

CWP-2007-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.2007 of 2017

Date of Decision: 16.09.2021

Parveen Kumar Mittal

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Ashwani Kumar Chopra, Senior Advocate with
Mr. Gursher Singh Bhandal, Advocate
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has approached this Court for quashing of the order dated 15.12.2016 (Annexure P-14) passed by the Zonal Committee through the Administrator, HUDA-cum-Additional Director, Urban Estates, Haryana, Panchkula – respondent No.4 on his representation, which was filed by him in pursuance to the order dated 01.07.2015 passed by this Court in CWP No.12556 of 2014, titled as 'Parveen Kumar Mittal Vs. State of Haryana & others', with a further prayer to quash the notification dated 16.08.2001 (Annexure P-5) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 14.08.2002 (Annexure P-6)

issued under Section 6 of the 1894 Act and also the award dated 26.02.2004 (Annexure P-7) and release his 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. Learned senior counsel for the petitioner submits that the petitioner is the owner in possession of land comprised in Khewat No.128, Khatoni No.206, Khasra No.603 (0-8) and Khewat No.193, Khatoni No.292, Khasra No.600 (4-14), 601 (3-3), 604 (0-8), 613 (5-11), measuring 14 bighas and 4 biswas situated in the revenue estate of village Gobindpura, Hadbast No.407, Tehsil Jagadhri, District Yamuna Nagar. 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 having the compensation amount been disbursed, would render the land of the petitioner acquired vide award dated 26.02.2004 (Annexure P-7) liable to be released, especially when the petitioner is cultivating the said land. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Learned senior counsel for the petitioner, on this basis, asserts that the order dated 15.12.2016 (Annexure P-14), notifications dated 16.08.2001 (Annexure P-5) and 14.08.2002 (Annexure P-6) and also award dated 26.02.2004 (Annexure P-7) 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 petitioner 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 Department, Panchkula, dated 07.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.911, dated 26.02.2004 and mutation in this regard was also sanctioned in favour of beneficiary department i.e. HSVP vide mutation No.5106 dated 02.09.2016. It has further been asserted that out of the total amount of the award of Rs.11,66,46,409/-, an amount of Rs.11,09,64,256/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. Rs.28,46,702/-, he has not received the same and is at liberty to receive it at any time

4. His further contention is that the land of the petitioners affects the site of 71 nos. plots of 3 marla, 8 nos. plots of 6 marla, one site

of Primary School, one site of Public/Semi Public Building, one site of Crèche, 3 roads of 10 meter width, 2 roads of 12 meter width and 2 roads of 18 meter width 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.911, dated 26.02.2004, 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 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).

6. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 16.08.2001 and 14.08.2002 respectively, leading to the passing of the award dated 26.02.2004. Petitioner is claiming himself to be the owner of land comprised in Khewat No.128, Khatoni No.206, Khasra No.603 (0-8) and Khewat No.193, Khatoni No.292, Khasra No.600 (4-14), 601 (3-3), 604 (0-8), 613 (5-11), measuring 14 bighas and 4 biswas situated in the revenue estate of village Gobindpura, Hadbast No.407, Tehsil Jagadhri, District Yamuna Nagar and is seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

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 Rs.11,66,46,409/-, an amount of Rs.11,09,64,256/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. Rs.28,46,702/-, he has not received the same and is at liberty to receive it at any time. Merely because the petitioner has not collected the amount of compensation, it would not entitle him to assert that the compensation has not been disbursed to them.

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).

9. Further, an assertion has been made by learned counsel for the petitioner that the petitioner is still in physical possession of the land in question. The said assertion cannot be accepted in the light of the fact

that the petitioner had filed a Civil Suit No.311-CS of 2006 seeking injunction and restraining respondents from dispossessing him from the said land, where stay was granted in favour of the petitioner on 28.03.2006, which was vacated vide order dated 16.04.2007; the said order was challenged before the Additional District Judge, Jagadhari, who proceed to pass an order of status quo, which was continued as such till 22.08.2014, when the civil suit preferred by the petitioner was dismissed. Thereafter, petitioner had preferred CWP No.12556 of 2014, where also the status quo order was granted in favour of the petitioner and the same remain continued till 26.09.2014. The said writ petition was disposed of vide order dated 01.07.2015 (Annexure P-11) directing the respondents to consider and decide the representation, which was to be submitted by the petitioner, by passing a speaking order. The said representation was decided by the respondents vide order dated 15.12.2016 which has been challenged in this writ petition.

In the light of the above proceedings which were initiated by the petitioner, it cannot be said that the respondents had not taken the physical possession of the land in question, rather it is the petitioner who got the stay orders in one proceeding or the another, which result in the delay of taking the physical possession.

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.911, dated 26.02.2004 and mutation in this regard was also sanctioned in favour of beneficiary department i.e. HSVP vide mutation No.5106 dated 02.09.2016 after the stay order having been vacated by this Court, 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. It may also be added here that the the petitioner himself has pleaded in para 6 of the writ petition that he had preferred a reference before the Competent Court for enhancement of compensation amount, where the compensation amount was enhanced but the said amount has not been received by him. 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 and thus, the petitioner cannot take the benefit by asserting

that there is a lapse of proceedings.

12. That apart, since the land of the petitioner falls on the site of 71 plots of 3 marla, 8 plots of 6 marla, one site of Primary School, one site of Public/Semi Public Building, one site of Crèche, 3 roads of 10 meter width, 2 roads of 12 meter width and 2 roads of 18 meter width, his land, 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.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

16.09.2021
Harish

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