

(1)

CWP No.30077 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Pronounced on : 01.02.2022

CWP No.30077 of 2017

Barkha Ram

...Petitioner

Versus

State of Haryana & others

...Respondents

(2)

CWP No.30078 of 2017

Rajeev Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

(3)

CWP No.30079 of 2017

Jang Singh (Deceased) through his LR

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Dr. Surya Parkash, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana
assisted by Ms. Kushaldeep Kaur, Advocate.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to dispose of three writ petitions i.e.

CWP Nos.30077, 30078 and 30079 of 2017 as they relate to same

acquisition proceedings and issues involved therein are the same. Counsel for the parties have consented for disposal of these writ petitions by a common judgment and have referred to the pleadings in CWP No.30077 of 2017, titled as 'Barkha Ram Vs. State of Haryana & others'.

2. Petitioner has approached this Court for quashing of notification dated 11.03.1981 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 14.12.1983 (Annexure P-2) issued under Section 6 of the 1894 Act and award No.9, dated 12.09.1986 (Annexure P-3) and supplementary award No.1, dated 27.05.1987 (Annexure P-3A) with a prayer for release of their land as per Section 24 (2) of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act').

3. It has been pleaded in the writ petition that in the year 1962, residential plots were allotted to the residents of the village within the Lal Dora but due to shortage of land within Lal Dora, five residents including the father of the petitioner, were allotted plots outside the Lal Dora. Father of the petitioner was allotted khasra/Plot No.218, measuring 10 marla ($\frac{1}{2}$ share) situated in village Devi Daspura, Hadbast No.361, Tehsil Thanesar, District Kurukshetra, outside the Lal Dora, which is the land in dispute. Thereafter, the petitioner had raised construction and built double storey house on the said plot and is residing therein with his family.

A notification dated 11.03.1981 (Annexure P-1) under Section 4 of 1894 Act was issued by the Government of Haryana for development

and utilization of land as residential and commercial for Sectors 5 and 7 under Haryana Urban Development Authority Act, 1977. Thereafter, notification dated 14.12.1983 (Annexure P-2) under Section 6 of 1894 Act was issued to acquire the land for the above purpose including the land of the petitioner. After about two and half year, notices under Section 9 was issued to the land owners including the petitioner to appear on 04.08.1986 for stating the nature of their respective interests and amount and particulars of their claims for compensation. Thereafter, award No.9 was announced on 12.09.1986 (Annexure P-3). Before the announcement of the said award, land owners of the five plots, had approached this Court by filing CWP No.3943 of 1986 for quashing of notifications referred to above. During the pendency of the said writ petition, a supplementary award No.1 was issued on 27.05.1987 (Annexure P-3A). On 14.09.1993, the said writ petition was dismissed by the learned Single Judge of this Court, which judgment was challenged by filing LPA No.885 of 1993 and during the pendency of the said LPA, 2013 Act came into force w.e.f. 01.01.2014. In the light of the said 2013 Act having come into effect, petitioner along with other land owners withdrew their LPA on 04.09.2015 with a liberty to file a representation to the respondents under the 2013 Act.

On 04.09.2015, petitioner/land owners filed their representation, which ultimately was decided by the respondents on 16.10.2017 (Annexure P-8) by passing a speaking order. Petitioner has attached a copy of written statement filed by the respondents on 08.01.1987 (Annexure P-9) in the writ petition preferred by the petitioner i.e. CWP

No.3943 of 1986 to substantiate the fact that the respondents have themselves admitted that the land in question is a *gair mumkin* bara and four sub-standard rooms in the shape of farm house were already built. It was also mentioned in the said written statement that a supplementary award in respect of the building structures and trees will be announced soon as the assessment in respect of these aspects was not received by them from the technical experts. Thereafter, in a Reference made under Section 18 of the 1894 Act for enhancement of compensation, respondents got inspected and evaluated the houses and structures on the land in question through Executive Engineer, Provisional Division No.1 on 10.09.1992, who submitted its report dated 28.10.1992 (Annexure P-9A), according to which a house on Khasra No.218 was constructed by the petitioner in the year 1978 with covered area of 625.02 square feet and boundary wall, however, complete construction was not shown but the said report shows that the house of the petitioner existed on the land in question since 1978 i.e. prior to issuance of notification under Section 4 of 1894 Act. Reference has been made of a letter dated 02.11.2011 (Annexure P-10) addressed by the Estate Officer, HUDA, Kurukshetra to the Administrator, HUDA, Panchkula, wherein it has been stated that out of 5 plots, 4 plots have been constructed, whereas 1 bara is lying vacant and if the land in question is released, services of the sector would not be affected in any manner. Copy of election card, ration card and certain photographs have been attached with the writ petition as Annexure P-11 (colly).

4. Learned counsel for the petitioner asserts that in the light of the

provisions as contained in Section 24 (2) of 2013 Act, respondents having neither taken physical possession of the land nor having the compensation amount been disbursed, would render the land of the petitioner acquired vide the impugned award liable to be released, especially when the petitioner had constructed his house thereon and is residing thereon with his family. It is asserted that the land acquisition proceedings under 1894 Act would lapse. Counsel for the petitioner, on this basis, asserts that the notifications dated 11.03.1981 (Annexure P-1) and 14.12.1983 (Annexure P-2) and award No.9, dated 12.09.1986 (Annexure P-3) as also supplementary award No.1, dated 27.05.1987 (Annexure P-3A) cannot sustain and deserves to be set aside.

5. On the other hand, learned counsel for the respondents submits that the objections were filed by one of the co-sharers of the land involved in these writ petitions i.e. Rulda Ram with respect to only 2 baras out of 5 baras under Section 5-A on the ground that these baras were being used by them for residential purpose. The said objections were heard and considered by the then Land Acquisition Collector on 22.05.1981. As per report of the Land Acquisition Collector, bara situated on Khasra No.218 was having four sub-standard rooms along with verandah in the shape of farm house and the same was used for animals and therefore, the said land was recommended by the Land Acquisition Collector for acquisition.

6. Learned counsel for the respondents further submits that for applicability of Section 24 (2) of 2013 Act, which would entitle the petitioner the benefit of release of land on the lapsing of the acquisition

proceedings initiated under the 1894 Act, there should neither be physical possession taken nor compensation paid. If any of the two contingencies has been complied with, then the land acquisition proceedings under 1894 Act would not lapse. In this regard, counsel for the respondents has placed reliance upon the judgment of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC 1496.

To substantiate this contention, counsel for the respondents has referred to the reply which has been filed by way of an affidavit of Land Acquisition Collector, Urban Estate, Panchkula, dated 08.09.2021, wherein it has been stated that the possession of the land was taken vide Rapat No.24, dated 12.09.1986, immediate after the passing of the award. It has further been asserted that out of the total amount of the award of Rs.26,38,322/-, an amount of Rs.25,35,608/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. Rs.347.50/-, the said amount is lying deposited in the account of the Land Acquisition Collector, and same is available for payment immediately on demand of land owners.

7. Counsel for the respondents further submits that award No.1 was announced on 27.05.1987 after the assessment report dated 16.09.1986 having been received from the Executive Engineer, HUDA, Divn. Karnal, with regard to building structures/tubewell etc. and the assessment report dated 11.09.1986 of the Sub-Divisional Engineer, Horticulture, with regard to fruit/no-fruit trees. The assessment of Rs.25,400/- was made for the construction on Khasra No.218 and Rs.334/- for trees on Khasra No.219.

The said amount is lying deposited in the account of LAC and the same is not received by the petitioner, however, the same is available for payment immediately on demand of land owners. Therefore, it cannot be said that because there is structures on the land in question, possession thereof has not been taken by the respondents as the compensation amount was assessed after the passing of the award and the same was available for disbursement but the petitioner himself has not received it.

8. His further contention is that the land of the petitioners affects the site of three plots of 4 marla and 9 meter wide road, and therefore, the land of the petitioner cannot be released. Since the compensation amount has been duly deposited with the Land Acquisition Collector and further, the possession has been taken vide Rapat No.24, dated 12.09.1986, the deemed lapsing of acquisition under Section 24 (2) of 2013 Act would not apply. The writ petition, therefore, deserves to be dismissed.

9. An additional plea, which has been taken while challenging the award which has been passed, is that an incomplete award has been announced by the Land Acquisition Collector and since the award qua superstructure has been announced with the lapse of 2 years after the passing of the award under Section 11 of 1894 Act, the land acquisition proceedings would lapse. Learned counsel for the respondents has refuted this contention of the learned counsel for the petitioner by placing reliance upon the judgment of Hon'ble Supreme Court in **Mohanji and another Vs. State of U.P. and others** 1996 (27) ALR 76 and **State of Punjab and others Vs. Sharan Pal Singh and others** 1996 (11) SCC 683, where this

very plea has been considered and rejected. In any case, it has been asserted that the award in this case has been announced on 12.09.1986 and the amendment in 1894 Act came into force w.e.f. 24.09.1984 and therefore, this contention of the learned counsel for the petitioner cannot be accepted.

10. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings as well as the judgment passed by the Hon'ble Supreme Court in *Indore Development Authority's* case (supra).

11. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 11.03.1981 and 14.12.1983 respectively, leading to the passing of the award dated 12.09.1986. Petitioner is claiming himself to be the owner in possession of khasra/Plot No.218, measuring 10 marla ($\frac{1}{2}$ share) village Devi Daspura, Hadbast No.361, Tehsil Thanesar, District Kurukshetra and is seeking lapsing of acquisition with the aid of Section 24 (2) of 2013 Act.

Paras 244 and 245 of the judgment in *Indore Development Authority's* case (supra) deal with the vesting of the land in the State on taking of possession of the acquired land, for which the award has been passed free from encumbrances. The taking of possession through Rapat Roznamacha entry has been held to be a valid mode of taking possession of land. The person retaining possession thereafter is to be treated as a trespasser as he does not have any right to continue in possession of the land, which has vested in the State. Possession of the land has been taken vide Rapat Roznamacha No.24, dated 12.09.1986, thus, fulfilling one of the

conditions with regard to the possession having been taken over especially in the light of the fact that the possession through rapat roznamacha has been held to be valid mode of taking possession of the land.

12. As regards the compensation amount is concerned, it has been specifically averred in the reply that out of the total amount of the award of Rs.26,38,322/-, an amount of Rs.25,35,608/- has already been disbursed and rest of the amount is available for disbursement. So far as the amount of compensation due to the petitioner is concerned, i.e. Rs.347.50/-, the said amount is lying deposited in the account of the Land Acquisition Collector, and same is available for payment immediately on demand of land owners. Further, award No.1 was announced on 27.05.1987 after the assessment report dated 16.09.1986 having been received from the Executive Engineer, HUDA, Divn. Karnal, with regard to building structures/tubewell etc. and assessment report dated 11.09.1986 of the Sub-Divisional Engineer, Horticulture, with regard to fruit/no-fruit trees. The assessment of Rs.25,400/- was made for the construction on Khasra No.218 and Rs.334/- for trees on Khasra No.219. The said amount is also lying deposited in the account of LAC and the same is not received by the petitioner, however, the same is available for payment immediately on demand of land owners. Merely because the petitioner has not collected the amount of compensation, it would not entitle him to assert that the compensation has not been disbursed.

13. Para 203 of the judgment in *Indore Development Authority's* case (supra) deals with the word 'paid' and it has been concluded in para 206

that when the amount has been tendered, the obligation has been fulfilled by the Collector. In case a person does not collect the amount, he cannot take the benefit of the same by asserting that the amount has not been paid to him and as such, there is a lapse of proceedings. Apart from that, it has been held in para 224 of the said judgment that word 'paid' used in Section 24 (2) of 2013 Act does not include within meaning the word 'deposited', which has been used for proviso to Section 24 (2). It has, therefore, been concluded that the acquisition would not lapse, if the compensation amount is deposited with the Land Acquisition Collector, which is available for disbursement to the land owner(s).

14. The plea of the learned counsel for the petitioner with regard to the award qua superstructure etc. having been announced by the Land Acquisition Collector after a lapse of two years of passing of the award under Section 11 of the 1894 Act and therefore, land acquisition proceedings would lapse, cannot be sustained in the light of the judgment passed by the Hon'ble Supreme Court in *Mohanji's* case (supra), on which reliance has been placed by the learned counsel for the respondents, wherein, on a similar plea, as has been taken by the petitioner herein, a question was formulated, which reads as follows:-

“4. xxxx xxxxx. The question is whether in these circumstances, it can be said that no award had been made under Section 11 of the Act in the proceeding to result in lapse of the entire proceeding for the acquisition of the land?”

While dealing with this question in para 5, it has been held as follows:-

“5. It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceeding? In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acres. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23.9.1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acres with no compensation awarded for the building. The Appellants, therefore, had the right to claim compensation for the building by seeking a reference under Section 18 of the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acres but no compensation was awarded for the building therein.

The Appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is, however, a different matter and it does not require any further consideration in this context. It is sufficient to say that the award dated 23.9.1986 made within the period specified in Section 11A of the Act must be construed as an award under Section 11 in the proceedings for acquisition of the Appellants' land bearing plot No.1311 having a total area of 0.99 acres. The contention that the entire proceeding for acquisition of the land has lapsed by virtue of Section 11A cannot, therefore, be accepted”

Similar view has been reiterated by the Hon'ble Supreme Court in *Sharan Pal Singh's* case (supra). Therefore, plea of the learned counsel for the petitioner with regard to award qua superstructure etc. having been announced by the Land Acquisition Collector after a lapse of two years of passing of the award under Section 11 of the 1894 Act, cannot be accepted and thus, the same is hereby rejected.

15. Further, the objections filed by one of the co-sharers of the land in question were heard and considered by the then Land Acquisition Collector on 22.05.1981, who submitted its report that a bara is situated on Khasra No.218 having four sub-standard rooms along with verandah in the shape of farm house and the same was being used for animals. During the

proceedings of Reference under Section 18 of the 1894 Act for enhancement of compensation, respondents had got inspected and evaluated the structures on the land in question through Executive Engineer, Provisional Division No.1 on 10.09.1992, who submitted its report dated 28.10.1992 (Annexure P-9/A) and assessed the amount of compensation, which was deposited in the account of Land Acquisition Collector but the petitioner has not received the same. Thus, it cannot be said that the compensation has not been awarded for the constructed portion on the land in question.

16. The petitioner has failed to produce any documentary evidence which would substantiate that he was residing in the house which was constructed on the land in question prior to issuance of notification under Section 4 of 1894 Act. According to the report of Land Acquisition Collector, there were only four sub-standard rooms along with verandah in the shape of farm house, which were being used for animals. The documents placed on record by the petitioner i.e. ration card and Aadhar Card etc. (Annexure P-11 colly), are of the year 2017 i.e. almost 35 years after the issuance of notification under Section 4 of 1894 Act. No other document has been placed on record which would substantiate that there was a house on the land in question where the petitioner was residing with his family prior to issuance of notification under Section 4 of 1894 Act. As per the record available on file, there was only a structure constructed on the land in question which was used for animals, compensation of which structure has been assessed and evaluated by the respondents and award in

that regard has been passed separately after having received the report from the concerned authorities and compensation amount also stands deposited in the account of Land Acquisition Collector.

17. It may also be added here that the petitioner himself has pleaded in para 11 of the writ petition that a Reference before the Competent Court for enhancement of compensation amount has been filed, where the structure constructed on the land in question was inspected and evaluated. The Hon'ble Supreme Court, in para 363 (5) of the judgment in *Indore Development Authority's* case (supra), has held that the landowners, who have filed a reference for higher compensation, cannot claim lapsing of acquisition proceedings under Section 24 (2) of the 2013 Act and therefore, the petitioner cannot be held eligible for claiming the acquisition proceedings to be lapsed under Section 24 (2) of the 2013 Act and thus, the petitioner cannot take the benefit by asserting that there is a lapse of proceedings.

18. It is pertinent to mention here that since the earlier writ petition i.e. CWP No.3943 of 1986, challenging the same very notifications stands dismissed by this Court vide order dated 14.09.1993 and LPA preferred against the said order stands withdrawn by the petitioner on 04.09.2015, the prayer made by the petitioner in the present writ petition cannot be accepted in the light of the observations of the Hon'ble Supreme Court in *Indore Development Authority's* case (supra), where, in paras 359 and 363 (9), it has been held that if the acquisition of land had earlier been challenged and the same has been upheld, the proceedings having been concluded, the

umbrella of protection provided under Section 24(2) of the 2013 Act, cannot be invoked and it does not revive stale and time barred claims especially when it has been held in the earlier part of the judgment that after passing of the award, the amount of compensation has already been deposited with the Land Acquisition Collector, leading to the land having been vested in the State in accordance with law.

19. It may not be out of way to mention here that the speaking order 16.10.2017 (Annexure P-8) which has been passed by the respondents on the representation submitted by the petitioner in pursuance to the order dated 04.09.2015 passed by this Court in LPA No.885 of 1993, has not been challenged in the present writ petition and therefore, the same has attained finality. Thus, the prayer as made by the petitioner in this writ petition for quashing the acquisition proceedings cannot be accepted in the light of non-challenging the speaking order 16.10.2017 (Annexure P-8).

20. Learned counsel for the petitioner has referred to a letter dated 02.11.2015 (Annexure P-10) addressed by the Estate Officer, HUDA, Kurukshetra to the Administrator, HUDA, Panchkula, wherein it has been stated that out of 5 plots, 4 plots have been constructed, whereas one bara is lying vacant and if the land in question is released, services of the sector would not be affected in any manner. This contention of the learned counsel for the petitioner cannot be accepted in the light of para 4 of the said letter where it has clearly been stated that release of these baras would affect the site of plots of 4 marla. Since the land in question affects the sites of three plots of 4 marla and 9 meter wide road, his land, in any case,

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cannot be released as it would directly affect the planning.

21. In view of the above, we do not find any merit in these writ petitions and therefore, dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

01.02.2022
Harish

(MEENAKSHI I. MEHTA)
JUDGE

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