

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

**RA-CW-270-2020 (O&M) in
CWP-7140-2014
Reserved on: 26.08.2022
Date of Decision: 16.09.2022**

Kamlesh Rani

. . . . Applicant/Petitioner

Vs.

State of Haryana and others

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE AVNEESH JHINGAN**

Present: - Mr.P.C. Yadav, Advocate, for the petitioner.

Mr.S.S. Pannu, DAG, Haryana.

M.S. RAMACHANDRA RAO, J.

This Review Application is filed seeking review of the order dt.17.11.2020 passed in CWP-7140-2014.

The applicant in the Review application is the petitioner in CWP-7140-2014. We shall hereafter refer to him as the 'petitioner'.

The pleas and prayer of petitioner in the CWP-7140-2014

The petitioner had filed the said Writ Petition for quashing of a notification dt.27.03.2001 issued under Section 4 of the Land Acquisition Act, 1894 [for short 'the 1894 Act'], declaration dt.26.03.2002 issued under Section 6 of the 1894 Act and for a declaration of deemed lapsing of the land acquisition proceedings in view of the proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short 'the 2013 Act'].

It was the contention of the petitioner in the Writ Petition that she purchased land ad-measuring 3 biswas comprising in Khasra No.200

RA-CW-270-2020 (O&M)
in CWP-7140-2014

Hadbast No.199 in the Revenue Estate of Village Nada, District Panchkula vide sale deed dt. 03.07.1995, that mutation was also carried out in the relevant record prior to the issuance of notification under Section 4 of the 1894 Act, and that due to unavoidable circumstances, she could not file objections under Section 5-A of the 1894 Act. She further contended that land admeasuring 32.70 acres out of 117.52 acres sought to be acquired under the above notification was left out after Section 6 declaration was issued and the petitioner was thus discriminated against. She contended that award was passed on 22.03.2004 in respect of the land of the petitioner, but she continued to be in physical possession of the land and no compensation was paid to her.

The stand of the respondents in the Writ Petition

The Writ Petition was opposed by the respondents on the ground that the petitioner (review applicant herein) had raised unauthorized construction of DPC over the land/plot in question in violation of Sections 5 & 11 of the Punjab New Capital (Periphery) Control Act, 1952 [for short 'the 1952 Act'] without obtaining Change of Land Use permission and that this Court in CWP-2958-2011 and batch decided on 23.03.2011 had held that if constructions were raised without obtaining Change of Land Use permission or without building plan being sanctioned, no relief under Article 226 of the Constitution of India could be granted.

It was further contended that the Writ Petition was barred by delay and laches since the Award No.14 dt.22.03.2004 has been challenged 10 years thereafter in 2014 and there is no satisfactory explanation for the delay.

RA-CW-270-2020 (O&M)
in CWP-7140-2014

It was also pointed out that possession of the acquired land was taken over by HUDA on 22.03.2004, that petitioner had applied for enhancement of compensation under Section 18 of the 1894 Act before the District Judge, Panchkula and on 21.12.2009, enhanced compensation was also granted. It was alleged by respondents No.4 to 7 that both the original compensation as well as enhanced compensation were released to the petitioner.

They also defended the release of adjoining land on the ground that it was left out of acquisition since it was Nandi namely Nada Choe and other area was left out as it found part of the abadi.

The order dt.17.11.2020 passed in the CWP-7140-2014

Petitioner did not dispute to above contentions by filing any replication.

Vide order dt. 17.11.2020, this Court dismissed the Writ Petition.

It held that the official record shows that possession has been handed over to HUDA on the date of award itself and the petitioner's claim that she continues to remain in possession means only that she had encroached upon the land that stood vested on the respondents and the review applicant is thus in unauthorized possession thereof.

It also held that the petitioner had received both original compensation as well as enhanced compensation and there was non-fulfillment of both the conditions for grant of relief of deemed lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act.

It held that no ground has been made out for quashing the notification issued under Section 4 and declaration issued under Section 6 of the 1894 Act because such a relief cannot be granted where objections under

RA-CW-270-2020 (O&M)
in CWP-7140-2014

Section 5-A of the 1894 Act have not been filed. It relied on the decision of the Supreme Court in *Delhi Administration Vs. Gurdeep Singh Uban*¹ which had taken such a view.

The Bench also rejected the plea of the petitioner that there was discrimination on the part of the respondents in releasing the land in question. It held that petitioner had, without obtaining proper sanctions, raised unauthorized constructions on the land and in the instances where portions of the land notified for acquisition were released, constructions had been raised prior to the issuance of the notification under Section 4 of the 1894 Act; and the petitioner, therefore, cannot claim any parity with those land owners whose lands were released from acquisition.

The instant review petition

Seeking review of the said order dt.17.11.2020, the instant Review Application is filed.

The following contentions are raised by the petitioner in the Review Application:

- I. That the plot in question is plot 3 biswa comprising khasra No.200 over which DPC has been raised *prior to* notification issued under Section 4 of the 1894 Act.
- II. That no portion has been taken possession by punchnama in the presence of the panchayat or any statutory body.
- III. That on one side the respondent department has released the adjoining land wherein also constructions were raised without obtaining change of land use permission or without building plan being sanctioned, whereas same relief has been declined

to the petitioner by this Hon'ble Court on the ground that in case constructions were raised without obtaining change of land use permission or without building plan being sanctioned, no relief under Article 226 of the Constitution of India could be granted.

- IV. That it is an admitted fact that the petitioner is in physical possession of the land since the date of purchase i.e. 3rd July, 1995 and till date she is continuing in physical possession and the respondent department has only taken symbolic possession in the year 2006. So under Section 24(2) of the 2013 Act, Land Acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid.
- V. As per the RTI reply dt.02.04.2014 (P16) reveals that compensation of award amounting to Rs.13585.03 is unpaid in this office.
- VI. That neither physical possession was taken nor the compensation amount was paid to the review applicant and as such the plot in question is liable to be released.
- VII. That the award was announced in the year 2003 and no development has been made over the land accusation till 2014, hence the claim of the petitioner is genuine and her land is liable to be released.

- VIII. That this vide order dt.28.11.2016 passed in the CWP-7140-2014 passed following order *“during the course of hearing, it appears that the matter can be effectively resolved by allotting 100 sq. yard plot to the review applicant preferably in Section 31, Panchkula in lieu of her acquired land. While HUDA will not charge any allotment price, the petitioner will also not claim any compensation for the acquired land. The petitioner shall also be required to refund the compensation amount, if any, received by her, to the authorized along with interest. To enable learned State counsel to have instructions in this regard, let the matter be posted for further consideration on 31.01.2017. Interim order to continue.* But the same has not been considered while passing the final order in the CWP-7140-2014.
- IX. That Section 101 provides for return of unutilized land under the Act of 2013. Section 101 provides that in case land is not utilized for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs as the case may be or to the land bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. But in present case the land in question was acquired in the year 2001 but till date the land in question has not been utilized by the respondent whereas the land of similar situated persons have been released even that land of review applicant

RA-CW-270-2020 (O&M)
in CWP-7140-2014

was not released when the physical possession of the sale is with the review applicant.

- X. That the Court erroneously rejected the plea of the petitioner to give opportunity to file a replication on 10.11.2020.

Counsel for the respondents refuted the said contentions and stated that no case has been made out for review the order passed by this Court on 17.11.2020.

The consideration by the Court

We have noted the contentions of both sides.

We may point out that the land of the petitioner admeasuring 3 biswas was purchased under the sale deed dt. 03.07.1995 and it was notified for acquisition vide notification dt.27.03.2001 issued under Section 4 of the 1984 Act. No objections were filed by the petitioner under Section 5A of the said Act and declaration under Section 6 of the said Act was issued on 26.03.2002. Award was passed as regards the petitioner's land on 22.03.2004.

Petitioner disputes receipt of compensation and also alleges that she continues to be in possession of the acquired land on the date of the decision in CWP-7140-2014 on 17.01.2020.

A stand has been taken in the written statement dt.22.11.2016 filed by the Land Acquisition Collector (respondents No.1 to 3 & 5) in the Writ Petition at para 6 that ₹13,585/- was awarded by the Collector, that the petitioner sought a reference under Section 18 of the 1894 Act with the Additional District Judge, Panchkula, who enhanced it on 21.12.2009, and in the said reference, she was granted enhanced compensation of ₹67,725/-. It is stated that demand of this amount was made from the Administrator, HUDA,

RA-CW-270-2020 (O&M)
in CWP-7140-2014

Panchkula, that the payment of this amount was sanctioned and *amount was paid* against D form.

In the written statement filed by the Estate Officer, HUDA, Panchkula (on behalf of respondents No.4 & 7 in the Writ Petition) at para 2.3, it is stated that the Land Acquisition Collector sent the claim statement for release of enhanced compensation amounting to ₹67,725/- in favour of the petitioner, which was duly processed by the office of the Administrator, HUDA, Panchkula and the said amount was paid to the Land Acquisition Collector for onward disbursement. In para 3.3 of the said written statement, it is stated that *compensation amount has already been tendered by the Land Acquisition Collector to the petitioner who received it as is apparent from the record sent by the Land Acquisition Collector to the learned District Judge, Panchkula.*

Petitioner alleges that Annexure P16 reply received under the RTI Act 2005 vide Memo No.1445 dt. 02.04.2014 shows that compensation amounting to ₹13,585.03 is unpaid in the said office.

But the docket proceedings of this Writ Petition indicate that on 05.02.2018, this Court noted the contention of the petitioner that enhanced amount of compensation was not paid to her and asked the State counsel for produce the original record to prove such payment and adjourned the matter to 22.03.2018. Thereafter, the original record was produced before Court on 22.03.2018 and the Court directed it to be shown to the petitioner/her counsel and adjourned the matter to 10.07.2018.

It is not denied by the petitioner's counsel that the said original record was shown to him by the State counsel.

If the said record supported the petitioner's case, she ought to have filed an application before the Court for supply of the said record to her and relied on it at the time of disposal of the Writ Petition. She cannot make an issue about it now in the Review Petition. It has therefore to be presumed that the original record produced by the State before the Court disproves the petitioner's contention of non-receipt of the original as well as the enhanced compensation.

In the review application it is now contended that copy of the original record was not supplied to the petitioner's counsel. There was no such order from the Division Bench to supply copy of the original record to the petitioner or the petitioner's counsel. As pointed out earlier, there was no application moved by the petitioner for furnishing of copy of such original record to her. Therefore, this plea cannot be countenanced.

Also since no replication was filed by the petitioner denying the stand taken in para 3.3 of the written statement filed by respondents No.4 & 7 about tendering of the compensation amount by the Land Acquisition Collector to the petitioner and its receipt by the petitioner, in the order dt.17.11.2020, this Court did not accept the stand of the petitioner that she had not received the compensation.

Petitioner contends that denial of opportunity to the petitioner by the Court to file replication when such request was made on 17.11.2020 caused injustice to the petitioner and such opportunity ought to have been granted by the Court to her.

The reason assigned by the Division Bench for not giving opportunity to the petitioner to file replication is that written statements of respondents had been on record for more than four years, and yet replication

RA-CW-270-2020 (O&M)
in CWP-7140-2014

was not filed to the above averments by the petitioner and so further time cannot be granted to her.

We do not find any error in the said reasoning of the Division Bench in declining to the petitioner opportunity to file replication when for a period of four years the petitioner had not chosen to file a replication denying the contentions of the respondents with regard to tender/payment of compensation.

On the aspect of possession of the petitioner of the acquired land, it is the stand of the respondents that on 22.03.2004, when the Land Acquisition Collector passed award for the 84.82 acres notified for acquisition, possession was taken over by the HUDA and a rapat dt.22.03.2004 was also prepared at that time. The taking over of possession by HUDA is also mentioned in the award passed on 22.03.2004 by the Land Acquisition Collector.

The Division Bench, in its order dt.17.11.2020, relied on the decision of the Supreme Court in **Indore Development Authority Vs. Manohar Lal**² and held that if the official record (rapat) shows that possession has been handed over to HUDA on the date of the award itself, the petitioner's claim that she continues to remain in possession can only mean that she has encroached upon the land that stands vested in the respondents and that she is in unauthorized possession thereof. In **Indore Development Authority (1 Supra)** the Supreme Court had held that when the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. It held:

² AIR 2020 SC 1496

RA-CW-270-2020 (O&M)
in CWP-7140-2014

“247. The question which arises whether there is any difference between taking possession under the 1894 Act and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the 1894 Act, by taking the possession meant only physical possession of the land. Taking over the possession under the 2013 Act 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 is 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.” (emphasis supplied)

So this reasoning of the Division Bench is also unexceptionable.

It is not disputed by the counsel for the petitioner that for lapsing of acquisition proceedings under Section 24(2) of the 2013 Act, it is necessary that 5 years after passing of the award (a) compensation had not been tendered/paid *and* (b) the land owner is in possession of the acquired land,.

The Division Bench, in our opinion, rightly held that neither of these two conditions which are required to be satisfied for grant of the relief of deemed lapsing of land acquisition proceedings under Section 24(2) of the 2013 Act, stand satisfied, and so the said relief cannot be granted.

The decision of the Madras High Court in **V.Sivakumar**³ is not of any assistance to the petitioner in view of the above reasoning.

As regards the contention of the petitioner that there was discrimination on the part of the respondents in not releasing her land, a

³ Order dt.7.10.2021 in W.P.9349 and 9350 of 2018

RA-CW-270-2020 (O&M)
in CWP-7140-2014

finding of fact was recorded by the Division Bench that other lands were released from acquisition since constructions had been raised thereon prior to the issuance of a notification under Section 4 of the 1894 Act, but the petitioner had raised unauthorized construction on her acquired land without obtaining proper sanctions. Though petitioner disputes the said finding as regards the other lands, no material is placed on record to substantiate her contention that in other parcels of land which were released from acquisition, their respective owners had also made constructions without obtaining Change of Land Use permission or without building plan being sanctioned. So this plea is also liable to be rejected.

Reliance placed by petitioner on docket order such as the one on 28.11.2017 cannot be permitted because once the final order is passed in the Writ Petition, the interim orders passed during its pendency, do not survive.

Merely because in CWP-11468-2002 etc. certain lands were directed to be released from acquisition by this Court, the petitioner cannot get the said benefit having regard to the facts and circumstances of the CWP-7140-2014 and the reasoning recorded therein by this Court in its order dt. 07.11.2020.

As regards the plea raised by the petitioner by placing reliance on Sec.101 of the 2013 Act and not putting the land to use by the State is concerned, no such contention was raised in the Writ Petition by her and no argument was advanced at the time of hearing of the Writ Petition on that basis. In the review petition, it is not open to petitioner to raise new plea. In **Nehali Panjiyara v. Shyama Devi**⁴, the Supreme Court held :

“The review petition raises entirely a new point about the extinction of the legal heirs in the line of descendants of the estate represented by

⁴ (2002) 10 SCC 578, at page 578

RA-CW-270-2020 (O&M)
in CWP-7140-2014

Gurudayal Panjiara and Kunjlal Panjiara prior to the institution of the suit and that the said estate stood inherited in amongst the descendants of only Matuki Panjiara and Ashrafi Panjiara. Such a contention was never canvassed before any of the courts below. Not only that, there was no issue sought for on this point even before the trial court. In second appeal the only dispute raised was regarding suit properties Items 2 to 8. The High Court confirmed the decision about their partibility in the light of the findings reached by the lower appellate court which has noted in para 49 of its judgment that defendant 2nd party admitted the plaintiff's claim for Items 2 to 8 of the schedule."

For the aforesaid reasons, we do not find any merit in the Review Petition and the same is accordingly dismissed.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

16.09.2022
Vivek

(AVNEESH JHINGAN)
JUDGE

- | | |
|-------------------------------|------------|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes/No |