

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21906-2020

Decided on :February 22, 2021

Ram Sumer

. . . Petitioner(s)

Versus

State of Haryana and others

. . . Respondent(s)

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

(Proceedings through Video Conferencing)

Present: Mr. Prithvi Raj Yadav, Advocate,
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana
for the respondents.

AUGUSTINE GEORGE MASIH, J.

The petitioner has approached this court by way of a writ petition praying for quashing of notification issued under Section 4 read with Section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') dated 17.09.2004 (Annexure P-3), notification issued under Section 6 read with Section 17 of the 1894 Act dated 27.10.2004 (Annexure P-4), award dated 9.3.2006 (Annexure P-6) and all subsequent proceedings arising therefrom as more than five years have elapsed since the date of passing of the award as neither compensation has been paid to the petitioner nor the physical possession of the land taken. This assertion and claim has been made in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013 (hereinafter referred to as '2013 Act').

2. Facts as pleaded by the petitioner are that the acquisition proceedings qua the land of the petitioner comprised in Mustil 24 and Killa No. 19/2 (5-1), Mustil No. 36 Killa No.19/2 (3-0), 21/2/2/(2-0), 21/2/1 (2-9) and 22/1(4-0) situated in village Lakhnoula, Tehsil Manesar and District Gurugram has elapsed in the light of Section 24(2) of 2013 Act as the period of more than five years have elapsed on 1.1.2014 since the date of passing of the award as neither the possession of the land had been taken nor compensation was paid to the petitioner. Notification under Section 4 of the 1894 Act read with Section 17(2)(c) of the said Act was issued for acquisition of land of six villages including the land of village Lukhnoula where the land of the petitioner is situated. Declaration under Section 6 read with Section 17(2) (c) of the 1894 Act was issued on 27.10.2004. Land of the petitioner was included in both these notifications issued by the respondents. Purpose of acquisition was industrial and commercial. Petitioner along with others challenged the above mentioned acquisition proceedings by filing CWP No. 17997 of 2004. During the pendency of the writ petition award was passed by the District Revenue Officer-cum-Land Acquisition Collector, Gurugram on 9.3.2006. The writ petition came to be allowed by this Court vide order dated 16.4.2009 (Annexure P-7).

3. Respondents filed Letters Patent Appeal against the said order of the learned Single Judge. The bunch of appeals came to be decided vide order dated 28.1.2011 (Annexure P-8) vide which the order passed by the learned Single Judge dated 16.4.2009 was modified and the State was granted liberty to proceed afresh from the stage of issuance of notification under Section 4 of the 1894 Act.

4. The review application preferred by the petitioners was dismissed vide order dated 20.5.2011 (Annexure P-9). It is on these basis that the petitioner has approached this Court praying for quashing of the notifications issued under Sections 4 and 6 of the 1894 Act as also the award passed in the said proceedings by asserting that period of more than five years have elapsed from the date of passing of the award but neither physical possession of the land had been taken nor the compensation paid or offered to the petitioner.

5. When the case came up for hearing on 18.12.2020, the following order was passed:-

“It is the contention of learned counsel for the petitioner that the details of the land as given in Para 2 of the writ petition, except Mustil No.24, Killa No.19/2, was not a part of the challenge in Civil Writ Petition No.1797 of 2004. His further contention is that the possession and compensation qua the said land having not been paid till date to the petitioner, acquisition lapsed and, therefore, the land deserves to be released.

Mr.Ankur Mittal, Additional Advocate General, Haryana, prays for an adjournment to verify the said fact and file reply to the writ petition with specific reference to Para 2 of the pleadings.

*List on **08.02.2021.**”*

6. In pursuance to the said order passed by this Court, short reply by way of an affidavit dated 21.2.2021 of Divisional Town Planner, HSIIDC, Sector 6, Panchkula on behalf of respondent No.3 (Haryana State Industrial and Infrastructure Development Corporation) has been filed in Court which is taken on record.

order dated 28.01.2011 by the Division Bench of this Court, land comprising in Khasra No. 24//19/2 (5-1) which was owned by the petitioner, was again notified for acquisition vide notification dated 24.12.2013 issued under Section 4 of the 1894 Act followed by a declaration dated 23.12.2014 issued under Section 6 of the said Act. These acquisition proceedings were challenged by filing CWP No. 7942 of 2015 titled as **Kailash and others Vs. State of Haryana and others** on the ground that no declaration under Section 6 of the 1894 Act can be issued after the commencement of the 2013 Act. This writ petition was allowed vide order dated 5.9.2017 relying upon the Full Bench judgment of this Court in CWP No. 4371 of 2015 **Deepak Aggarwal and another Vs. State of Haryana and others**. This order having been challenged before the Hon'ble Supreme Court in SLP (C) 016567 of 2018 lead to the staying of the operation of the judgment. The said challenge is still pending consideration before the Hon'ble Supreme Court.

The prayer of the petitioner, therefore, with regard to the elapsing of the acquisition proceedings qua the above referred land under Section 24 (2) of the 2013 Act is misconceived and baseless. On the basis of these factual assertions it has been submitted that the petitioner has not approached this Court with clean hands and has intentionally and deliberately concealed the aforesaid facts. This being the position, petitioner is not entitled to equitable relief of this Court by way of writ petition as prayed for.

8. As regards the land comprising in Khasra No. 36//19/2 (3-0), 21/2/1 (2-9), 21/2/2 and 22/1 (4-0) is concerned, it has been stated that the award qua the said land was announced on 09.3.2006 and the possession of

the land was taken by recording rapat roznamcha No. 902 dated 31.5.2013 and the possession of the land comprising Khasra No. 36//19/2 was taken on 31.5.2013 and possession of Khasra No.36//21/2/2, 21/2/1 and 22/1 was taken by recording rapat roznamcha No. 650 dated 09.3.2006.

A reference has been made in para No. 244 of the judgment of **Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496** to contend that when the State has acquired the land and the award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession and any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

9. That apart, it has been stated that the amount of compensation was duly tendered which the petitioner did not withdraw. The compensation amount was deposited in the Court of Additional District Judge vide cheque dated 26.08.2015. Stressing upon the word 'paid' used in the provisions of Section 24 (2) of the 2013 Act, mention to the judgment of the Supreme Court in **Indore Development Authority's case (supra)** has been made to contend that the word 'paid' implies tendering of compensation amount and once the amount is tendered, the obligation of the State to pay compensation is fulfilled. Merely because the petitioner has not taken the said amount would not entitle him to the benefit of the provisions of Section 24 (2) of the 2013 Act.

10. It has further been stated that one of the two contingencies as referred to in Section 24 (2) of the 2013 Act having been fulfilled, provisions of Section 24 (2) would not be available to be invoked for taking

the benefit thereof by the owner of the land.

On these factual and legal basis, prayer has been made for dismissal of the writ petition.

11. We have considered the submissions made by learned counsel for the parties and with their assistance have gone through the records of the case.

12. Petitioner, as is apparent, from the reply which has been filed, has not approached this Court with clean hands. After the passing of the order by the Division Bench of this Court on 28.1.2011 vide which liberty was granted to the State to proceed from the stage of issuance of notification under Section 4 of the 1894 Act and after giving the opportunity to land owners to file objections under Section 5-A of the 1894 Act, the further action taken by the respondents has not been pleaded.

It has not been disclosed by the petitioner that notification under Section 4 of the 1894 Act dated 24.12.2013 and declaration dated 23.12.2014 (Annexure P-6) qua Khasra No.24//19/2 (5-1), were issued by the respondents, challenging which a writ petition was filed by the petitioner i.e. CWP No. 7942 of 2015 which was allowed vide order dated 5.9.2017 lead to the challenge thereto by the respondents in SLP (C) 016567/2018 and the stay of the judgment passed by this Court. This having been not mentioned, the writ petition deserves dismissal on this score alone.

13. As regard Khasra no. 36//21/2/2 and 22/1 (4-0), the possession of the said land had been taken well before coming into force of the 2013 Act. Not only this, compensation amount was also duly tendered which the petitioner did not withdraw, for which the respondents cannot be held liable nor could they be penalized. The reasoning and the grounds which have

been taken by the respondents is in accordance with law as the same have the backing judgment of the Hon'ble Supreme Court in **Indore Development Authority's case (supra)**. In our considered view, the petitioners do not have a case on merit which would entitle them to any relief.

14. In view of the above, we do not find any ground to interfere in the present writ petition, therefore, the same stands dismissed on both counts i.e. on the ground of non-disclosure of true facts as well as on merits.

(AUGUSTINE GEORGE MASIH)
JUDGE

February 22, 2021
archana

(ASHOK KUMAR VERMA)
JUDGE

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