

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-7431-CWP-2021 in/and
CWP-7913-2017

Date of Decision: 12.07.2021

RAMBIR & OTHERS

... PETITIONERS

VS.

STATE OF HARYANA & OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Sandeep Sharma, Advocate for the petitioners.

Mr. Sandeep Moudgil, Addl. AG, Haryana.

Mr. Lokesh Sinhal, Advocate for respondents No.2 & 3.

TEJINDER SINGH DHINDSA, J.(ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

CM-7431-CWP-2021

Prayer in the instant application is for disposal of the main writ petition, in view of judgment rendered by the Hon'ble Supreme Court in “**Indore Development Authority vs. Manoharlal and others, AIR 2020 SC 1496**”.

Notice was issued in the application.

Mr. Sandeep Sharma, Advocate for the non-applicants/petitioners has joined the proceedings and concedes that the issue raised in the main petition would be covered in terms of the judgment of the Apex Court in **Manoharlal and ors'** case (supra).

In view of the above and upon taking consent of the counsel for the parties, the date in the main case is preponed from 02.09.2021 and the same is taken up on Board today itself for final disposal.

Application disposed of.

CWP-7913-2017

Petitioners claim to be owners as co-sharers and in cultivating possession of land bearing Khewat No.20//9 (8-0), 10/1 (4-0), 11/1 (4-5), 12 (6-13), 13/1 (1-0) land admeasuring 23 Kanals 18 Marlas situated in the revenue estate of Village Tigra, Tehsil and District Gurugram.

Instant petition has been filed seeking the issuance of a writ of mandamus to direct the respondents to release land of the petitioners in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

It has been submitted that pertaining to the land in question, acquisition proceedings were initiated vide issuance of notification under Section 4 of the Land Acquisition Act, 1894 dated 03.03.2003 followed by the notification under Section 6 dated 02.03.2004. Thereafter, the award No.22 dated 29.12.2005 was passed and the acquisition was for a public purpose namely residential/commercial in Sectors 49 and 50, Gurugram.

The precise case set up on behalf of the petitioners is that they are still in physical possession of the property and have not received the compensation amount as yet. It is contended that on such basis, the acquisition proceedings are deemed to have lapsed under Section 24(2) of the 2013, Act (hereinafter to be referred as 2013 Act).

In the reply filed on behalf of the Land Acquisition Officer, Urban Estate Department, Gurugram, it has been averred in paragraph 4 that possession of land was taken vide Rapat No. 216 dated 29.12.2005 and the same was handed over to HUDA (now Haryana Shehri Vikas Pradhikaran).

Furthermore in para 5 of the reply, the categoric averments with regard to the

compensation are in following terms.

“Total compensation amount of the awarded land i.e. Rs.5,48,70,876/- was available with LAC out of which the amount of Rs.73,73, 866/- has been disbursed to the land owners and the rest of the amount Rs.4,74,97,410/- is available for disbursement. As far as the compensation amount due to the petitioners is concerned, it has not been lifted by them and the petitioners are at liberty to receive the same. It is submitted that the compensation amount was duly tendered and the money was available at the time of announcement of award.”

The afore-noticed stand taken on behalf of the respondents has not met with any rebuttal by counsel representing the petitioners.

A Constitution Bench of the Supreme Court in **“Indore Development Authority vs. Manoharlal and others, AIR 2020 SC 1496”** has laid down as under:-

“245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24 (2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

“363 (4). The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is

provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

(5) In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

(9) Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

In view of the dictum laid down by the Apex Court, we find that the grounds raised on behalf of the petitioners seeking release of their land from the acquisition proceedings cannot sustain.

It will be apposite to take note that on a previous date i.e. 30.07.2018, the instant writ petition had been directed to be put up alongwith CWP No.11227 of 2014 which raised a similar issue. It stands conceded that CWP No.11227 of 2014 stands dismissed by the coordinate Bench of this Court vide decision dated 17.11.2020, in the light of a judgment of the Apex

Court in **Manoharlal and ors'** case (supra).

Even though in the writ petition certain averments have been made as regards discrimination in the matter of release of the land in question, such ground was not pressed by counsel during the course of arguments.

In view of the above, we do not find any merit in this writ petition and the same is accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VIVEK PURI)
JUDGE

12.07.2021

Ali

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