

CWP No.9356 of 2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9356 of 2015 (O&M)
Date of Decision: 16.09.2021

Jiwan Kapil

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Rakesh Kumar Sharma, Advocate,
for the petitioner.

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

AUGUSTINE GEORGE MASIH, J.

CM-853-CWP-2017

Written statement to the writ petition on behalf of respondent
No.2 – Land Acquisition Collector, Urban Estate, Panchkula, is taken on
record, subject to all just exceptions.

Application stands disposed of.

CWP No.9356 of 2015

By filing the present writ petition, petitioner has challenged
notification dated 30.05.2005 (Annexure P-3) issued under Section 4 of the
Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') and
notification dated 22.05.2006 (Annexure P-4) issued under Section 6 of the
1894 Act followed by award dated 16.07.2007 with a prayer 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').

2. Counsel for the petitioner 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 petitioner acquired vide impugned notifications, liable to be released, especially when the petitioner has constructed their house thereon and is residing therein. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, asserts that the notifications 30.05.2005 (Annexure P-3) and dated 22.05.2006 (Annexure P-4) and the award dated 16.07.2007 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 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 the Land Acquisition Collector, Urban Estate Department, Panchkula, dated 11.01.2007, wherein it has been stated that the possession of the land was taken vide Rapat No.1995, dated 16.07.2007 and the same has been handed over to HUDA (now HSVP). It

has further been asserted that out of the total amount of the award of ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed., as such 85.56% of compensation amount has already been disbursed to the landowners. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹4,08,306/-, the same is available for disbursement and the petitioner is at liberty to receive the same on any working day.

4. Counsel further submits that the petition earlier also approached this Court by filing CWP No.10700 of 2007, titled as 'Jiwan Kapil Vs. State of Haryana & others', challenging the same very acquisition proceedings, which was disposed of vide order dated 05.08.2008 in the light of the speaking order dated 18.06.2008 passed by the Director, Urban Estates, Haryana, where 90 square meters of area was recommended for release under Section 48 of the 1894 Act. Challenging the said order dated 05.08.2008, SLP No.7154 of 2009 was preferred by the petitioner, which was dismissed by the Hon'ble Supreme Court on 27.02.2015, however, liberty was granted to the petitioner to make appropriate application or petition under Section 24 (2) of the 2013 Act. On this ground, counsel submits that the acquisition proceedings have been finalized and the same cannot be challenged again by filing the present petition.

5. His contention is that since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.1995, dated 16.07.2007, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

6. 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).

7. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 30.05.2005 and 22.05.2006 respectively, leading to the passing of the award dated 16.07.2007. Petitioner is claiming himself to be the owner of land measuring 626.66 square feet comprised in Khasra No.9//6/2/2 and 9//15 and 16/1 situated in the revenue estate of village Gulabnagar, Hadbast No.404, Tehsil Jagadhari, District Yamuna Nagar 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.1995, dated 16.07.2007, 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.

8. 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 ₹20,87,22,222/-, an amount of ₹17,85,89,081/- has already been disbursed., as such 85.56% of compensation amount has already been disbursed to the landowners. So far as the amount of compensation due to the petitioner is concerned, i.e. ₹4,08,306/-, the same is available for disbursement and the petitioner is at liberty to receive the same on any working day. Merely because the petitioner has not collected the amount of compensation, it would not entitle them to assert that the compensation has not been disbursed to them.

9. 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).

10. It is pertinent to mention here that since the earlier writ petition i.e. CWP No.10700 of 2007, titled as 'Jiwan Kapil Vs. State of Haryana & others', challenging the same very notifications and award stands dismissed by this Court vide order dated 05.08.2008 and SLP preferred against the said

order has also been dismissed by the Hon'ble Supreme Court vide order dated 27.02.2015, the prayer made by the petitioner in the present writ petition cannot be accepted 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.1995, dated 16.07.2007 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.

Further, the land in question falls in Sector 24, Jagadhari and affects the site required for Housing Board and thus, cannot be released.

11. 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

16.09.2021
Harish

(ASHOK KUMAR VERMA)
JUDGE

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