

CWP-24682-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.24682 of 2018

Date of Decision: 07.04.2021

Ishwar Singh & others

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Johan Kumar, Advocate,
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 09.05.1995 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 06.05.1996 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 30.04.1998 as also the order dated 05.03.2018 (Annexure P-7) passed by the Chairman-cum-Zonal Administrator, HUDA-cum-Additional Director, Urban Estate, Faridabad – respondent No.5, whereby the representation of the petitioners for release of their land 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') has been rejected.

2. Counsel for the petitioners 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 petitioners acquired vide award dated 30.04.1998 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. Counsel for the petitioners, on this basis, asserts that the order dated 05.03.2018 (Annexure P-7) cannot sustain and deserves to be set aside.

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 petitioners the benefit of release of land on the lapsing of the acquisition proceedings initiated under the 1894 Act, there should neither be physically 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, Haryana, Faridabad, dated 16.02.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.389, dated 30.04.1998, after the passing of the award dated 30.04.1998. It has further been asserted that out of the total amount of the

award of ₹ 1,77,57,869/-, an amount of ₹ 1,69,67,643/- has already been disbursed, which comes to more than 77% of the total amount. Rest of the amount is lying deposited in the account of the Land Acquisition Collector, i.e. CCF HSVP, Panchkula. So far as the amount of compensation due to the petitioners is concerned, i.e. ₹ 7,90,226/-, the said amount is also lying deposited with the Land Acquisition Collector. As far the amount due to the petitioner is Rs.85220/-, the same has not been collected by the petitioners.

4. His further contention is that the land of the petitioners affects the site of alignment of 30 meter dividing road between Sectors 62 and 65, Faridabad 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.389, dated 30.04.1998, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

5. 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 judgment passed by the Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

6. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 09.05.1995 and 06.05.1996 respectively, leading to the passing of the award dated 30.04.1998. Petitioners are owners of Khasra No.6//25/2/2 (3k-10m) of land and are 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 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.389, dated 30.04.1998, 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.

7. As regards the compensation amount is concerned, it has been specifically averred in the reply that out of the total amount of compensation of ₹ 1,77,57,869/-, an amount of ₹ 1,69,67,643/- stands already disbursed, which comes to more than 77% of the awarded amount. The remaining amount is lying deposited with the Land Acquisition Collector. Petitioners, as per the award dated 30.04.1998, are entitled to compensation of ₹ 85,220/-, which has not been collected by the petitioners till date. Merely because the petitioners have not collected the amount of compensation, it would not entitle them to assert that the compensation has not been disbursed to them.

8. 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

CWP-24682-2018

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). That apart, since the land of the petitioners fall on the 30 meter dividing road between Sectors 62 and 65, the land of the petitioners, in any case, cannot be released as it would directly effect the planning.

9. In view of the above, we do not find any merit in the present writ petition and therefore, dismissed the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

07.04.2021

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No