out to consider the case of the petitioners for release of land.

Resultantly, all these petitions (i.e. CWP Nos.19246 of 2017, 910, 1155, 1156, 1168, 1188, 1207, 1660, 1661, 1662, 1741, 1756, 1770, 1833, 1834 and 1663 of 2018) are dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

30.07.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No