

CWP No.578 of 2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.578 of 2015

Date of Decision: 16.09.2021

Mohinder Singh & another

...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 6 kanals and 13 marlas comprised in Khasra No.27//3/2/2, 27//3/2/1/2 and 19//23/2/2 situated in the revenue estate of village Shahpur, Tehsil Ambala, 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, petitioners

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.27//3/2/2, 27//3/2/1/2 and 19//23/2/2 was not included in the notification dated 10.11.2000 (Annexure P-4).

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 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 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. out of the total amount of the award of ₹2,86,60,542/-, an amount of ₹2,01,90,129/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. ₹1,58,234/-, the said amount has not been collected by the petitioners and they are at liberty to receive/collect the same.

5. His further submission is that the petitioners earlier challenged the acquisition proceedings by filing CWP No.1219 of 1992 which has been allowed by this Court vide order dated 23.07.1993 (Annexure P-3). In the said writ petition, Khasra Nos.27//3/2/2, 27//3/2/1/2 and 19//23/2/2 were not mentioned and therefore, the acquisition qua the said land of the petitioners

stood absolutely concluded. The possession of the said land was taken vide Rapat No.261, dated 23.01.1992. It has been also stated that the petitioners had moved an application i.e. CM-16365-2009 in CWP No.1219 of 2012 for mentioning Khasra Nos.27//3/2/2 (1-14), 27//3/2/1/2 (4-0) and 19//23/2/2 (0-18) in the said writ petition but the same was dismissed by this Court vide order dated 29.11.2010. Further, it has been pointed out that the land qua which the acquisition proceedings were quashed, stands re-acquired in the year 2000 which has not been challenged by the petitioners in this writ petition.

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 laches 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 incumbrances. Delay and laches 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 of the petitioners affects the site of 50 plots of 14 marla, 18 plots of 10 marla, 7 roads 18 meter and green portion and therefore, the land of the petitioners 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.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 6 kanals and 13 marlas comprised in Khasra No.27//3/2/2, 27//3/2/1/2 and 19//23/2/2 situated in the revenue estate of village Shahpur, Tehsil Ambala, District Ambala 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 the land has been taken vide Rapat Roznamacha No.261, dated 23.01.1992, 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 entire award amount was tendered at the time of announcement of award and the same was available with the Land Acquisition Collector for disbursement. out of the total amount of the award of ₹2,86,60,542/-, an amount of ₹2,01,90,129/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioners is concerned, i.e. ₹1,58,234/-, the said amount has not been collected by the petitioners and they are at liberty to receive/collect the same. Merely because the amount of compensation has not been received by the petitioners, they cannot claim that the compensation amount has not been disbursed to them.

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. It may also be added here that in CWP No.1219 of 1992, which was preferred by the petitioners earlier, the details of land in question was not mentioned and therefore, the same was not released. However, the land which was released in compliance of the order dated 23.07.1993 passed in the said writ petition, was re-acquired by the State Government in the subsequent acquisition proceedings vide notifications dated 10.11.2000 and 08.11.2001 issued under Sections 4 and 6 of 1894 Act respectively followed by award dated 05.11.2003 for the residential, commercial and industrial area for Sector 10-11, Urban Estate Ambala, which is not challenged by the petitioners in this writ petition and therefore, on this ground also, claim of the petitioners cannot be accepted.

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

15. In any case, the land, release of which the petitioners are seeking, if so released, would interfere and affect the site of 50 plots of 14 marla, 18 plots of 10 marla, 7 roads 18 meter and green portion, which has specifically been stated in para 10 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.

16. 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