

CWP No.23943 of 2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.23943 of 2016 (O&M)

Date of Decision: 16.09.2021

Kaka Singh & others

...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 11 kanals and 14 marlas comprised in Khasra No.19/17/2 (15 marlas), 26/14/2/1 (3 kanals), 26/14/2/2 (4 kanals), 26/15/1 (3 kanals 8 marlas), 24/12/2/19 min., 24/11/25 min (11 marlas), village Shahpur, Tehsil and District Ambala, 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. Khasra No.19/17/2 (15 marlas), 26/14/2/1 (3 kanals), 26/14/2/2 (4 kanals), 26/15/1 (3 kanals 8 marlas), 24/12/2/19 min., 24/11/25 min (11 marlas) has not been utilized by the respondents and the same is still in possession of the petitioners.

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 some of the landowners including father of the petitioners had challenged the acquisition proceedings qua the land falling in Khasra No.26//14/2/2 and Khasra No.26//15/1 in CWP No.523 of 1992, which was allowed vide order dated 23.07.1993 by quashing the acquisition proceedings qua these two khasra numbers and therefore, these two khasra numbers were left out from the acquisition. However, Khasra No.19//17/2 (1-3) and Khasra No.26//14/2/1 (4-0) was acquired vide award dated 23.01.1992. Thereafter, petitioners had filed an application i.e. CM-16385-CWP-2009 in CWP No.523 of 1992 for correction of para No.3 of the writ petition regarding the land mentioned in the name of petitioner - Kehar Singh by inserting Khasra No.26//14/2/1, which was dismissed by this Court on 29.11.2010 observing that the applicants did not challenge the notifications qua this land at the relevant point of time and since the land qua which notifications were quashed stands re-acquired in the year 2000, the applicants can only claim compensation qua such land. He, therefore, submits that the land in question cannot be released as the acquisition proceedings qua the same stands completed and possession of the land stands taken.

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 08.09.2021, wherein it has been stated that the possession of the land in Khasra No.26//14/2/1 and 19//17/2 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, however, the petitioners have chosen not to receive/collect the same. It has been further mentioned that in Khasra No.19//17/2 (1-3), there were two co-sharers, one was father of the petitioners who are owner of 1/3rd share and another was Mangat Ram, who was owner of 2/3rd share, out of which Mangat Ram has already received the compensation amount and compensation qua the share of the father of the petitioners is available for disbursement.

It has further mentioned that Khasra nos.26//15/1 and 26//14/2/2 qua which acquisition was quashed earlier, were re-acquired vide notifications dated 10.11.2000 and 08.11.2001 followed by award dated 05.11.2003, however, these notifications were challenged by the petitioners before this Court by filing CWP No.17079 of 2003, where Khasra no.19//17/2 was included, but the said writ petition was dismissed vide order dated 12.02.2008 and the acquisition proceedings were upheld. Thereafter, possession of the land was taken and compensation qua Khasra No.26/15/1 and Khasra No.26//14/2/2 was received by the petitioners.

Petitioner No.1 has receive the compensation amount of ₹1,23,54,148/- vide cheque No.184607 dated 17.02.2009, petitioner No.2 has received the compensation amount of ₹12,54,148 vide cheque No.184608 dated 17.02.2009 and petitioner No.3 has received the compensation amount of ₹12,54,148/- vide cheque No.184609 dated 17.02.2009. So far as Khasra Nos.24//12/2/19 min and 24//11/25 are concerned, petitioners are not the owners of the said land and the real owners of the said land have already received the compensation amount.

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 latches 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 latches is itself a ground for dismissing the writ petition. It has, in any case, been pressed by the counsel that the land of the petitioner is essential for dispensary and public utility site as per approved layout plan, which is the part of the planning and the same would be effected.

7. His further contention is that the land in question affects the site of nursing home, clinic site and green site of Sector 10 and 11, Ambala Cantt, comprising 12 plots of 1 kanal, 8 plots of 10 marla, 19 plots of 6 marlas, 8 roads of 10 meter and therefore, the land of the petitioners cannot be released. Since the compensation amount has been duly deposited/received 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 11 kanals and 14 marlas comprised in Khasra No.19/17/2 (15 marlas), 26/14/2/1 (3 kanals), 26/14/2/2 (4 kanals), 26/15/1 (3 kanals 8 marlas), 24/12/2/19 min., 24/11/25 min (11 marlas) 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 Khasra No.26//14/2/1 and 19//17/2 was taken vide Rapat No.261, dated 23.01.1992 and 26/14/2/2 (4 kanals), 26/15/1 (3 kanals 8 marlas) was possession of Khasra Nos. 26/14/2/2 (4 kanals), 26/15/1 (3 kanals 8 marlas) was taken in pursuance of the subsequent award dated 05.11.2003, 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 compensation qua Khasra No.26/15/1 and Khasra No.26//14/2/2 has been received by the petitioners. Petitioner No.1 has receive the compensation amount of ₹1,23,54,148/- vide cheque No.184607 dated 17.02.2009, petitioner No.2 has received the compensation amount of ₹12,54,148 vide cheque No.184608 dated 17.02.2009 and petitioner No.3 has received the compensation amount of ₹12,54,148/- vide cheque No.184609 dated 17.02.2009. As regards to Khasra No.26//14/2/1 and 19//17/2, it has been stated 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, however, the petitioners have chosen not to receive/collect the same. So far as Khasra Nos.24//12/2/19 min and 24//11/25 are concerned, petitioners are not the owners of the said land and the real owners of the said land have

already received the compensation amount.

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. Further, in the light of the judgments of the Hon'ble Supreme Court in the cases of *Aflatoon & other* (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 laches.

14. In any case, the land, release of which the petitioners are seeking, if so released, would interfere and affect the site of nursing home,

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clinic site and green site of Sector 10 and 11 comprising 12 plots of 1 kanal, 8 plots of 10 marla, 19 plots of 6 marlas, 8 roads of 10 meter, which has specifically been stated in para 14 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.

15. In view of the above, we do not find any merit in the present writ petition and therefore, dismiss the same.

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In the light of the dismissal of the main writ petition, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

16.09.2021

Harish

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