

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

210

Civil Writ Petition No.1955 of 2018

Date of Decision: April 22nd, 2021

Ramesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court praying for issuance of a writ of mandamus for release of the land of the petitioner measuring 3 *kanals* 17 *marla* being 75/85 share of 4 *kanal* 5 *marla* comprised in Khewat No.98, Rectangle No.23, Khasra No.6/2/1/2 (1-10), 15/2/2 (2-12) and 16/1 (0-3) situated in Village Mangalpur, Tehsil and District Karnal in the light of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act') for the reason that neither the compensation has been paid or deposited with the Reference Court nor has physical possession of the acquired property of the petitioner taken.

2. Fact that the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') was issued on 02.01.2002, to which objections were filed by the petitioner on 01.02.2002, which was rejected and thereafter notification under Section 6 of the said Act was issued on 24.12.2002 leading to the passing of the award on 21.12.2004, is not disputed.

Petitioner challenged the said acquisition by filing CWP No.18365 of 2004, which was disposed of by this Court vide order dated 09.09.2008 with liberty to the petitioner to move a representation for agitating his claim for release of his land from acquisition. On submission of such representation, the same was rejected vide order dated 03.08.2012 (Annexure P-3) on the ground that the petitioner had resorted to unauthorized construction.

3. Asserting that the compensation amount was neither received by the petitioner nor was the possession taken, petitioner approached this Court by filing CWP No.13908 of 2016 claiming therein release of the acquired land of the petitioner invoking the benefit of the provisions of Section 24 (2) of the 2013 Act. The said writ petition was disposed of vide order dated 18.07.2016 (Annexure P-5) giving liberty to the petitioner to file a representation which was ordered to be considered and decided within a period of four months.

Petitioner filed representation dated 30.08.2016, which when not decided, petitioner filed COCP No.258 of 2017. Along with the reply to the said petition, order dated 05.07.2017 (Annexure P-8) was appended, whereby the representation of the petitioner was rejected on the ground that the land of the petitioner was falling in the site reserved for hospital as approved by the layout plan of sector (part), Karnal. It was further stated that the industrial use over the land is in non-conformity with the residential sector as per the development plan of Karnal. Further reason assigned for non-acceptance of the representation was that the land of the petitioner was lying vacant at the time when notification under Section 4 of the 1894 Act was issued and thereafter illegal construction has been carried out by the petitioner.

4. This order rejecting the representation of the petitioner has been challenged by the petitioner in the present writ petition, wherein prayer has been made for setting aside the impugned order dated 05.07.2017

(Annexure P-8) and for release of the land of the petitioner from acquisition in the light of the provisions of Section 24 (2) of the 2013 Act.

Reply to the writ petition has been filed by way of an affidavit dated 10.03.2021 of the Land Acquisition Collector, Urban Estate, Panchkula, wherein it has been submitted that the possession of the land was taken vide *Rapat* No.250 dated 21.12.2004 i.e. on the date when the award was passed by the Collector. It has further been submitted that the total amount of compensation of the award was ₹21,32,594/-, which was available for disbursement and out of the same, an amount of ₹3,93,391/- stands disbursed while the remaining amount is available for disbursement but not collected by the landowners. The share of the petitioner comes to ₹3,18,854/-, which is also available and the petitioner is at liberty to receive the same. The amount of compensation was duly tendered and was available at the time of passing of the award. On this basis, it is asserted that the claim of the petitioner as made under Section 24 (2) of the 2013 Act would not be sustainable in the light of the judgment of the Hon'ble Supreme Court in ***Indore Development Authority Versus Manoharlal and others AIR 2020 SC 1496***. It is on this basis that prayer has been made for dismissal of the writ petition.

5. We have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings and the judgment of the Hon'ble Supreme Court in ***Indore Development Authority's case (supra)***.

6. The facts, as have been stated above, have not been disputed, what has been asserted by the counsel for the petitioner primarily is that the non-release of the land of the petitioner in the light of the provisions of Section 24 (2) of the 2013 Act is unsustainable on the ground of non-payment of compensation and for not taking the physical possession of the

land of the petitioner.

7. This contention of the counsel for the petitioner cannot be accepted in the light of the judgment of the Hon'ble Supreme Court in ***Indore Development Authority's case (supra)***, according to which the mode of taking possession under the 1894 Act and as contemplated under Section 24 (2) is by drawing of inquest report/memorandum. Once award has been passed, on taking possession under Section 16 of the 1894 Act, the land vests in State and there is no divesting provided under Section 24 (2) of the 2013 Act as once possession has been taken, there is no lapse under Section 24 (2) of the 2013 Act.

8. As regards the deposit of compensation is concerned, provision of expression 'paid' as contained in main part of Section 24 (2) of the 2013 Act, does not include deposit of compensation in Court. Non-deposit of compensation in Court does not result in lapse of land acquisition proceedings. In case a person has been tendered the compensation as provided under Section 31 (1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24 (2) due to non-payment or non-deposit of compensation in Court. It has further been held that the obligation to pay is complete by tendering the amount under Section 31 (1) of the 1894 Act and in case the landowners refuse to accept the compensation, acquisition proceedings would not lapse under Section 24 (2) of the 2013 Act.

The Hon'ble Supreme Court proceeded to hold that lapse of acquisition proceedings initiated under the 1894 Act and under Section 24 (2) of the 2013 Act would occur if both steps have not been taken i.e. neither physical possession is taken nor compensation is paid. In case of any one of the two steps having been taken i.e. either possession has been taken or compensation is paid, the land acquisition proceedings would not lapse.

9. The specific pleadings on the part of the respondents in the affidavit, which has been filed in reply to the writ, to which no counter has been filed, is that the possession of the land was taken vide *Rapat* No.250 dated 21.012.2004. As regards the deposit of compensation amount as per the award dated 21.12.2004, an amount of ₹21,32,594/- was available for disbursal. Share of the petitioner out of the said amount is ₹3,18,854/-, which was also available for disbursement, which the petitioner has chosen not to receive.

This being the factual position, the prayer of the petitioner as made in the writ petition, cannot be accepted as none of the conditions i.e. non-payment of compensation and non-taking of physical possession required to be available for deemed lapse of acquisition under Section 24 (2) of the 2013 Act do not exist.

10. In the light of the above, we do not find any merit in the present writ petition and, therefore, dismiss the same being devoid of merit.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

April 22nd, 2021
Puneet

**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No