

CWP No.26357 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26357 of 2016

Date of Decision: 16.09.2021

Keshar Dass

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Rakesh Nagpal, Advocate,
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioner has challenged the notification dated 11.11.2002 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 07.11.2003 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 31.10.2005 (Annexure P/2A) with a prayer for release of his land measuring 14.48 marlas comprised in Rect. No.103, Killa No.24/3 and 25/1/2 situated in village Patii Kaisth Seth as per Section 24 (2) of the Right of Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'). Petitioner has also pressed into service a plea of discrimination which is alleged to have been meted out to him as has pleaded by him in para 9 of the writ petition.

2. Counsel for the petitioner 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 have the compensation amount been disbursed, would render the land of the petitioner acquired vide award dated 31.10.2005 liable to be released, in view of Section 24 (2) of 2013 Act, especially when the petitioners have constructed their houses thereon and are residing. It is asserted that the land acquisition proceedings under 1894 Act would lapse.

3. Counsel for the petitioner further asserts that one of the co-sharers had challenged the notification(s) and the Hon'ble Supreme Court in SLP No.22578 of 2008, titled as 'Vijay Latka & another Vs. State of Haryana & others', has ordered for release of his land vide order dated 05.05.2016 (Annexure P-4). Similarity, in CWP No.4100 of 2006, titled as 'Rajinder Kumar & others Vs. State of Haryana & others', directions have been issued to the respondents therein to consider the claim of the petitioner therein as per Section 24 (2) of 2013 Act. Counsel for the petitioner, on this basis, asserts that the notifications dated 11.11.2002 (Annexure P-1) and dated 07.11.2003 (Annexure P-2) as also award dated 31.10.2005 (Annexure P/2A) cannot sustain and deserve to be set aside.

4. On the other hand, learned counsel for the respondents 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 Department, Panchkula, dated 14.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.285, dated 31.10.2005. It has further been asserted that out of the total amount of the award of ₹9,39,49,758/-, an amount of ₹4,00,93,086/- has already been disbursed and rest of the amount is lying available for disbursement. It has further been stated that the petitioner was not the owner of the land in question as per the records available at the time of issuance of notification under Section 4 of 1894 Act and so far as the compensation amount qua the land in question is concerned, the same is available for disbursement.

5. His further contention is that the land in question affects the site of 100 meter green belt and 75 meter road and therefore, the land in question cannot be released. Since the petitioner is not the owner of the land in question as stated above, compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.285, dated 31.10.2005, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

6. As regards the plea with regard to the discrimination, which has been taken by the petitioners in para 9 of the writ petition, has been answered by observing that no ground for discrimination is made out as merely by saying that some land of his co-sharers has been released would not be enough to make out a case for discrimination and therefore, violative of Article 14 of the Constitution. The petitioner was required to make out a case that the land which has been released of the other persons was identical to the one of the petitioners and the reason given by the Government for refusing to release his land are irrelevant or extraneous. He contends that the said details are not forthcoming. A perusal of said para No.9 would indeed leave no manner of doubt that these are bald assertions made in the writ petition bereft of any details whatsoever what to say of making out a case of discrimination. Learned counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Shanti Sports Club & another Vs. Union of India & others** {2009 (5) SCC (Civil) 707} to submit that this plea would not be sustained in the absence of pleadings.

7. 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 judgments passed by the Hon'ble Supreme Court in the cases of *Indore Development Authority* (supra) and *Shanti Sports Club* (supra).

8. Having heard the learned counsel for the parties and having gone through the pleadings, we are of the considered view that the plea of discrimination as sought to be raised by the petitioner is not spelt-out from

the pleadings and these are merely bald assertions which have been made. The details with regard to the land which has been released has not been given and nothing has been mentioned about its location, its similarity or the comparison thereof with that of the petitioner nor has it been spelt-out in the pleadings. In any case, the land, release of which the petitioner is seeking, if so released, would interfere and affect the site of 100 meter green belt and 75 meter road as per approved layout plan, which has specifically been stated in para 7 of the affidavit, which has been filed by the Land Acquisition Collector, Urban Estate, Panchkula, dated 14.09.2021, rebuttal whereof has not been filed by the petitioner. Meaning thereby that the said aspect stands admitted by him.

9. The case of the petitioner, therefore, is covered against them by the judgment of the Hon'ble Supreme Court in the case of *Shanti Sports Club* (supra) wherein, in a similar matter where plea of discrimination had been taken, the Hon'ble Supreme Court has dealt with the aspect of the plea of discrimination and violation of Article 14 of the Constitution of India and had held that this Article can be invoked for seeking a direction to the respondents to withdraw from the acquisition of the land in question in case the asserting person is able to prove that he has been subjected to invidious or hostile discrimination. The concept of equality enshrined in Article 14 is a positive concept and the Court can command the State to equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegally or pass wrong orders because in another such case an illegality has been committed or wrong orders have been passed. Article

14 of the Constitution cannot be invoked for perpetuating illegalities and irregularities

10. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 11.11.2002 and 07.11.2003 respectively, leading to the passing of the award dated 31.10.2005. Petitioner is claiming himself to be the owner of land measuring 14.48 marlas comprised in Rect. No.103, Killa No.24/3 and 25/1/2 situated in village Patii Kaisth Seth on the basis of sale deed No.4762/1, dated 30.01.1990 and is seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

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.285, dated 31.10.2005, 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 out of the total amount of the award of

₹9,39,49,758/-, an amount of ₹4,00,93,086/- has already been disbursed and rest of the amount is lying available for disbursement. It has further been stated that the petitioner is not recorded owner of the land in question at the time of issuance of notification under Section 4 of 1894 Act and so far as the compensation amount qua the land in question is concerned, the same is available for disbursement.

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 & others Vs. Lt. Governor of Delhi & others 1975 (4) SCC 285 and Northern Indian Glass Industries Vs. Jaswant Singh & others 2003 (1) SCC 335, 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 petitioner and the present

petition has been filed after about 11 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 incumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and laches.

14. That apart, since the land in question affects the site of 100 meter green belt and 75 meter road as per approved layout plan, the same, in any case, cannot be released as it would directly affect the planning.

15. 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