

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 11926 of 2016
Reserved on : 29.03.2022
Pronounced on : 31.08.2022

Bhupinder Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

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

Mr. Ankur Mittal, Addl. Advocate General, Haryana, with
Mr. Saurabh Mago, Asst. Advocate General Haryana, and
Ms. Kushaldeep K Manchanda, Advocate, for respondents.

RAVI SHANKER JHA, C.J.

1. The instant petition has been filed claiming that the acquisition proceedings carried out vide the notifications issued under Section 4 & 6 of the Land Acquisition Act, 1894 dated 20.04.1990 and 18.04.1991 respectively; followed by the award dated 23.03.1993, thereby acquiring the land for a public purpose, namely, the development and utilization of land as Residential, Commercial, Institutional area, recreational zone and open space in Sector 44, 45 and 46, Gurugram; qua the land of the petitioners; has lapsed in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'). The petitioners have also placed reliance on orders dated 18.12.2002, 26.06.2012, 22.08.2012 to demonstrate that the respondents are discriminating with the petitioners as they have released the land of the other land owners after passing of the award.

2. Owing to the controversy erupted as regards the interpretation of the provision of Section 24 (2) of the Act of 2013, like many other writ petitions, the proceedings in the instant petition were kept in abeyance awaiting the decision of Supreme Court. The controversy was finally put to rest by the Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*** the penultimate paragraph of which is reproduced here-in-below:-

‘...1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

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.*

6. *The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).*

7. *The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).*

8. *The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.*

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'*

3. The sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Supreme Court is that the first and foremost condition to seek lapsing is that both the contingencies provided i.e. about the physical possession and the payment of compensation are to be fulfilled, meaning thereby, if either of the conditions is not satisfied, there would be no lapsing. As far as the obligation to make the payment in lieu

of the land acquired is concerned, it has been clarified that such obligation to pay is complete by tendering the compensation which would mean that the compensation amount was made available to the land owner and if he has not accepted the same, it will not be available for the land owner to claim that the compensation has not been paid. Similarly, the word “deposit” has been interpreted to mean depositing with the LAC or the Treasury or the Reference Court. Drawing of panchnama has been considered to be a valid proof of taking physical possession and once the land stands vested in the State, there is no divesting provided under Section 24 (2) of the Act of 2013. The Supreme Court has further clarified that the period for which any interim order was in operation, will be excluded while computing the gap period of five years. Similarly, it has been clarified that Section 24 (2) of the Act of 2013 does not give rise to a new cause of action to question the legality of concluded proceedings of land acquisition as it applies to only those cases wherein the proceedings were pending on the date of enforcement of the Act of 2013.

4. As per the case put forth by the petitioners, they are owners of Khasra No. 34//22/2 measuring 350 sq. yards situated within the Revenue Estate of Village Kanhai, Tehsil and District Gurugram. The said land was acquired by the Government of Haryana by issuing notifications dated 20.04.1990 and 18.04.1991 under Section 4 & 6 of the Land Acquisition Act, 1894 followed by award dated 23.03.1993 for the public purpose namely, development and utilization of land as Residential, Commercial, Institutional area, recreational zone and open space in Sector 44, 45 and 46, Gurugram. It is the case of the petitioners that despite having announced the award on 23.03.1993, the respondents have

failed to take the possession of the land in question and the compensation has neither been paid nor deposited in the Reference Court. Therefore, the acquisition proceedings qua the land in question stand lapsed in view of Section 24 (2) of the Act of 2013. In addition to the aforesaid, the petitioners have contended that the land of the other land owners acquired vide aforesaid acquisition proceedings has been released from the acquisition, for which reliance has been placed on orders dated 18.12.2002, 26.06.2012 and 22.08.2012, and thus, have pleaded that the respondent State has discriminated against them. The petitioners had earlier filed CWP No. 14242 of 2015 wherein aforesaid plea was taken and same was disposed of vide order dated 17.07.2015 to decide the representation, which was then decided and the claim of the petitioners was rejected vide order dated 21.03.2016 and same has been impugned in the instant petition.

5. Before averting to the contentions raised by the respondents, it is important to be note here, that prayer clause of the petition was styled in the manner as in below i.e.:-

“praying for issuance of a writ in the nature of Mandamus of direction to release the land of the petitioners under the section 24(2) new act namely The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and further directed to the respondents to release the land of the petitioners as the respondents have released the land of other persons in the same village Kanhai from the same award vide order dated 18.12.2002 (Annexure P-4), dated 26.06.2012 (Annexure P-5) and 22.08.2012 (Annexure P-6), dated 09.12.2006 (Annexure P-7) and praying for issuance of a writ in

the nature of certiorari for quashing the impugned order Annexure P-11 (dated 21.03.2016) being illegal and arbitrary.”

However, at the time of issuance of notice of motion on 03.06.2016, only contention which was raised by the petitioners was that the compensation has lapsed under Section 24 (2) of the Act of 2013 and accordingly notice was issued and the status quo was granted. The order dated 03.06.2016 is reproduced herein below:-

‘...Learned counsel for the petitioners has claimed that in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since neither the possession has been taken from the petitioners nor the compensation has been offered or deposited before the reference Court, the acquisition proceedings have lapsed.

Notice of motion to the respondents for 27.07.2016.

In the meantime parties shall maintain status quo regarding possession...’

6. The aforesaid facts clearly reveal that at the time of the issuance of notice of motion, the petitioners had only claimed lapsing under Section 24 (2) of the Act of 2013 and for all these years the matter was kept pending awaiting the interpretation of Section 24 (2) of the Act of 2013. Thus, at this stage the petitioners cannot agitate the plea of discrimination. Even otherwise, no parity can be claimed by the petitioners in view of the discussion made here-in-after.

7. Per contra, Mr. Ankur Mittal, learned counsel appearing for the respondent State, submitted that the instant petition deserves to be dismissed in view of the laws laid down by the Supreme Court in the case

of Indore Development Authority (supra), as none of the contingencies prescribed in Section 24 (2) of the Act of 2013 are fulfilled. The first and foremost requirement to claim lapsing of acquisition proceedings is to prove that the land owner is in possession of the land in question, which the petitioners have failed to prove as the possession of the land in question was taken by the State by recording Rapat Roznamcha No. 425 dated 23.03.1993, which has been held as a valid mode of taking possession. Once such possession is taken, the land vests absolutely in the State and whosoever retains or remains in the possession of the land, he is a trespasser. He further submits that the obligation of the State to pay the compensation stands duly discharged as the entire compensation amount was tendered at the time of announcement of award and was made available to the landowners which is substantiated from the fact that out of total amount of compensation of Rs. 12,27,47,937.60/-, amount of Rs. 11,20,50,371.55/- has been disbursed and rest of the amount is available for disbursement **including for the land in question**. Thus, none of the contingencies prescribed in Section 24 (2) of the Act of 2013, necessary for declaring acquisition proceedings to have been lapsed, are fulfilled.

8. He further contends that the petitioners had filed objection under Section 5-A of the Act of 1894 and after hearing the objections, the constructed portion in Khasra No. 34//22min measuring 2 Kanal 14 Marla was released from acquisition and rest of the vacant land was included in the acquisition proceedings. Thus, the benefit of release has also been given to the petitioners and the acquisition proceedings qua rest of the land, including land in question, stand concluded. Thus, the instant petition deserves to be dismissed.

9. As regards the plea of discrimination having been raised by the petitioners, Mr. Mittal submits that the petitioners are neither identically situated to such persons, whose land has been released from the acquisition proceedings, nor the petitioners have pleaded even a single word showing as to how they are similarly situated to the persons whose land has been released from the acquisition proceedings. He has vehemently contended that the petitioners are precluded from raising the plea of discrimination by relying upon the orders dated 18.12.2002, 26.06.2012 and 22.08.2012 because such plea is barred by delay and latches coupled with the fact that the petitioners have themselves taken the benefit of release of construction existing on the acquired land and only vacant land of the petitioners was acquired. Further, he has stressed upon the fact that before relying upon such orders it is important to understand in what manner and to what context these orders came to be passed and further, whether petitioners are identically placed to such landowners whose land was released or not.

10. Taking us to the order dated 18.12.2002, he has submitted that it was passed based upon the recommendations of the sub-committee sent to the Government, as this land was near residential area of village, which was fully developed. While referring to the release order dated 26.06.2012, he has submitted that the same was passed in compliance of the directions issued by this Court vide order dated 18.01.2011 in CWP No. 6129 of 1992 and CWP no. 7909 of 1992. The perusal of the order further reveals that the construction of the land owner was released and rest of the vacant land was acquired. Mr. Mittal contends that no parity can be drawn with such order of release as it was passed in favour of landowners who had approached this Court way back in the year 1992

i.e. even before announcement of award and also, because the petitioners have already been granted benefit of release of construction from the acquisition proceedings, thus, the petitioners are not entitled to any further release. As regards the order dated 22.08.2012, he submits that in that case also, the applicant had approached the authorities way back in the year 2003 and the case was considered as per applicable policy while exercising power under Section 48 of the Act of 1894. As a conspectus of aforesaid, he submits that the petitioners' claim of discrimination is misconceived and deserves to be rejected.

11. Furthermore, he submits that even the legal position has become clear as the aforesaid orders were passed while exercising the power under Section 48 of the Act of 1894 because at that time there was not much clarity about the mode of taking possession of the acquired land. Now, the Constitution Bench in Indore Development Authority (supra) has held that recording of Rapat Roznamcha is valid mode of taking possession and as a consequence thereof the land vests in the State. Once possession is taken, it is trite law that power under Section 48 of the Act of 1894 for withdrawal from the acquisition proceedings cannot be exercised. Applying the aforesaid principle on the case at hand, he contends that since the possession of the land in question was taken by recording Rapat No. 425 dated 23.03.1993, land has vested in the State free from all encumbrances and same cannot be divested in any case.

12. While taking the argument further, he has submitted that once it is clear proposition of law that recording of Rapat amounts to physical possession of the land, there can be no exercise of power under Section 48 of the Act of 1894 by the State and accordingly, if any such order has been passed earlier, no negative equality can be drawn from such order.

In order to buttress his contention, he has placed reliance on the judgment passed in the case of *Shanti Sports Club Vs. Union of India 2009 (15) SCC 705*. As far as reliance placed on the judgment passed in the case of *Pune Municipal Corporation and others Vs. Harakchand Misrimal Solanki and others* cited as 2014(3) SCC 183, is concerned, Mr. Mittal submits that it has been overruled in Indore Development Authority (supra), hence no reliance can be placed in same. In view of the submissions made hereinabove, he has prayed for dismissal of the instant writ petition.

13. Having heard the respective arguments, going through the respective pleadings and above all the exposition of Indore Development Authority (supra), we are of the considered opinion that the instant petition is liable to be dismissed for more than one reason.

I. Physical possession of the land in question stands taken

14. The petitioners in the instant petition have claimed to be in the physical possession of the land in question. Positive case set up by the petitioners is that even though the award was passed on 23.03.1993 and they did not challenge the acquisition proceedings but the physical possession has not been taken from them. In this regard, the respondents have filed the written statement submitting that possession was taken by drawing panchnama in the form of Rapat Roznamcha No. 425 dated 23.03.1993, which has been held as a valid mode of taking possession of the land. Section 16 of the Act of 1894 provides that after taking the possession of the land, it vests in the State free from all encumbrances. The reference in this regard is made to the following paragraphs from the judgment:-

...244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word “possession” has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression “physical possession” is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and 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, 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.

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.

15. Thus, we are of the considered opinion that the physical possession of the land in question stands duly taken and thus, the plea being raised by the petitioners of being in physical possession of the land in question is wholly mis-conceived and is liable to be rejected.

II. Compensation amount for the land in question was tendered.

16. The respondents have categorically pleaded in the written statement that the amount of compensation for the entire acquired land was made available to all the landowners and as regards the compensation for land in question, same was tendered and is available for disbursement, which the petitioners are at liberty to receive. In this regard, Mr. Mittal has asserted that in view of the exposition in Indore Development Authority (supra), the obligation of the State to pay the compensation is discharged if the amount of compensation is tendered which has been interpreted to mean that the amount was made available to the land owners as observed in Para 203 which is reproduced here-in-below:-

*‘...203. The word “paid” in Section 31(1) to the landowner cannot include in its ambit the expression “deposited” in court. Deposit cannot be said to be payment made to landowners. Deposit is on being prevented from payment. **However, in case there is a tender of the amount that is to mean amount is made available to the landowner that would be a discharge of the obligation to make the payment and in that event such a person cannot be penalised for the default in making the payment.** In default to deposit in court, the liability is to make the payment of interest under Section 34 of Act of 1894. Sections 32 and 33 (which had been relied upon by the landowners’ counsel to say that valuable rights inhere, in the event of deposit with court, thus making deposit under Section 31 mandatory) provide for investing amounts in the Government securities, or seeking alternative lands, in lieu of compensation, etc. Such deposits, cannot fetch higher interest than the 15 per cent contemplated under Section 34, which is pari materia to Section 80 of Act of 2013. Section 34 is pari materia to section 80 of Act of 2013 in which also the similar rate of interest has been specified. Even if the amount is not deposited in Reference Court nor with the treasury as against the name of the person interested who is entitled to receive it, if Collector has been prevented to make the payment due to exigencies provided in Section 31(2), interest to be paid. **However, in case the deposit is made without tendering it to the person interested, the liability to pay the interest under section 34, shall continue.** Even*

assuming deposit in the Reference Court is taken to be mandatory, in that case too interest has to follow as specified in section 34. However, acquisition proceeding cannot lapse due to non-deposit....'

The aforestated facts clearly reveal that the observations made hereinabove do not leave any scope for doubt that the State has discharged its obligation towards making the compensation for the land acquired. Therefore, the contention of the petitioners that no compensation amount has been received by them is meritless and thus, is hereby rejected.

III. None of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled.

17. The Supreme Court in Indore Development Authority (supra) has clearly observed that for deemed lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, both the conditions i.e. payment of compensation and taking of possession must not be fulfilled i.e. if either of the conditions is fulfilled, the lapsing cannot happen. The Supreme Court has observed that the word “or” occurring in Section 24 (2) of the Act of 2013 must be read as “and/nor”. Relevant paras from the judgment are reproduced here-in-below:-

‘...99. In this Court’s considered view, as regards the collation of the words used in Section 24(2), two negative conditions have been prescribed. Thus, even if one condition is satisfied, there is no lapse, and this logically flows from the Act of 1894 read with the provisions of Section 24 of the Act of 2013. Any other interpretation would entail illogical results. That apart, if the rule of interpretation with respect to two negative conditions qualified by “or” is used, then “or” should be read as “nor” or “and”.

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101. In M/s. RanchhoddasAtmaram and Anr. v. The Union of India and Ors.77, a Constitution Bench of this Court observed that if there are two negative conditions, the expression “or” has to be read as conjunctive and

conditions of both the clauses must be fulfilled. It was observed:

“(13) It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case, "or" really means "either" "or." In the Shorter Oxford Dictionary one of the meanings of the word "or" is given as "A particle co-ordinating two (or more) words, phrases or clauses between which there is an alternative." It is also there stated, "The alternative expressed by "or" is emphasised by prefixing the first member or adding after the last, the associated adv. EITHER." So, even without "either," "or" alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being considered at all. In such a case it must be held that a penalty exceeding Rs. 1,000 can be imposed.

(14) If, however, the sentence is a negative one, then the position becomes different. The word "or" between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000.’

(15) The question then really comes to this: Is the sentence before us a negative or an affirmative one? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import.”

(emphasis supplied)

Thus, for lapse of acquisition proceedings initiated under the old law, under Section 24(2) if both steps have not been taken, i.e., neither physical possession is taken, nor compensation is paid, the land acquisition proceedings lapse...’

18. In the case at hand as reflected from the reply filed, it is evident that after the award was announced on 23.03.1993, the physical possession was taken by recording Rapat Roznamcha No. 425 dated 23.03.1993 and the compensation amount was duly tendered. Therefore, since none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled, the said provision cannot be relied upon by the Petitioners to claim lapsing of the acquisition proceedings.

IV. Essentiality of the land in question

19. Mr. Ankur Mittal, on the strength of the facts pleaded in the written statement, has vehemently contended that the State acquired the land for the public purpose namely, the development and utilization of land as Residential, Commercial, Institutional area, recreational zone and open space in Sector 44, 45 and 46, Gurugram. The land in question is very much essential to achieve the public purpose as it affects the development of 12 mtr. wide road and primary school site as per the layout plan. We have considered this part of argument raised by the respondents and we are in complete agreement with the same as this is an important factor to be kept in mind while dealing with the case arising out of the acquisition of land to achieve the public purpose and it is the State/its authority who is in the best position to decide about utilization of the land acquired, after it having been vested in State.

V. Plea of Discrimination

20. We have also considered the contention of the petitioners seeking parity with the release of land made by the State vide letter dated 18.12.2002, 09.12.2006, 26.06.2012 and 22.08.2012. Though at the time of notice of motion, as noticed hereinabove, only plea raised was with respect to lapsing of acquisition proceedings under Section 24 (2) of the Act of 2013, thus, virtually the plea of discrimination was given up, yet we deem it appropriate to deal with the contention in view of the averments made in the petition.

21. The plea of the petitioners on the ground of discrimination deserves to be rejected, as the petition is highly belated as the acquisition proceedings were concluded way back in the year 1993 and even the letters on which reliance has been placed were issued way back in 2002

and 2012. Therefore, if the petitioners were aggrieved by the action of the State, they ought to have approached the Court at the time when cause of action had arisen. They cannot be allowed to reopen the settled claims under the garb of Section 24 (2) of the Act of 2013.

22. We are also in agreement with Mr. Mittal who has drawn our attention to the facts and circumstances considering which the land was released from the acquisition proceedings. As noticed above, order dated 18.12.2002 was passed upon the recommendations of the sub-committee sent to the Government and the land which was released, was situated near residential area of village and was fully developed. As far as order dated 26.06.2012 is concerned, it was passed in compliance of the directions given by this Court vide order dated 18.01.2011 in CWP No. 6129 of 1992 and CWP No. 7909 of 1992. The perusal of the order clearly shows that the construction of the land owner was released and rest of the vacant land was acquired. Thus, no parity can be claimed by the petitioners with such landowners who had approached this Court way back in the year 1992 i.e. even before the announcement of award. We are in further agreement with Mr. Mittal that the petitioners cannot claim parity since they have already been granted benefit of release of construction from the acquisition proceedings. Similarly, even the order dated 22.08.2012 was passed in view of the application submitted by the landowner way back in the year 2003 and the case was considered as per applicable policy while exercising power under Section 48 of the Act of 1894. The power under Section 48 of the Act of 1894 can be exercised only if possession has not been taken. Once it is held that possession was taken by recording Rapat Roznamcha, neither the petitioners can claim

release of land nor reliance can be placed on order passed while exercising power under Section 48 of the Act of 1894.

23. Further, the instant plea is liable to be rejected in view of the fact that the petitioners have failed to aver even a single word as to how they are similarly situated to the persons in whose favour land was released. It is trite law that finding of discrimination cannot be recorded merely on the basis of vague and bald assertions as have been made by the petitioners in the instant writ petition. The reference in this regard, can be made to the judgment of the Supreme Court in the case of ***Shanti Sports Club Vs. Union of India 2009 (15) SCC 705*** wherein the Apex Court held as under:-

“...The plea of discrimination and violation of Article 14 of the Constitution put forward by the appellants is totally devoid of substance because they did not produce any evidence before the High Court and none has been produced before this Court to show that their land is identically placed qua the lands on which Hamdard Public School, St. Xavier School, Scindia Potteries, etc. exist. In the representations made to different functionaries of the Government and DDA, the appellants did claim that other parcels of the land have been de-notified and before the High Court a copy of notification dated 6.9.1996 issued under Section 48(1) was produced, but the said assertion and notification were not sufficient for recording a finding that their case is identical to those whose land had been denotified. The burden to prove the charge of discrimination and violation of Article 14 was on the appellants. It was for them to produce concrete evidence before the Court to show that their case was identical to other persons whose land had been released from acquisition and the reasons given by the Government for refusing to release their land are irrelevant or extraneous. Vague and bald assertions made in the writ petition cannot be made basis for recording a finding that the appellants have been subjected to invidious or hostile discrimination. That apart, we are prima facie of the view that the Government's decision to withdraw from the acquisition of some parcels of land in favour of some individuals was not in public interest. Such decisions had, to some extent, resulted in defeating the object of planned development of Delhi on which considerable emphasis has been laid by the Full Bench of the High Court and this Court. This being the position, Article 14 cannot be invoked by the appellants for seeking a direction to the respondents to withdraw from the acquisition of the land in question. Article 14 of the Constitution declares that the State shall not deny to any person equality before

the law or the equal protection of the laws within the territory of India. The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities....”

24. The aforesaid authority is a leading precedent as far as the aspect of discrimination is concerned. The perusal of the aforesaid observation clearly reveals that it is incumbent on the petitioner/landowner alleging discrimination to show that in what manner he has been discriminated and how he is identically placed to such persons in whose favour the order of release of land has been passed. Suffice to mention that if the order relied upon is itself illegal and against the provisions of law, the land owner/petitioner(s) cannot claim parity even if he is identically placed because Article 14 of the Constitution of India does not envisage the concept of negative equality and thus cannot be used as tool to perpetuate illegality time and again. Applying the aforesaid principles onto the case at hand, the only conclusion which can be drawn is that the petitioners have miserably failed to setup a plea of discrimination. Also, we are in complete agreement with Mr. Mittal that in view of the law settled by the Apex Court in Indore Development Authority (supra), once possession of the land has been taken, which in the case at hand was taken by recording Rapat Roznamcha, and the land stands vested in the State, no order of divesting can be passed and any such order would be against the provisions of the Act and the position of law. Even the judgments being relied upon by the petitioners are not applicable on the

case at hand as same were passed when the law as regards the mode of taking possession was not clear, which has now been clarified in Indore Development Authority (supra) wherein taking possession of the land by way of Rapat Roznamcha has been held to be a valid mode of taking possession of the land and once such possession is taken, the land vests in the State free from all encumbrances. Once land is vested in the State, no power under Section 48 of Act of 1894 can be exercised and thus, neither the orders cited by the petitioners as regards the release of land nor the judgments passed by the Hon’ble Court in this regard can be relied upon.

25. As a sequel of the above discussion and in view of law summarized in para 363 of Indore Development Authority (supra), specifically after having recorded that in the case at hand, the physical possession of the land in question having been taken, the obligation for payment of compensation stands discharged and also considering that the land in question is very much essential to achieve the public purpose, we have no hesitation to hold that in the instant case, the State has fully discharged its obligation qua both the contingencies occurring in Section 24 (2) of the Act of 2013 and it being so, the instant petition is dismissed. Accordingly, the order impugned in the petition is hereby affirmed.

26. Having dismissed the main writ petition, pending application, if any, also meets the same fate. Status quo, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2022
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No