

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 9938 of 2016 (O&M)

Date of Decision: 03.02.2022

Hoshiyari Devi and another

...Petitioners

Versus

State of Haryana and others

...Respondents

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

Present:- Mr. Ram Bilas Gupta, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Saurabh Mago, Assistant Advocate General Haryana,
for the respondents.

(The aforesaid presence is being recorded through video
conferencing since the proceedings are being conducted in
virtual Court).

RAVI SHANKER JHA, CHIEF JUSTICE (oral)

Besides the applicability of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as Act of 2013), the issue posed before us to answer is as to whether Section 24(2) of Act of 2013 provide an arm or tool to question the legality of proceedings undertaken decades back on any ground including of discrimination; in clear ignorance of the delay and laches on the part of the land owner which otherwise disentitle him/ her to seek the relief being prayed for.

2. For the purpose of deciding the controversy involved, we deem it appropriate to notice certain elemental facts of the case in hand

as pleaded before us by the respective parties. Vide the instant petition filed in the year 2016, the petitioners have prayed for issuance of a writ in the nature of Certiorari for quashing the acquisition notifications issued under section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred as "Act of 1894") dated 04.01.2002 and 31.12.2002 respectively; followed by the award dated 29.09.2004, thereby acquiring the land for public purpose namely, for the development and utilization of land as Residential, Transport/ Communication situated in the revenue estate of Village Bohar, Hadbast no. 68 and Village Para, Hadbast No. 67, Tehsil and District Rohtak, Sector 4 and 5 under the Haryana Urban Development Authority Act, 1977 by the Haryana Urban Development Authority. Besides the petitioners have prayed for setting aside the order dated 14.03.2016 passed by the Zonal Administrator, HUDA -cum- Additional Director Urban Estate Rohtak, in compliance of the order dated 19.03.2015 passed by this Court in CWP no. 19228 of 2014. Additionally, the petitioners have prayed for issuance of a writ in the nature of Mandamus to declare that the acquisition proceedings in question have lapsed qua their land, in view of deeming fiction postulated under section 24(2) of Act of 2013; by claiming that in their case neither the physical possession has been taken nor compensation for the land acquired has either been paid/ tendered to them or deposited in the Reference Court under section 31 of Act of 1894.

3. The perusal of the factual matrix as stated by the petitioners reveals that by filing the instant petition even though predominantly the plea of lapsing as provided under section 24(2) of Act of 2013 has been

taken to secure the release of their land from acquisition but besides thereto, they have chosen to take all the pleas including discrimination questioning the legality of acquisition proceedings undertaken decades back.

4. In view of the above the question arises as to whether by virtue of section 24(2) of Act of 2013, a landowner/ litigant gets a right to seek condonation of delay and virtually set at naught the inaction on his/ her part to invoke the jurisdiction of the Court at the time when the alleged cause of action, if any had actually accrued.

Pleadings in the petition

5. The petitioners have claimed in the petition that they are owner in possession of land measuring 48 Kanals 4 Marlas comprised in Khasra no. 72//14 (7-11), 17/1 (4-0), 15/2 (2-5), 9/2 (6-0), 10 (8-0), 11 (7-11), 12 (7-11) and 13 (7-11) situated within the revenue estate of Village Para, District Rohtak. It has been stated that their land along with the land of other land owners was sought acquired by the State of Haryana by issuance of notification under section 4 of Act of 1894 dated 04.01.2002 as against the issuance of notification under section 4 of Act of 1894, the petitioners claimed to have filed objection under section 5-A of Act of 1894 but as stated, the authorities adopted pick and chose policy and released the land of some influential persons so much so the vacant land measuring 53 Acres was released. The land of the petitioners was included in the declaration issued under section 6 of Act of 1894 dated 31.12.2002. It has further been contended that even post issuance of declaration under section 6 of Act, the land of certain

persons was released and eventually the award under section 11 of Act of 1894 came to be announced on 29.12.2004. The petitioners maintained that feeling aggrieved with acquisition of their land, they approach this Court by filing CWP no. 4951 of 2005 which came to be dismissed vide order dated 14.07.2005. It has further been contended that despite the decision of the State Government to release the land outside the boundary on the map of Sizra Plan, their land was not released and accordingly, they once again the writ jurisdiction of this Court by filing CWP no. 10175 of 2007 assailing the acquisition proceedings inter alia by placing reliance on the State Government order dated 03.11.2006 as regards release of the land from acquisition. The said petition was disposed of by this Court vide order dated 12.07.2007 by permitting the petitioners to file the representation before the Principal Secretary to Government Haryana, Urban Estates Department within a period of two weeks and by further directing the authorities to consider the claim of the petitioners and decide the same, in the light of State Government order dated 03.11.2006 within a period of 8 weeks.

6. As a consequence thereto, the petitioners allegedly submitted representation dated 30.07.2007 which came to be decided vide order dated 11.10.2007, thereby rejecting their claim while taking into consideration the order dated 03.11.2006 passed by the State Government, sought to be relied upon by the petitioners, to which the petitioner has claimed to be arbitrary in the present petition. The petitioners once again approached this Hon'ble Court by filing Civil Writ

Petition No. 17007 of 2008 seeking quashing of acquisition proceedings

as well as the speaking order dated 11.07.2007 which was allowed to be withdrawn with the liberty to file fresh one by challenging the averments made in the affidavit filed by the then Financial Commissioner – cum – Principal Secretary Government of Haryana, Department of Urban Estates vide order dated 19.05.2010. The perusal of the pleadings reveals that even though the plea of discrimination has been agitated thereafter including of placing reliance on the proceedings initiated by some other landowner from the same acquisition but nothing is stated as regards the filing of fresh petition in terms of the liberty granted by this Court vide order dated 19.05.2010 in Civil Writ Petition No. 17007 of 2008.

7. The petitioners further claimed that once again, they filed Civil Writ Petition No. 11547 of 2014 which was dismissed as withdrawn with liberty to file fresh one vide order dated 14.07.2014. Accordingly, they preferred CWP no. 19228 of 2014 thereby laying challenge to the acquisition besides seeking declaration that the acquisition proceedings in question qua their land have lapsed in terms of section 24(2) of Act of 2013 by contending that they are still in physical possession of the land in question and the compensation has not been paid to them. The CWP was disposed of by this Court vide order dated 19.05.2015 by granting them liberty to file a detailed and comprehensive representation within a period of one month from the date of passing of the order and further directing the authorities that in the eventuality of filing of such representation, same will be decided by passing a speaking order and till the said decision status quo was directed to be maintained. Accordingly, the petitioners filed

representation which was rejected by passing the speaking order dated 14.03.2016 by recording that the possession of the land in question stands taken vide Rapat Roznamcha no. 444 dated 29.12.2004 besides recording that the land in question affect Grid Sub-Station Site, EWS Housing Site, 24 m road and 45 M sector dividing road. It was also noticed that in all, 72% of compensation stands disbursed.

8. Assailing the said order dated 14.03.2016; the petitioners have chosen to take the plea of discriminatory treatment, contending that the reasoning given by the authorities to reject their claim under section 24(2) of Act of 2013 is unsustainable in law. The reliance was also placed on the RTI information to contend that the compensation for the land in question have not been paid to them.

9. The writ petition came up for preliminary hearing before this Court on 19.05.2016 whereby taking note of the contentions raised by the petitioners that neither the possession has been taken from them nor the compensation has been offered or deposited before the Reference Court and thus, the acquisition proceedings have lapsed, issued notice of motion and passed the interim order of directing the parties to maintain status quo. This implies that at the time of preliminary hearing the petitioners restricted their grievance only to the aspect as to whether the acquisition proceedings have lapsed under section 24(2) of Act of 2013 or not.

Written Statement filed by the respondents

10. Pursuant to issuance of notice of motion, short reply dated 16.09.2016 was filed by the Additional Director Urban Estate, Rohtak

Zone by pleading that the land measuring 48 Kanal 4 Marlas of the petitioners was acquired vide acquisition proceedings in hand which culminated in the form of passing of an award dated 29.12.2004. The possession of the land was taken and handed over to HUDA vide Rapat Roznamcha no. 444 dated 29.12.2004 (Village Para) and Rapat Roznamcha no. 255 dated 29.12.2004 (Village Bohar). It has been contended that said fact was loudly announced by beating the drums on spot ad in the locality of both villages also by the Chowkidar by Sh. Mie Ram of Village Para and Sh. Dayanand of Village Bohar. So far as the compensation is concerned, 72% of the compensation amount of entire awarded land stands disbursed to the landowners and the balance amount was lying deposited with the LAC. So far as the petitioners are concerned, it has been specifically pleaded that the compensation amount was duly tendered to them but they have not lifted the same. As regards the State Government decision dated 03.11.2006, heavily relied upon by the petitioner to claim differential/ discriminatory treatment, it has been contended that based upon the re-survey conducted, the Government decided to release the land measuring 89.62 acres which includes the land of the petitioners as well measuring 8 Kanals 6 Marla and thus, it is contended that being beneficiary of the said order, it would not lie in the mouth of the petitioners to allege discriminatory treatment.

11. It has further been contended that the petitioners for the first time challenged the acquisition proceedings before this Court by filing writ petition before this Court which was dismissed as withdrawn as the petitioners' land measuring 8 Kanal 6 Marla was released from

the acquisition. It has further been contended that the claim filed by the petitioner under section 24(2) of Act of 2013 was duly considered and rejected by passing a well-reasoned order and thus prayer was made for dismissal of writ petition. The perusal of record reveals that even though written statement/ short reply was filed way back on 16.09.2016 but the petitioners chose to not to file any replication and thus, the factual assertions made by the respondents remain unrebutted.

12. In view of afore stated facts noticed especially claims put forth by the petitioners, following issues require adjudication by this Court:-

- A. Whether the land acquisition proceedings qua the land in question can be said to have been lapsed or not?*
- B. Whether the plea of discrimination as raised by the petitioners is tenable or not?*

A. Whether the land acquisition proceedings qua the land in question can be said to have been lapsed or not?

13. Before dealing with the plea of petitioners as regards the lapsing of acquisition proceedings under section 24(2) of Act of 2013, it is necessary to mention that the petition was kept pending awaiting the decision of the Hon'ble Supreme Court of India in the case of **Indore Development Authority v. Manoharlal and others AIR, 2020, SC, 1496**, wherein the Hon'ble Supreme Court of India after seeing various interpretations, put at rest the controversy surrounding the

interpretation of Section 24(2) of Act of 2013. The penultimate para of the judgment 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'.

14. That the sum and substance of the interpretation of Section 24 (2) of the Act of 2013 by the Hon'ble Supreme Court of India 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 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 Hon’ble Supreme Court of India 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 Act of 2013.

15. Having perused the judgment passed by the Hon’ble Supreme Court of India in Indore Development Authority (supra) and the principles laid down, now we proceed to test the factual matrix of the case in hand pleaded before us on to the afore reproduced laid down principles by the Hon’ble Supreme Court of India.

16. 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 but yet the physical possession has not been taken from them. In this regard, the respondents have filed the reply submitting therein that after the announcement of the award possession was duly taken by recording Rapat no. 444 dated 29.12.2004 (Village Para) and Rapat no. 255 dated 29.12.2004 (Village Bohar). The Hon’ble Supreme Court of India in Indore Development Authority (Supra) has categorically held that the recording of panchnama is the valid mode of taking possession of the land and amounts

to taking of physical possession of the land. Once the possession of the land is taken, it vests in the State free from all encumbrances and any person who retains the possession of the land thereafter is a trespasser. 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.

17. 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.

18. The respondents have categorically pleaded in the reply that the amount of compensation for the entire awarded land was made available to all the landowners. This is proven from the fact that 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 compensation amount has been disbursed to the landowners and rest of the amount is available for disbursement to the landowners. 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....’*

19. The afore-stated facts clearly reveals that the amount of compensation was duly tendered so much so that the majority of compensation amount stands disbursed to the landowners and thus, it did not leave any scope for doubt that the State has discharged its obligation towards making the compensation for the land acquired and thus the plea being raised by the petitioners that they have not been paid the compensation amount is rejected.

20. The Hon’ble Supreme Court of India 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 lapsing cannot happen. The Hon’ble Supreme Court of India 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...

21. In the case in hand as reflected from the speaking order as well as from the reply filed, it is evident that after the award was announced on 29.12.2004, the physical possession was taken by recording the Rapat No. 444 dated 29.12.2004. Further, 8K - 15M land was released from the

acquisition proceedings even before the announcement of award. As far as the compensation part is concerned, it stands duly stated in the reply that the amount was tendered and is available for disbursement. In view thereof, both the contingencies as provided in Section 24 (2) of the Act of 2013 are not fulfilled. Thus, we hereby hold that no declaration as regards the lapsing of acquisition proceedings can be issued in the case at hand.

B. Whether the plea of discrimination as raised by the petitioners is tenable or not?

20. Though at the time of issuance of notice of motion, the only plea raised by the petitioners was with respect to section 24(2) of Act of 2013 and even the petition was kept pending on that ground alone. This shows that the plea as regards the discrimination was virtually given up by the petitioners. Yet we deem appropriate to deal with the said contention of the petitioners as has been set up in the pleadings. It is the case of the petitioners that respondents have discriminated as they have followed pick and choose policy while releasing the land of other landowners. It has also been admitted that the petition filed by the petitioners challenging the acquisition proceedings i.e. CWP no 19385 of 2004 was dismissed as the land measuring 8Kanal- 6 Marla was released vide letter dated 03.11.2006 in Khasra no. 72//14, 15/2, 17/1 in Village Para. This shows that the release has been made in favour of the petitioners, once it is so, there is no more surviving ground of discrimination.

21. Further, it is also well settled that the burden to prove the plea of discrimination is on the petitioners and they have to produce concrete evidence before the Court to show that their case is identical to other persons whose land had been released from the acquisition proceedings. Merely by stating that there is discrimination without refereeing as to whom the

petitioners have been discriminated against and how they are similarly situated to those land owners whose land has been released. The finding of discrimination cannot be recorded merely on the basis of vague and bald assertions as has been made by the petitioners in the instant writ petition. The reference in this regard, can be made to the judgment of the Hon'ble Supreme Court of India 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....”

22. 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.

23. Applying the aforesaid principles onto the case at hand, the petitioners have miserably failed to setup a plea of discrimination as the instances based upon which discrimination has been alleged are not even arising out of the same acquisition proceedings and further no averment has been made as to how they are identically placed to such persons whose land has been released from the acquisition proceedings. Therefore, the plea of discrimination set up by the petitioners is hereby rejected.

24. Mr. Ankur Mittal on the strength of the facts recorded in the reply submits that the land in question as acquired for the public purpose namely. Residential, Transport and Communication Sector 4 & 5 Rohtak and has been planned as per the development plan of the sector duly approved by the competent authority. It has been planned for Grid Sub-Station Site, EWS Housing site, 24 mtrs road and 45 mtrs sector dividing

road. The land is therefore, necessary for achieving the public purpose. We have considered this part of arguments raised by the respondents and are in complete agreement with the same as it is an essential factor to be kept in mind while dealing with the case arisen out of the acquisition of the land.

25. As a conspectus of what all has been discussed here in above especially the fact that after the announcement of the award, the possession was taken by recording rapat Roznamcha, mutation was sanctioned in favour of the beneficiary department and the obligation to pay the compensation stands discharged and also that the land in question is very much essential to achieve the public purpose, for which it is acquired; we are of the considered opinion that no ground is made out in the petition to interfere in the acquisition proceedings much less holding that the acquisition proceedings are deemed to have lapsed and thus, the claim made by the petitioners is rejected and the petition filed is hereby dismissed. The speaking order impugned in the petition is accordingly upheld.

Since the main petition has been dismissed, all the pending applications, if any, stand disposed of. Status quo order, if any, is hereby vacated.

Dismissed accordingly.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

03.02.2022
ravinder

Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No