

CWP No.5824 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5824 of 2016

Date of Decision: 30.09.2021

Balwant Singh & others

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. C.B. Goel, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate,
for the respondents.

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 08.02.1989 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 07.02.1990 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 23.01.1992 (Annexure P-7) with a prayer for release of their 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').

2. Counsel for the petitioners asserts that petitioners No.1 to 3 were the owners of land measuring 18 kanals and 4 marlas comprised in Khewat/Khatoni No.231/330, Khasra No.16//3 (4-19), Khewat/Khatoni No.232/331, Khasra No.16//14 (3-13), Khewat Khatoni No.234/333, Khasra

No.16//8/2 (1-6), Khewat Khatoni No.230/329, Khasra No.16//17/2 (3-16), 18//1/1 (0-4), 18//1/2 (3-18) situated in the revenue estate of village Nanhera, Hadbast No.104, Tehsil and District Ambala and had sold the said land to petitioner No.4 vide registered sale deed No.1597 dated 06.02.2009. He contends that before selling the said land to petitioner No.4, 'No Objection Certificate' was applied by petitioners No.1 to 3 from the District Town Planner, which was issued by the said authority vide letter dated 05.02.2009 (Annexure P-5), which shows that the possession of the land was very much with the petitioners. He further asserts that none of the petitioners was ever offered the compensation nor have they received the same till date. Counsel states 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 has the compensation amount been disbursed/paid, would render the land of the petitioners acquired vide award dated 23.01.1992 (Annexure P-7) liable to be released. It is, thus, submitted that the land acquisition proceedings under 1894 Act would lapse and therefore, notifications dated 08.02.1989 (Annexure P-1) and 07.02.1990 (Annexure P-2) as also the award dated 23.01.1992 (Annexure P-7) deserve 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 petitioners the benefit of release of land on the lapsing of the acquisition proceedings initiated under the 1894 Act, is that 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 the Land Acquisition Collector, Urban Estate, Panchkula, dated 08.01.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.341, dated 23.01.1992. It has further been asserted that out of the total amount of the award of ₹2,85,60,842/-, an amount of ₹1,65,29,522/- has already been disbursed and rest of the amount i.e. ₹1,20,31,320/- is still lying deposited with the LAC account. Qua the land in question, Harnek Singh – petitioner No.3 has already received the compensation amount of ₹1,29,793/- relatable to him and rest is lying deposited in LAC account.

4. Further, it has been asserted that admittedly, petitioner No.4 has purchased the land from petitioners No.1 to 3 vide sale deed dated 06.02.2009, which is the date after the land having vested with the Government after the passing of the valid award dated 23.01.1992 (Annexure P-7) and thus, is a subsequent purchaser and in the light of the judgments of the Hon'ble Supreme Court in **Shiv Kumar Vs. Union of India & others** 2019 (10) SCC 229 where it has been held that subsequent purchaser has no right to challenge the acquisition proceedings nor can he claim lapsing of the same under Section 24 (2) of the 2013 Act, no relief as claimed can be granted to petitioner No.4.

5. It has also been pointed out that petitioner No.4 had earlier also

approached this Court challenging the same very notifications and award by filing CWP No.23131 of 2010, titled as 'Dhiyan Singh Vs. State of Haryana & others', which was dismissed on 06.01.2011 (Annexure P-6) by this Court on the ground of delay and laches especially when the land was purchased by him subsequent to the finalization of the acquisition proceedings. Once the acquisition proceedings have been upheld by this Court, petitioners cannot claim the same very benefit which has been rejected earlier by filing the present writ petition. To substantiate this contention, reliance has been placed on para 359 of the judgment of Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

6. His submission is that since the land in question affects the site of 2 plots of 14 marla, 20 plots of 10 marla, 30 plots of 6 marla, one 10 meter wide road and a portion of green belt, the same 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.341, 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.

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 various judgments passed by the Hon'ble Supreme Court.

8. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 08.02.1989 (Annexure P-1) and 07.02.1990 (Annexure P-2) respectively,

leading to the passing of the award dated 23.01.1992 (Annexure P-7). Petitioners are asserting themselves to be owner in possession of land measuring 18 kanals and 4 marlas comprised in Khewat/Khatoni No.231/330, Khasra No.16//3 (4-19), Khewat/Khatoni No.232/331, Khasra No.16//14 (3-13), Khewat Khatoni No.234/333, Khasra No.16//8/2 (1-6), Khewat Khatoni No.230/329, Khasra No.16//17/2 (3-16), 18//1/1 (0-4), 18//1/2 (3-18) situated in the revenue estate of village Nanhera, Hadbast No.104, Tehsil and District Ambala 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 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.341, 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.

It may be added here that merely because 'No Objection Certificate' has been issued by the District Town Planner, Ambala, for registration of the sale of land, it cannot be said that the possession of the land in question is with the petitioners as the possession of the land has

been already taken vide Rapat Roznamacha No.341, dated 23.01.1992 and person retaining possession thereafter is to be treated as a trespasser.

9. 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 ₹2,85,60,842/-, an amount of ₹1,65,29,522/- has already been disbursed and rest of the amount i.e. 1,20,31,320/- is still lying deposited with the LAC account. Qua the land which is in question is concerned, Harnek Singh – petitioner No.3 has already received the compensation amount of Rs.1,29,793/- and rest is lying deposited in LAC account. Merely because some of the petitioners have not collected/received the amount of compensation, it would not entitle them to assert that the compensation has not been paid/distributed to them.

10. 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).

11. Petitioners themselves have admitted in para 8 of the writ petition that petitioner No.4 had purchased the land from petitioners No.1 to 3 vide registered sale deed No.1597 dated 06.02.2009 and thus, is a subsequent purchaser as the land stood vested in Government after the passing of a valid award on 23.01.1992 (Annexure P-7). Therefore, in the light of the law laid down by the Hon'ble Supreme Court in *Shiv Kumar's* case (supra) where it has been held that subsequent purchaser has no right to challenge the acquisition proceedings nor can he claim lapsing of the same under Section 24 (2) of the 2013 Act, the prayer as made by the petitioners in the present writ petition cannot be accepted.

12. Further, it has been admitted by the petitioners in para 9 of the writ petition that petitioner No.4 had earlier also approached this Court by filing CWP No.23131 of 2010, titled as 'Dhiyan Singh Vs. State of Haryana & others', challenging the same very notifications and award which was dismissed by this Court vide order dated 06.01.2011 (Annexure P-6) on the ground of delay and laches especially when the land was purchased by him subsequent to the finalization of the acquisition proceedings, the present writ petition deserves to be dismissed on this ground alone. Once the acquisition proceedings have been upheld by this Court, petitioners cannot challenge the same very notifications and award which was earlier challenged and rejected and therefore, the present writ petition deserves to be dismissed in the light of the observations of the Hon'ble Supreme Court in *Indore Development Authority's* case (supra), where, in paras 359 and 363 (9), it has been held that if the acquisition of land had earlier been challenged and the same has been upheld, the proceedings having been

concluded, the umbrella of protection provided under Section 24(2) of the 2013 Act, cannot be invoked and it does not revive stale and time barred claims especially when it has been held in the earlier part of the judgment that after passing of the award, possession of the land has been taken vide Rapat No.341, dated 23.01.1992 and the amount of compensation has already been deposited with the Land Acquisition Collector, leading to the land having been vested in the State in accordance with law.

13. That apart, since the land in question affects the site of 2 plots of 14 marla, 20 plots of 10 marla, 30 plots of 6 marla, one 10 meter wide road and a portion of green belt, the same, in any case, cannot be released as it would directly affect the planning.

14. 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

30.09.2021
Harish

(MEENAKSHI I. MEHTA)
JUDGE

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