

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1559-2016 (O&M)
Reserved on : 29.03.2022
Date of decision : 31.08.2022

Kavita and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Ram Bilas Gupta, Advocate,
for the petitioners.
Mr. Ankur Mittal, Addl. Advocate General, Haryana,
with Mr. Saurabh Mago, Assistant Advocate General, Haryana,
and Ms. Kushaldeep K Manchanda, Advocate,
for the respondents.

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RAVI SHANKER JHA, C.J.

1. The instant petition has been filed by claiming that the acquisition proceedings carried out vide the notifications issued under Sections 4 & 6 of the Land Acquisition Act, 1894 dated 04.01.2002 and 31.12.2002 respectively; followed by the award dated 29.12.2004, thereby acquiring the land for a public purpose, namely, for the development and utilization of land as Residential, Transport/Communication sectors 4 and 5 Rohtak situated in the revenue estate of Village Bohar and Para, Tehsil and District Rohtak ; 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. The acquisition proceedings have also been challenged on the ground of alleged discrimination in release of land.

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 at rest by the Constitution Bench of the Supreme Court in ***Indore Development Authority Vs. Manohar Lal and others AIR 2020 SC 1496*** 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shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.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 to seek lapsing 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, 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 new cause of action to question 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 land comprised in Khasra Nos. 59//22/2 (4-0), 59//23/1 (5-6), 21, 22/1 measuring 24 Kanal situated within the revenue estate of Village Para, District Rohtak. The said land was acquired by the Government of Haryana by issuing notifications dated 04.1.2002 and 31.12.2002 under Sections 4 & 6 of the Acquisition Act, 1894 followed by an award dated 29.12.2004 for the public purpose, namely, development and utilization of land as Residential, Transport/Communication Sectors 4 and 5 Rohtak. It is the case of the petitioners that despite having announced the award on 29.12.2004, the respondents have failed to take possession of the land in question and even the compensation has not been paid to the petitioners or deposited in the Reference Court in lieu of the acquired land. 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 other land owners acquired vide aforesaid acquisition proceedings has been released from the acquisition and the State has adopted policy of pick and choose in order to release the land of influential persons. Large chunk of constructed and vacant land measuring 53 acres was released and thereafter vide letters dated 07.04.2004 and 10.11.2004 another 13 acres more was released from acquisition proceedings. Yet again 5 acres of vacant land was released from the acquisition. Therefore, entire acquisition proceedings are nothing more than a colourable exercise of power and shall be quashed being arbitrary and illegal.

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

“issuance of an appropriate writ in the nature of Mandamus/ certiorari for quashing the notification dated 04.01.2002 (Annexure P-3), the notification dated 31.12.2002 (Annexure P-4), award dated 29.12.2004 (Annexure P-6) and all subsequent proceedings and the action of the respondent authorities is not releasing the land and acquiring the land which is illegal, arbitrary, malfide, ultra vires the provisions of the Land Acquisition Act, 1894 and violative of Article 14 of the Constitution of India

Issuance of a writ in the nature of Mandamus to declaring the acquisition shall be deemed to have lapsed in view of the operation of section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which has come in operation on 01.01.2014 and the compensation has neither been deposited in the Reference Court nor offered/ paid in accordance with the

provisions of section 31 to 34 of the Land Acquisition Act, 1894 and physical possession is also with the petitioners.”

6. However, at the time of issuance of notice of motion on 25.01.2016, only contention which was raised and noticed by this Court was that the acquisition has lapsed under Section 24(2) of the Act of 2012 and accordingly notice was issued and status quo was granted. The order dated 25.01.2016 is reproduced herein below:-

“...The petitioners claim benefit of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for the reason that neither the possession has been taken from the petitioners nor the compensation has been offered or deposited before the Reference Court.

Notice of motion for 24.05.2016.

Ms. Palika Monga, DAG, Haryana, accepts notice on behalf of respondents.

Learned counsel for the petitioners is directed to supply copies of the writ petition to Ms. Monga during the course of the day. In the meantime, parties shall maintain status quo regarding possession. ...”.

7. Perusal of the aforesaid clearly reveals that at the time of 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 only. 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 herein after.

8. Refuting the contentions raised by the counsel of petitioners, Mr. Ankur Mittal, learned counsel appearing for the respondent State submitted that the instant petition deserves to be dismissed in view of the law laid down by the Supreme Court in 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 Nos. 255 & 444 dated 29.12.2004, 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 thereafter 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. Out of total amount of compensation i.e., Rs. 34,68,85,977/- an amount of Rs. 24,62,84,468/- i.e. 71% of total amount has already been disbursed to the landowners and as far as the land in question is concerned, same was deposited in ADJ Court, Rohtak vide cheque no. 513985 dated 23.05.2012 due to dispute with respect to apportionment.

9. As regards the plea of discrimination having been raised by the petitioners, Mr. Mittal submits that the petitioners are neither similarly situated to such persons whose land has been released from the acquisition proceedings, nor the petitioners have made any pleading to that effect. He has vehemently contended that the petitioners are precluded from raising the plea of discrimination because such plea is barred by delay and laches. Further, he has stressed upon the fact that it is important to understand as to why the land was released from acquisition proceedings.

10. He submits that land measuring 64.43 acres was released under Section 5-A of the Act of 1894 on account of construction. Thereafter, on the direction of the government, a resurvey of the area was conducted after issuance of declaration under Section 6 of the Act of 1894 and the report was sent to the Government based on which decision was taken to release area of 2.44 acre of village Bohar and 17.85 acres of village Para. Accordingly, blocks of thickly populated area were released from acquisition proceedings. Therefore, decision to release the land was methodical and, thus, same cannot be said to be arbitrary and discriminatory.

11. Furthermore, he submits that even the legal position does not favour the petitioners, as the land was released from acquisition proceedings while exercising power under Section 48 of the Act of 1894 i.e., before taking possession of land and at the time when there was no clarity with respect to valid mode of taking possession of the land. However, now the Constitution Bench in Indore Development Authority (supra) has categorically held that recording of rapat Roznamcha is a valid mode of taking possession and as a consequence thereof, 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 Nos. 255 & 444 dated 29.12.2004, land has vested in the State free from all encumbrances and same cannot be divested in any case.

12. Once it is clear proposition of law that recording of rapat amounts to taking 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. Harak Chand Misrimal Solanki and others*** cited as 2014(3) SCC 183, Mr. Mittal submits that it has been overruled in Indore Development Authority (supra). 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), and other judgments cited by learned counsel for the parties, 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 29.12.2004 and they did not challenge the acquisition proceedings but they still retain the physical possession. In this regard, the respondents have filed the written statement submitting that possession was taken by drawing panchnama in the form of Rapat Roznamcha Nos. 255 & 444 dated 29.12.2004 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. Therefore, we are of the considered opinion that the physical possession of the land in question stands duly taken and, thus, the plea 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. As far as compensation of acquired land is concerned, it is categorically pleaded in the reply that the amount of compensation for the entire acquired land was made available to all the land owners which is substantiated from the fact that the majority of compensation amount stands

disbursed to the landowners. 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....’*

17. The aforestated facts clearly reveal that the amount of compensation was duly tendered so much so the majority of the compensation amount stands disbursed. Further, the compensation with respect to the land in question was deposited in the Court of ADJ under Section 30 of the Act of 1894. The State has, thus, discharged its obligation towards making the compensation for the land acquired and, therefore, the

plea raised by the petitioner that they have not been paid the compensation amount is rejected.

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

18. 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 condition is fulfilled, the proceedings cannot lapse. The Supreme Court has observed that 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. Ranchhoddas Atmaram 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...'

19. In the case at hand as reflected from the reply filed, it is evident that after the award was announced on 29.12.2004, the physical possession was taken by recording Rapat Roznamcha Nos. 255 & 444 dated 29.12.2004 and the compensation amount was duly tendered and deposited in the Reference Court. Since none of the conditions prescribed in Section 24(2) of the Act of 2013 are fulfilled, therefore, the said provision cannot be relied upon by the petitioners to claim lapsing of the acquisition proceedings.

IV. **Essentiality of the land in question**

20. 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, development and utilization of land as Residential, Transport/Communication Sectors 4 and 5 Rohtak. The land in question is essential to achieve the public purpose for it affects the development of 24 mtr road, Group Housing site, Site for EWS Housing and Nursing Home as per the layout plan. We have considered this part of argument raised by the respondents and we are in agreement with the same as this is an important factor to be kept in mind while dealing with a case arising out of the acquisition of land for 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 the State.

V. **Plea of Discrimination**

21. We have also considered the contention of the petitioners seeking parity with the release of land made by the State. 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.

22. The plea of the petitioner on the ground of discrimination deserves to be rejected firstly on the ground that the petition is highly belated as the acquisition proceedings were concluded way back in the year 2004. If the petitioners were aggrieved of 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.

23. We are also in agreement with Mr. Mittal who has brought our attention to the facts and circumstances, considering which the land was released from the acquisition proceedings. As noticed above, the land was released owing to the existing construction on the land in question whereas land of the petitioners as appears from Jamabandi is vacant agriculture land. Hence, no case of parity is made out in the case at hand and the plea of discrimination is, thus, hereby rejected.

24. Further, the instant plea is liable to be rejected in view of the fact that the petitioners have failed to aver as to how they are similarly situated 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....”

25. The aforesaid authority is a leading precedent as far as the aspect of discrimination is concerned. The perusal of the observation therein clearly reveals that it is incumbent on the petitioners/land owners 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 is 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 a 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 set up a plea of discrimination. Also in view of the law settled by

the Supreme 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. Therefore, no power under Section 48 of the Act of 1894 can be exercised, at this stage.

26. 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 discharged and also considering that the land in question is essential to achieve the public purpose, we have no hesitation to hold that in the instant case, the State has fully discharged its onus qua both the contingencies occurring in Section 24(2) of 2013 Act and it being so, the present petition merits dismissal. Hence, the instant petition is dismissed. The speaking order passed by the respondent authorities thereby rejecting the claim of the petitioners is accordingly, affirmed and upheld.

27. Having dismissed the main writ petition, all pending applications, if any, also meet the same fate.

28. Status quo, if any, stands vacated.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.08.2022
Amodh Sharma

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