

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

CWP No. 22638-2017 (O&M)
Date of decision 13.09.2021

Manga Ram & others

...Petitioners

VS.

State of Haryana and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. M.S. Puri, Advocate,
for the petitioners

Mr. Ankur Mittal, Addl. A.G., Haryana
and Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J. (Oral)

On joint request of the parties, the matter i.e CWP No. 22638-2017 is taken on board by today itself.

Petitioners have filed the present writ petition seeking quashing of acquisition proceedings initiated by the Haryana Government vide its Industries and Commerce Department Gazette Notification No. 32/13/2005-41BI dated 20.06.2005 (P-1) published under Section 4 of the Land Acquisition Act, 1894 (for short 'Act 1894') and its same numbered Gazetted notification dated 26.06.2006 (P-2) published under Section 6 of Act 1894, qua the land of the petitioners. Petitioners are seeking quashing of the notifications on the ground that the same has been lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

This Court issued notice of motion on 04.10.2017 and

thereafter, written statement has been filed by the respondent-State stating therein that the present writ petition is squarely covered by the judgment of Hon'ble the Supreme Court of India in a case of ***Indore Development Authority vs. Manoharlal and others, passed in SLP (C) 9036-9038 of 2016***. The petitioners are claiming the lapsing of the land qua Khasra No. 4//20/2 having share of 1K-14 M out of 6K-12M, Village Dhakola, Tehsil and District Ambala. The said land is under the joint Khewat and since today, no tatima has been carved out by the office of DRO-cum-LAC Ambala.

It is not in dispute that the land of the petitioners was acquired and award was also passed in this regard. After passing of the award, one of the co-sharer i.e Puran Singh @ Puran Chand had approached this Court by way of filing CWP No. 13019-2007, which was allowed on 30.09.2013 holding the petitioners entitled to the benefit of the policy. The respondents were directed to consider their claim for allotment of plot at Saha in accordance with the above mentioned policy as early as possible but not later than six months from the date of receipt of certified copy of this order.

Thereafter, the petitioners had approached this Court claiming parity with Puran Singh @ Puran Chand by filing CWP No. 5332/2014, which was disposed of on 21.03.2014 (P-7), giving direction to the respondents to consider their claim for release of their plot or for allotment of alternative sites. In compliance of the above order, the respondent-authority has passed order dated 07.10.2015 (R-1) rejected the claim of the petitioners but given them liberty to approach agency for allotment of plot under R&R policy. In this order, it has further been mentioned that the land of the petitioners and others land falling under area is reserved for

commercial purpose and as per field report, the land of the petitioners is lying vacant. In para No. 7, the name of the persons had been given i.e Krishna, Baljit Singh and Sudhir Kumar, who had taken the compensation. The land was released pursuant to the directions given by this Court in CWP No. 13019-2007. The case of the petitioners was rejected however, it has been mentioned that their case can be considered for entitlement for allotment of residential plot under R&R Policy as per Rule. The petitioners were advised to contact the estate developing agency i.e HSIIDC and the HSIIDC were directed to take appropriate action in respect of allotment of plot as per policy.

Learned counsel for the petitioners has not dispute the fact that till date, the petitioners had not challenged order dated 07.10.2015 (R-1) and thus this order has attained finality. The case of the petitioners is only to be examined in view of ***Indore Development Authority's case (supra)*** that whether the land of the petitioners can be released, even if it has not been released till date.

In ***Indore Development Authority's case (supra)***, Hon'ble the Supreme Court has held that it is a well settled position in law that after passing of the award and taking possession under Section 16 of the Act, the acquired land vests with the Government free from all encumbrances. Even if the land is not used for the purpose for which it is acquired, the land owner does not get any right to ask for reverting the land to him and to ask for restitution of the possession. The operative part of the judgment reads as under:-

“244. [Section 16](#) of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government.

Similar are the provisions made in the case of urgency in [Section 17\(1\)](#). The word “possession” has been used in the Act of 1894, whereas in [Section 24\(2\)](#) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and [Section 24\(2\)](#) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in [Section 24\(2\)](#). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which is in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under [Sections 16](#) and [17](#) of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under [section 16](#), takes place after various steps, such as, notification under [section 4](#),

declaration under [section 6](#), notice under [section 9](#), award under [section 11](#) and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the land- owner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

Hon'ble the Supreme Court in the above judgment has further observed that for the deemed lapse of acquisition under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, both the conditions i.e payment of compensation and taking of possession must not be fulfilled. The Hon'ble Court has observed that the work 'or' in the Section 24 (2) of the Act of 2013 must be read as 'and'. The relevant part of the judgment reads as under:-

“99. In this Court’s considered view, as regards the collation of the words used in [Section 24\(2\)](#), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of [Section 24](#) of the Act of 2013. Any other interpretation would entail illogical results. That apart, 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”

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101. [In M/s. Ranchhoddas Atmaram and Anr. v. The Union of India and Ors.](#)77, a Constitution Bench of this Court observed that if there are two negative conditions, the expression “or” has to be read as conjunctive and conditions of both the clauses must be fulfilled. It was observed:

“(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In

such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.

*(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That 77 AIR 1961 SC 935 is a positive concept. The sentence is therefore not negative in its import." (emphasis supplied) Thus, for lapse of acquisition proceedings initiated under the old law, under [Section 24\(2\)](#) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse. Several decisions were cited at Bar to say that "or" has been treated as "and" and vice versa. Much depends upon the context. [In Prof. Yashpal & Ors. v. State of Chhattisgarh & Ors.](#)⁷⁸, the expression "established or incorporated" was read as "established and incorporated." In *R.M.D.C (supra)*, to give effect to the clear intention of the Legislature, the word "or" was read as "and."*

Since the possession in the present case has been duly taken

vide Rapat No. 247 dated 24.01.2018, therefore, the possession is of the beneficiary department only. Further there can be no lapse of acquisition qua the land of the petitioner.

Further in the reply dated 21.01.2021 filed by Divisional Town Planner, HSIIDC, Panchkula, order dated 07.10.2015 has been annexed as Annexure R-1. As per Annexure R-1, the State has already deposited the compensation amount but the petitioners had not taken the amount. It has been further stated that this Hon'ble Court vide order dated 11.06.2008 passed in CWP No. 10754-2008 ordered status quo regarding the land comprised in Khasra No. 4//20/2 situated in village Dhakaula, Tehsil and District Ambala. However, vide order dated 30.09.2013 passed in CWP No. 13109-2007, this Court upheld the acquisition proceedings in regard to above stated land and in consequence thereof the stay regarding dispossession of the petitioners was vacated. Therefore, due to the operation of stay, the respondents were unable to take possession of the land in question. After order dated 30.09.2013, the possession of the above land was taken vide Rapat No. 247 dated 24.01.2018. As per judgment of ***Indore Development Authority (supra)***, the period during which the interim order was in operation, has to be excluded while determining the period of five years as provided in Section 24 (2) of the Act of 2013. As far as amount of compensation is concerned, it is submitted that out of the total amount of the award i.e Rs.36,35,400/-, the amount of Rs.13,61,232/- has been disbursed and the amount of compensation amounting to Rs.2,82,000/- due to the petitioner is concerned, the same has not been lifted by him and is lying deposited with LAC.

For all intents and purposes, even if the land of the petitioners

has not been utilized by the State but it does not give right to the petitioners to claim release of land under Section 24 (2) of the Act.

The writ petition deserves to be dismissed, as the petitioners had not challenged speaking order dated 07.10.2015 (R-1) till date, which was passed in compliance of order dated 21.03.2014 (P-7) passed in CWP No. 5332/2014. In the order dated 07.10.2015 (R-1), the case of the petitioners has been discussed in detailed and rejected by the authorities.

In view of the discussion made above, the present petition is dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

13.09.2021
G Arora

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