

CWP No.27503 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.27503 of 2017

Date of Decision: 15.09.2021

Raj Kumar & 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. Ravindra Jain, 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 16.08.2001 (Annexure P-4) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 14.08.2002 (Annexure P-5) issued under Section 6 of the 1894 Act and the award dated 26.02.2004 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 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 26.02.2004 liable to be released, in view of Section 24 (2) of 2013 Act especially petitioners No.5 to 10 have constructed certain shops

and houses thereon and are residing there. It is asserted that the land acquisition proceedings under 1894 Act would lapse.

Plea of discrimination has also been pressed into service by the petitioners stating that the land adjacent to their land has been released by giving the benefit of Section 24 (2) of 2013 Act in the light of the order dated 01.12.2016 passed by this Court in CWP No.17513 of 2016, titled as 'Vinod Kumar & others Vs. State of Haryana & others' (Annexure P-6). He, therefore, submits that the land of the petitioners is similarly situated as that of the persons whose land has been released. Counsel for the petitioners, on this basis, asserts that the notifications dated 16.08.2001 (Annexure P-4) and dated 14.08.2002 (Annexure P-5) as also award dated 26.02.2004 cannot sustain and 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 to 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 07.09.2021, wherein it has been stated that the possession of the land was

taken and mutation has been sanctioned in favour of the beneficiary department i.e. HSVP vide mutation No.5106 dated 02.09.2016. He has further stated that a road stands constructed on Khasra No.158 and Khasra No.525 min, therefore, it cannot be asserted that the respondents have not taken the possession.

4. It has further been stated that the entire award amount was tendered at the time of announcement and was very much available with LAC for disbursement. Out of the total amount of the award of ₹11,66,46,409/-, an amount of ₹11,09,64,256/- 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. ₹8,58,321/-, the said amount has not been received/collected by them and they are at liberty to receive the same.

5. As regards the plea with regard to the discrimination, which has been taken by the petitioners, learned counsel for the respondents contends that the petitioners are not similarly situated to the persons whose land was released by this Court vide order dated 01.12.2016 passed in CWP No.17513 of 2016, titled as ' Vinod Kumar & others Vs. State of Haryana & others' (Annexure P-6) as the land of the petitioners was vacant at the time of acquisition and the land, which has been ordered to be released, construction thereon was already done by the landowners. In support of this contention, he 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}.

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. Referring to para 5 of the affidavit dated 07.09.2021, counsel contends that the petitioners had earlier also approached this Court challenging the acquisition proceedings and the same was dismissed vide order dated 04.05.2007 (Annexure R-1) and the said order was challenged before the Hon'ble Supreme Court by filing SLP (C) No.31111 – 31116 of 2008, which also stood dismissed vide order dated 19.12.2008 (Annexure R-2) and therefore, the present writ petition is not maintainable.

8. His further contention is that the land of the petitioners affects the site for dispensary and public utility site 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 mutation No.5106 dated 02.09.2016, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

9. 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, on which reliance has been placed by the learned counsel for the respondents.

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 16.08.2001 and 14.08.2002 respectively, leading to the passing of the award dated 26.02.2004. Petitioners are owners of land measuring 7 bighas and 12 biswas comprised in Khasra Nos.1295/525 (2-19), 524 (4-2) and 158 (0-11), situated within the revenue estate of village Gobindpura, Tehsil Jagadhari, District Yamuna Nagar 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 and mutation has been sanctioned in favour of the beneficiary department i.e. HSVP vide mutation No.5106 dated 02.09.2016, thus, fulfilling one of the conditions with regard to the possession having been taken over. Even the possession of the land through rapat roznamacha has been held to be a 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 the entire award amount was tendered at the time of announcement of award and was very much available with LAC for disbursement. Out of the total amount of the award of ₹11,66,46,409/-, an amount of ₹11,09,64,256/- 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. ₹8,58,321/-, the said amount has not been received by them and they are at liberty to receive the same.

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 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. The plea of discrimination as sought to be raised by the petitioners cannot be accepted as the same is not spelt-out from the pleadings and these are merely bald assertions which have been made and in the light of the fact that the land of the petitioners was vacant at the time of acquisition and the land, which was ordered to be released, construction thereon had been already done by the landowners and they were running shops etc. in the structures, therefore, there is clear distinction between the two. It may be added here that in para 2 of the judgment of this Court in CWP No.17513 of 2016 (*supra*), on which reliance has been placed by the learned counsel for the petitioners, it was admitted by the Land Acquisition Collector, Urban Estates, Gurgaon, in his affidavit that the amount of compensation was neither paid to the landowners nor it has been deposited in the Reference Court.

The case of the petitioners, 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.

14. It may also be added here that the present writ petition is not maintainable as petitioners had earlier also approached this Court challenging the acquisition proceedings which was dismissed vide order dated 04.05.2007 (Annexure R-1) and the said order was upheld by the Hon'ble Supreme Court in SLP (C) No.31111 – 31116 of 2008, vide order dated 19.12.2008 (Annexure R-2) and therefore, the same deserves to be dismissed as not maintainable. It has been held by 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 and mutation has been sanctioned in favour of the beneficiary department vide Mutation No.5106 dated 02.09.2016 as also 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.

15. Further, in the light of the judgments of the Hon'ble Supreme Court in the cases of *Aflatoon* 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

petitioner and the present petition has been filed after about 13 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.

16. In any case, the land, release of which the petitioners is seeking, if so released, would interfere and affect the site for dispensary and public utility site 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 07.09.2021, rebuttal whereof has not been filed by the petitioners. Meaning thereby that the said aspect stands admitted by the petitioners. Therefore, the land of the petitioners cannot be released as it affects the planning.

17. 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

15.09.2021

Harish

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