

CWP No.25912 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.25912 of 2017

Date of Decision: 16.09.2021

Kuldeep Singh

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: None 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 challenged the notification dated 26.09.2007 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 25.09.2008 (Annexure P-6) issued under Section 6 of the 1894 Act and the award dated 24.09.2010 (Annexure P-7) as also the order dated 22.12.2016 (Annexure P-14) passed by the Special Secretary-cum-Director, Urban Estates Department, Haryana, whereby the representation of the petitioner for release of 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'), has been rejected.

2. It has been pleaded 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 24.09.2010 (Annexure P-7) liable to be released, in view of Section 24 (2) of 2013 Act, especially when the petitioner has constructed his house thereon and is residing with his family. It is asserted that the land acquisition proceedings under 1894 Act would lapse.

Plea of discrimination has also been pressed into service by the petitioner stating that the respondents have released a vacant plot of 516 square yards of one Shri Jitender Kumar Sharma falling in Khasra No.473/75, therefore, the property of the petitioner being similarly situated as that of the persons whose land has been released be also released. On this basis, it has been asserted that the notifications dated 26.09.2007 (Annexure P-3), dated 25.09.2008 (Annexure P-6) and award dated 24.09.2010 (Annexure P-7) as also the order dated 22.12.2016 (Annexure P-14) cannot sustain and liable to be quashed.

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, Panchkula, dated 07.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.72, dated 24.09.2010. It has further been stated that total amount of award i.e. ₹2,59,77,50,090/-, an amount of ₹1,52,22,64,983/- has already been disbursed. So far as the amount of compensation of land in question is concerned, petitioner has already received compensation for khasra No.88 amounting to ₹15,10,992/- and khasra No.107 amounting to ₹36,13,225/- and as far as compensation qua khasra No.86 is concerned, same was available with Land Acquisition Collector at the time of announcement of award, however the petitioner has chosen not to receive the same.

4. Referring to para 12 of the affidavit filed by the Land Acquisition Collector, Urban Estate, Panchkula, dated 26.02.2020, counsel for the respondents contends that the land of the petitioner falls in Sector-4A of Development Plan of Pinjore Kalka Urban complex and it affects the proposed site of Centre of Haryana, Fire Brigade, Site of National Disaster Response Force and Manipur Bhawan 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.72, dated 24.09.2010, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply.

The writ petition, therefore, deserves to be dismissed.

5. As regards the plea with regard to the discrimination, which has been taken by the petitioner, has been answered by observing that the petitioner is not similarly situated as vacant land of one Shri Jitender Kumar Sharma, which was released from acquisition vide order dated 31.12.2012, was not similar to that of the petitioner as the land of Shri Jitender Kumar Sharma was released considering the fact that the said land measuring 10 biswa was surrounded by constructed houses on both sides and the said land was released under Section 5-A of the 1894 Act taking into consideration the fact that an isolated piece of land could not have been utilized for any purpose by the department and therefore, the same was recommended for release. No ground for discrimination is made out as merely by saying that some land 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 petitioner and the reason given by the Government for refusing to release his land are irrelevant or extraneous.

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.

6. We have considered the submissions made by the learned counsel for the respondents and with his 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* as also *Shanti Sports Club* (supra).

7. Having heard the learned counsel for the respondents 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. It has been stated in the affidavit of the Land Acquisition Collector, dated 07.09.2021 that the petitioner is not similarly situated as the land, which was released from acquisition vide order dated 31.12.2012, was not similar to that of the petitioner as the said land measuring 10 biswa was released considering the fact that the same was surrounded by constructed houses on both sides. Further, the said land was released under Section 5-A of the 1894 Act taking into consideration the fact that an isolated piece of land could not have been utilized for any purpose by the concerned department and therefore, the same was of no use. No ground for discrimination is made out as merely by saying that some land 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 petitioner and the reason given by the Government for refusing to release his land are irrelevant or

extraneous.

8. The case of the petitioner, therefore, is covered against him 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

9. Petitioner is claiming himself to be the owner of land measuring 5 bigha 4 biswa comprised in Khasra Nos.86, 88, 107, Hadbast No.192, situated within the revenue estate of village Islam Nagar, Tehsil Kalka and District Panchkula 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.72, dated 24.09.2010, 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.

10. As regards the compensation amount is concerned, it has been specifically averred in the reply that total amount of award i.e. ₹2,59,77,50,090/-, an amount of ₹1,52,22,64,983/- has already been disbursed. So far as the amount of compensation of land in question is concerned, petitioner has already received compensation for khasra No.88 amounting to ₹15,10,992/- and khasra No.107 amounting to ₹36,13,225/- and as far as compensation qua khasra No.86 is concerned, same was available with Land Acquisition Collector at the time of announcement of award, however the petitioner has chosen not to receive the same. Merely because the petitioner has not collected the amount of compensation of some of his land, it would not entitle him to assert that the compensation has not been disbursed to him.

11. 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).

12. 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 72 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 07 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.

13. In any case, the land, release of which the petitioner is seeking, if so released, would interfere and affect the proposed site of Centre of Haryana, Fire Brigade, Site of National Disaster Response Force and Manipur Bhawan road as per approved layout plan, which has specifically

been stated in para 12 of the affidavit, which has been filed by the Land Acquisition Collector, Urban Estate, Panchkula, dated 26.02.2020, rebuttal whereof has not been filed by the petitioner. Meaning thereby that the said aspect stands admitted by him.

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