

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

CWP No.5453 of 2016

Date of Decision: April 26, 2022

Krishni Devi and others

.....Petitioners.

Versus

State of Haryana and others

.....Respondents.

**CORAM: *HON'BLE MS. JUSTICE RITU BAHRI*
*HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Present:- Mr. B.S. Rana, Senior Advocate with
Mr. Suresh Kumar Kaushik, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana
for respondent No.1-State.

Mr. Ankur Mittal, Advocate,
Ms. Kushaldeep Kaur Manchanda, Advocate and
Mr. Shiv Garg, Advocate
for respondents No.2 and 3.

MEENAKSHI I. MEHTA, J.

By way of the instant writ petition, the petitioners seek the indulgence of this Court for the issuance of a writ in the nature of certiorari for quashing the notification dated 03.01.1977 (Annexure P-3) issued under Section 4 and the notification dated 22.05.1978 (Annexure P-6) issued under Section 6 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') as well as the Award dated 27.02.1986 (Annexure P-8) passed by

respondent No.4 in respect of the acquisition of their land, while claiming that the said acquisition has lapsed by virtue of the provisions as contained in Section 24(2) of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013') and they have also sought the quashing of the order dated 30.12.2015/28.01.2016 (Annexure P-29) passed by respondent No.1 whereby the representation moved by them (petitioners) for seeking the release of their land from the said acquisition, has been rejected. They have further prayed for the issuance of a writ in the nature of mandamus directing the respondents-authorities to release their land from acquisition.

2. Shorn and short of unnecessary details, the averments as canvassed by the petitioners in the instant writ petition, are that initially, the respondent-State issued a notification dated 02.05.1973 under Section 4 of the Act of 1894 to acquire the land measuring 19 Acres 06 Kanals 09 Marlas with a view to extend the area of the existing Grain-Market in Village Dhand but vide the notification dated 30.08.1973, the said acquisition proceedings were cancelled. However, the respondent-State issued a fresh notification dated 03.01.1977 (Annexure P-3) under Section 4 of the Act of 1894 for acquiring the land belonging to their (petitioners') predecessors-in-interest. Some of the affected land-owners moved an application to the then Chief Minister for the release of their land from the said proposed acquisition but finally, the notification dated 22.05.1978 (Annexure P-6) was issued under Section 6 of the Act of 1894 for acquiring the land measuring 20 Acres and 09 Marlas and thereafter,

respondent No.2 passed the Award dated 27.02.1986 (Annexure P-8) qua the said land.

3. The petitioners have further averred that since their predecessors-in-interest were in physical cultivating possession over the land in question and had not taken the amount of compensation from respondent No.2, therefore, they challenged the above-said notifications as well as the Award before this Court by filing **CWP No.1829 of 1986** but the same was rejected vide order dated 18.09.1986 (Annexure P-10). The petitioners as well as their predecessors-in-interest filed **Special Leave Petition (Civil) No.12946 of 1986** before the Apex Court to assail the said order but on the assurance of the respondents-authorities qua the release of their land, they withdrew above-said SLP vide the order dated 09.12.1996 (Annexure P-12).

4. Thereafter, all the land owners moved a joint representation (Annexure P-13) to respondent No.2 for the cancellation of the notifications issued regarding the acquisition of their land but instead of taking any final decision on their said representation, respondent No.4 allotted the contract for the construction of the boundary wall around the land in question. Then, they preferred **CWP No.10138 of 2014** before this Court which had been disposed of vide the order dated 03.08.2015 (Annexure P-22) while granting liberty to them to file a detailed and comprehensive representation raising all the pleas, as raised in that writ petition, before the appropriate authority with a direction to the respondents that such representation, if moved, would be decided in accordance with

law by passing a speaking order and after affording the opportunity of being heard to the petitioners. In pursuance of the said order, they moved a fresh representation (Annexure P-23) to the competent authority but the same has been rejected vide the impugned order Annexure P-29. The petitioners have finally averred that they are still continuing in physical cultivating possession over the land in question and no compensation in lieu of the acquisition of the said land, has yet been paid to them by the respondents and they have claimed the deemed lapse of the said acquisition of their land on these scores by invoking the provisions as contained in Section 24(2) of the Act of 2013.

5. Respondent No.1 as well as respondents No.2 and 3 filed their respective written statements contesting the claim of the petitioners therein, *inter-alia*, on the grounds that the amount of compensation in lieu of the acquisition of the above-said land, has already been deposited with the Land Acquisition Collector vide Draft No.94120 dated 16.12.1985 and Demand Drafts No.134963 and 186029 dated 30.04.1986 and as per their record, all the petitioners had been duly informed to receive the compensation but they have intentionally not taken the same. The land in question is required for the extension of the Grain Market, Fruit Market and construction of the Rest House for the farmers and other necessary purposes and moreover, the possession of the afore-said land has already been taken vide Rapat No.300 dated 27.02.1986 (Annexure R-1/2) as entered in *Roznamcha* (record of daily proceedings) and in view of the same, the possession of the petitioners over a parcel of the said land is that

of trespassers.

6. In their separate replications, the petitioners have controverted the assertions as made by the respondents in their respective written statements besides reiterating their averments as set-forth in the present writ petition.

7. It is worth-while to mention here that initially, the instant petition, being one amongst the bunch of the petitions with lead petition bearing **CWP No.11445 of 2008** titled as **Ghasitu Ram Versus State of Haryana and others**, was decided by this Court vide common judgment dated 27.10.2016 whereby the impugned acquisition proceedings in those cases were ordered to be deemed to have lapsed. The respondent-State preferred the **Special Leave Petitions (Civil) Nos.19868, 19872, 19870 and 19867 of 2018** to assail the above-mentioned judgment and vide order Annexure R-1, as passed on 13.11.2021 in **Civil Appeals No.6842, 6838, 6839 and 6841 of 2021** arising out of the afore-mentioned SLPs (C), Hon'ble Supreme Court has set aside the said impugned judgment and has relegated the parties before this Court for re-consideration of the entire matter afresh keeping in mind the exposition of the Constitution Bench in **Indore Development Authority and others Versus Manohar Lal and others AIR 2020 SC 1496** and has directed as under:-

“The High Court may record a clear finding of fact while dealing with the arguments of both sides and examine the matter in light of the exposition of the Constitution Bench in Indore Development (supra).

All contentions available to both parties are left

open.”

In pursuance of the above-said order, the respondent-State was directed on 12.01.2022 to file a better affidavit clarifying the stand with regard to taking over the possession and the compensation details as well and respondents No.2 and 3 have filed the additional affidavit of the Secretary-cum-E.O, Market Committee, Dhand, accordingly.

8. In compliance of the above-said order as passed by the Apex Court, we have heard learned Senior counsel for the petitioners as well as learned State counsel in this writ petition and have also gone through the record thoroughly.

9. Learned Senior counsel for the petitioners has contended that the petitioners are still continuing to be in the actual physical possession over the land in dispute and moreover, the respondents have also not paid any compensation to the petitioners till date and thus, both the pre-requisites for the deemed lapse of the acquisition proceedings in respect of the said land, as envisaged under Section 24(2) of the Act of 2013, stand duly fulfilled and the order Annexure P-29, as passed by respondent No.1 qua the rejection of the joint representation moved by all the land owners, including the petitioners and their predecessors-in-interest, for seeking the release of their land from acquisition, is patently illegal and in these circumstances, the impugned notifications and the Award as well as order Annexure P-29 deserve to be quashed and the petitioners are entitled to the relief of the release of their land from the said acquisition.

10. Per contra, learned State counsel has argued that the

possession of the land in question has already been taken by the respondents on 27.02.1986 vide 'Rapat' Annexure R-1/2 (page No.230 of the paper book) and moreover, the entries of the relevant revenue record also corroborate the above-said fact and it being so, the possession of the petitioners over a parcel of the land out of the total acquired land, is that of the trespassers only and moreover, the amount of compensation qua the acquisition of the said land has already been tendered to the land owners and these are the petitioners themselves, who have not taken/received the same and therefore, neither the possession of the petitioners over any part of the said acquired land nor their alleged plea qua the non-payment of the amount of compensation to them, can be taken into consideration for the purpose of deciding the issue of the deemed lapse of the said acquisition proceedings under Section 24(2) of the Act of 2013.

11. Before adverting to the discussion on the merits of the present matter, we deem it appropriate and expedient to refer to the following observations as made by the Constitution Bench in **Indore Development Authority and others' case (supra):-**

“363. xxx xxx

(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.”

12. Now coming to merits of the present matter, Annexure R-1/2 is Rapat No.300 dated 27.02.1986 entered in the relevant revenue record, i.e ‘*Rapat Rojnamcha*’, qua the possession of the land in question, including the assets in that area, having been handed over to the Executive Officer-cum-Secretary, Market Committee, Dhand, i.e respondent No.3, after making a proclamation in this regard in the village and the places situated nearby the said acquired land as well. In **Indore Development Authority and others’ case (supra)**, it has categorically been observed by the Constitution Bench of Hon’ble Supreme Court that:-

“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.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under section 16, takes place after various steps, such as, notification under section 4, declaration under section 6, notice under section 9, award under section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

In the light of the afore-quoted observations, it becomes crystal clear that the entry of the above-said Rapat Annexure R-1/2, in the relevant record, establishes that the possession of the acquired land, as detailed therein, has been taken by the respondents-authorities and it being so, the possession of the petitioners over any part of it, is no better than that of a trespasser. Therefore, the pre-requisite qua possession of the acquired land having not been taken over by the respondents, would not be available to the petitioners for asserting the deemed lapse of the acquisition of their land under the afore-mentioned provisions.

13. As regards the second pre-requisite regarding the non-payment of compensation, the Apex Court, in **Indore Development Authority and others' case (supra)**, has specifically observed as under:-

“206. It was submitted that mere tender of amount is not payment. The amount has to be actually paid. In our opinion, when amount has been tendered, the obligation has been fulfilled by the Collector. Landowners cannot be forced to receive it. In case a person has not accepted the amount wants to take the advantage of non-payment, though the amount has remained due to his own act. It is not open to him to contend that amount has not been paid to him, as such, there should be lapse of the proceedings. Even in a case when offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for majority of holding, for that adequate provisions have been given in the proviso also to Section 24(2). The scheme of the Act of 2013 in Sections 77 and 80 is also the same as that provided in Sections 31 and 34 of the Act of 1894.”

It is pertinent to mention here that in their initially filed written statements as well as in the above-said additional affidavit, the respondents have made specific assertions regarding the deposit of the amount of compensation for the acquired land with the Land Acquisition Collector vide the afore-said Draft and Demand Drafts dated 16.12.1985 and 23.04.1986. In Para No.11 of the said additional affidavit, it has further categorically been deposed that out of the total awarded amount of Rs.6,03,075/-, major part of the compensation amount stands disbursed to the land owners. To add to it, in Para No.9 of the present writ petition itself, the petitioners have specifically averred that their predecessors-in-interest were in physical cultivating possession of the land in question and had not taken the compensation amount from respondent No.2. The above-discussed assertions made by the respondents in their written statements and the depositions, as made in the additional affidavit as well as the averments as set-forth by the petitioners themselves in Para No.9 of this petition, when tested on the touchstone of the afore-cited observations as made by the Apex Court, speak volumes of the fact that these are the petitioners who have not received the compensation despite the same having been tendered by the acquiring authority. It being so, the plea qua non-payment of the amount of compensation would also not be permissible to them to claim the deemed lapse of the said acquisition of their land under Section 24(2) of the Act of 2013.

14. As a sequel to the fore-going discussion, it follows that the petitioners have not been able to establish the fulfilment of any of the

above-discussed two pre-requisites for substantiating their claim as prayed for in the instant writ petition and resultantly, the same stands dismissed accordingly.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

April 26, 2022
Yag Dutt

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>