

CWP No.3841 of 2017 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.3841 of 2017 (O&M)

Date of Decision: 30.09.2021

Kishan Dass & 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. Ajay Jain, Advocate,
for the petitioners.

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

AUGUSTINE GEORGE MASIH, J.

CM-9939-CWP-2020

For the reasons mentioned in the application, Annexures P-10
to P-13 are taken on record, subject to all just exceptions.

Application stands disposed of.

CM-12492-CWP-2020

For the reasons mentioned in the application, Annexures P-14
to P-18 are taken on record, subject to all just exceptions.

Application stands disposed of.

CM-3598-CWP-2021

For the reasons mentioned in the application, Annexures P-19
and P-20 are taken on record, subject to all just exceptions.

Application stands disposed of.

CWP No.3841 of 2017 (O&M)

CM-7384-CWP-2021

For the reasons mentioned in the application, Annexure P-21 is taken on record, subject to all just exceptions.

Application stands disposed of.

CWP No.3841 of 2017

By filing the present writ petition, petitioners have approached this Court for quashing of impugned speaking order dated 16.02.2017 (Annexure P-7) passed by the Zonal Administrator, HUDA-cum-Additional Director, Urban Estate, Rohtak, notification dated 17.11.2005 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 07.02.2006 (Annexure P-4) issued under Section 6 of the 1894 Act and the award dated 02.03.2006 with a prayer to release 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. As per the pleadings in the writ petition, petitioners are running a firm and factory in the name and style of M/s M K Enterprises on the land measuring 14 kanal and 6 marla situated in the revenue estate of village Aswarpur, Sonapat, which had been acquired vide award dated 02.03.2006. The petitioners had filed objections under Section 5-A of the 1894 Act and assailing the above notifications, they approached this Hon'ble Court by filing CWP No.3806 of 2006 for release of their land. The said writ petition was dismissed vide order dated 03.04.2008 on the ground that the writ petition had been preferred after the passing of the award. Challenging the order dated 03.04.2008, petitioners approached the Hon'ble Supreme Court

by filing Civil Appeal No.832 of 2011, which was also dismissed on 24.02.2015, however, liberty was granted to the petitioners to make an appropriate application under Section 24 (2) of the 2013 Act before the appropriate authority within a period of one month.

Petitioners had moved an application/representation under Section 24 (2) of 2013 Act on 18.03.2015, which was dismissed vide speaking order dated 16.02.2017 (Annexure P-7) observing that the land of the petitioners affects 50 meter wide green belt including 18 meter wide service road and related services but it was also admitted that the factory was functional prior to issuance of notification under Section 4. Challenging the said speaking order 16.02.2017, notifications dated 17.11.2005 and 07.02.2006 as also award dated 02.03.2006, the present writ petition has been preferred by the petitioners for release of their land.

3.. Counsel for the petitioners asserts that keeping in view 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 02.03.2006 is liable to be released. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioners, on this basis, submits that the speaking order dated 16.02.2017, notifications dated 17.11.2005 and 07.02.2006 as also award dated 02.03.2006 cannot sustain and deserve to be set aside.

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 Department, Haryana, Rohtak, dated 22.02.2021, wherein it has been stated that the possession of the land in question was taken vide Rapat No.71, dated 02.03.2006 and Mutation No.4064 dated 30.04.2008 has been sanctioned in favour of the beneficiary department i.e. HSVP. It has further been asserted that out of the total amount of the award of ₹3,34,90,10,360/-, an amount of ₹2,60,58,18,572/- 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. ₹29,81,819/- the said amount is available for disbursement. The petitioners have not received the compensation amount and they are at liberty to receive the same.

5. His further contention is that the land in question affects the site of 50 meter wide green belt, NH-1 and part of Hostel 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 Rapat Nos.71, dated 02.03.2006, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would

not apply.

6. Contention has also been made that as per zoning regulations, there is non-conforming use of the site and petitioners have not taken CLU in respect of the land and therefore, their land cannot be released. Reliance has been placed upon the judgment dated 05.08.2011 passed by this Court in CWP No.7711 of 2009, titled as 'New Vidya Niketan Educational Society Vs. State of Haryana & others', where it has been held that a person who raise unauthorized construction without obtaining CLU has no right to get equity by invoking writ jurisdiction of Court and therefore, relief as claimed by the petitioners cannot be granted. He, thus, submits that the present writ petition deserves dismissal.

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 this Court as well as Hon'ble Supreme Court.

8. The facts, as has been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 17.11.2005 and 07.02.2006 respectively, leading to the passing of the award dated 02.03.2006. Petitioners 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 No.71 dated 02.03.2006, 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.

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 ₹3,34,90,10,360/-, an amount of ₹2,60,58,18,572/- 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. ₹29,81,819/- the said amount is available for disbursement. The petitioners have not received the compensation amount and they are at liberty to receive the same. 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.

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. So far as the contention of the learned counsel for the petitioners that no award has been passed qua structure existed on the land in question, it has been specifically stated that as per zoning regulations, there is non-conforming use of the site and petitioners have not taken CLU in respect of the land and therefore, their land cannot be released. Reliance in this regard has been placed upon the judgment dated 05.08.2011 passed by this Court in CWP No.7711 of 2009, titled as 'New Vidya Niketan Educational Society Vs. State of Haryana & others', where it has been held that a person who raise unauthorized construction without obtaining CLU has no right to get equity by invoking writ jurisdiction of the Court.

It may be added here that the person who has not received the compensation qua the building/structure existed on the land which has been sought to be acquired, may file a reference before the appropriate Court for the relief/compensation under Section 18 of the 1894 Act. Therefore, the relief as sought for by the petitioners in this writ petition cannot be granted.

12. Since the earlier writ petition preferred by the petitioners i.e. CWP No.3806 of 2006, challenging the same very notifications stands dismissed by this Court vide order dated 03.04.2008 and Civil Appeal No.832 of 2011 preferred against the said order has also been dismissed by the Hon'ble Supreme Court vide order dated 24.02.2015, the prayer made by the petitioners 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.71 dated 02.03.2006 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 50 meter wide green belt, NH-1 and part of Hostel site, 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