

CWP No.5379 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.5379 of 2016

Pronounced on: 01.02.2022

Ram Lal & others

...Petitioners

Versus

State of Haryana & others

...Respondents

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

Present: Mr. Ajay Jain, Advocate,
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate, for the respondents.

AUGUSTINE GEORGE MASIH, J.

By filing the present writ petition, petitioners have challenged notification dated 26.09.2007 (Annexure P-1) issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act'), notification dated 25.09.2008 (Annexure P-2) issued under Section 6 of the 1894 Act and the award dated 24.09.2010 (Annexure P-6).

2. Counsel for the petitioners asserts that the petitioners are assailing the acquisition proceedings qua the land measuring 2 Bigha and 13 Biswa comprised in Khasra No.31/2 situated in village Bhagwanpur, Tehsil Kalka, District Panchkula, as their land measuring 3 Bigha and 10 Biswa has already been left out from the acquisition after considering the objections filed by them under Section 5-A of 1894 Act and in pursuance

to the recommendations made by the State Joint Inspection Committee (for short 'SJIC'). Counsel for the petitioners asserts that on the land in question, houses of the petitioners are existing, which they had constructed much prior to the acquisition proceedings and till date, they are in physical possession of the same. Reliance has been placed upon the policy of the Government of Haryana dated 26.10.2007 (Annexure P-7) to substantiate that along with the constructed house, proportionate vacant area is to be kept out of the acquisition proceedings. In support of his contention, learned counsel for the petitioners has also placed reliance upon the decision of this Court dated 28.04.2021 (Annexure P-8) given in LPA No.68 of 2008, titled as 'State of Haryana Vs. Kamlesh Rani. Counsel for the petitioners contends that some land of the petitioners has already been kept out of the acquisition on the ground that construction in the shape of residential houses existed thereon. He, therefore, submits that the land of the petitioners measuring 2 Bigha and 13 Biswa comprised in Khasra No.31/2 situated in village Bhagwanpur, Tehsil Kalka, District Panchkula, be also released and acquisition proceedings qua the said land be quashed.

3. On the other hand, learned counsel for the respondents submits that the father of petitioner No.1 and father-in-law of petitioner No.2, namely Dhanna Ram, had filed objections under Section 5-A of 1894 Act. Mother of petitioners No.3 to 5, namely Smt. Kesho, had also filed objections. The said objections were duly heard from 27.05.2008 to 29.05.2008 at PWD Rest House, Kalka and considering the same, land

measuring 3 Bigha and 10 Biswa was recommended for release as there were residential houses constructed at the time of issuance of notification under Section 4 of 1894 Act and remaining land, which was vacant at that time, was recommended for acquisition.

4. Learned counsel for the respondents further submits that the possession of the land in question was taken vide Rapat No.72, dated 24.09.2010. It has further been asserted that the total amount of the award of Rs.2,59,77,50,090/- was tendered and out of the same, an amount of Rs.1,69,27,40,159/- has already been disbursed. Rest of the amount could not be disbursed as the concerned landowners are not coming forward to receive the same and not tendering the documents regarding ownership etc. Further, as per the award statement, total amount of compensation of the petitioners is Rs.1,34,63,885/-, which is still pending as the petitioners are not coming forward to receive the same and not tendering the requisite documents. The said amount would be disbursed to the petitioners immediate on their demand and submitting their documents.

5. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in Aflatoon & others Vs. Lt. Governor of Delhi & others 1975 (4) SCC 285 to contend that the petitioners cannot be allowed to raise this plea when the notifications under Sections 4 and 6 have never been challenged nor has the validity of the award been attacked. There being dilatory tactics on the part of the petitioners, the writ petition is liable to be dismissed on the ground of delay and laches

on the part of the petitioners. Similarly, reliance has been placed upon another judgment of the Hon'ble Supreme Court in **Northern Indian Glass Industries Vs. Jaswant Singh & others** 2003 (1) SCC 335, where writ petition was filed after almost 17 years of finalization of the acquisition proceedings when the said proceedings have not been challenged earlier and it being the settled proposition of the law that after the passing of the award and after taking possession of the land, the acquired land vests with the Government free from all incumbrances. Delay and laches is itself a ground for dismissing the writ petition. It has, in any case, been pressed by the counsel that the land of the petitioners is essential for green belt, which is the part of the planning of the road and the same would be effected.

6. Learned counsel for the respondents has placed reliance upon the latest judgment of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manoharlal and others** 2020 (AIR) SC 1496 to submit that the land cannot be released from acquisition if possession of the acquired land, for which the award has been passed, has been taken through Rapat Roznamacha or even the amount of compensation tendered. In this case, possession of the land in question was taken vide Rapat No.72, dated 24.09.2010 and even the compensation amount stands deposited, which the petitioners have not taken. He, therefore, submits that the land in question cannot be released.

7. His further submission is that since the land in question affects the site of 12 meters wide service lane to the main road, the same

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.72, dated 24.09.2010, the writ petition deserves to be dismissed.

8. 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 various judgments passed by the Hon'ble Supreme Court.

9. The facts, as have been narrated above, have not been disputed. Notifications under Sections 4 and 6 of the 1894 Act were issued on 26.09.2007 (Annexure P-1) and 25.09.2008 (Annexure P-2) respectively, leading to the passing of the award dated 24.09.2010 (Annexure P-6). Petitioners are asserting themselves to be the owners in possession of the land measuring 2 Bigha and 13 Biswa comprised in Khasra No.31/2 situated in village Bhagwanpur, Tehsil Kalka, District Panchkula, and are seeking release of the same from acquisition.

10. The main argument of the learned counsel for the petitioners that on the land in question, houses of the petitioners existed prior to the issuance of notification under Section 4 of 1894 Act, cannot be accepted in the light of the specific stand taken by the respondents in the reply that after hearing and considering the objections filed by Dhanna Ram and Smt.Kesho, predecessors of the petitioners, land measuring 3 Bigha and 10 Biswa was released on the same ground that houses existed thereon prior to issuance of notification under Section 4 of the 194 Act and

remaining land was recommended for acquisition as the same was lying vacant. Learned counsel for the petitioners has failed to produce any documentary evidence which would show that the houses of the petitioners were in existence on the land in question prior to issuance of notification under Section 4 of 1894 Act. Merely by placing on record two photographs (Annexures P-9 and P-10) to prove that houses of the petitioners were in existence on the land in question at the time of acquisition cannot substantiate that the said houses were existed prior to issuance of notification under Section 4 or even constructed on the land in question or on some other land. Petitioners have not been able to place on record any document in support of this argument and having failed to do so, this contention of the learned counsel for the petitioners cannot be accepted especially when their land measuring 3 Bigha and 10 Biswa has been left out of acquisition on the same ground that certain houses were in existence prior to issuance of notification under Section 4 of the 1894 Act. Learned counsel for the petitioners has also been unable to explain as to how some land of the petitioners could be released on the ground that there being houses existed prior to issuance of notification while acquiring the adjacent land and not releasing it, had there been any construction thereon. If the houses would have been constructed on the land in question prior to the issuance of notification under Section 4, the land in question would have also been released along with the land which has been recommended for release i.e. 3 Bigha and 10 Biswa.

For the above mentioned facts and reasons, petitioners would

not be entitled to any benefit of the policy of the Government of Haryana dated 26.10.2007 (Annexure P-7) and the decision of this Court dated 28.04.2021 (Annexure P-8) given in LPA No.68 of 2008, titled as 'State of Haryana Vs. Kamlesh Rani', on which reliance has been placed by them.

11. Further, it has been specifically stated in the reply which has been filed to this writ petition that the possession of the land in question has already been taken vide Rapat No.72, dated 24.09.2010. It has also been stated that the total amount of the award of Rs.2,59,77,50,090/- was tendered and out of the same, an amount of Rs.1,69,27,40,159/- has already been disbursed and rest of the amount could not be disbursed as the concerned landowners are not coming forward to receive the same or are not tendering the documents regarding ownership etc. As per the award statement, total amount of compensation of the petitioners is Rs.1,34,63,885/-, which stands deposited and is still pending as the petitioners are not coming forward to receive the same and not tendering the requisite documents. The said amount would be disbursed to the petitioners immediately on their demand and submitting their documents.

12. 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.72, dated 24.09.2010, 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.

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.

14. It may also be added here that the petitioners themselves have admitted in para 5 of the writ petition that a Reference under Section 18 of 1894 Act has been filed by petitioners No.1 and 2 before the Competent Court for enhancement of compensation amount, which would not entitle them to release the land in question. 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 release of their land and therefore, the petitioners cannot be held eligible for claiming the said benefit.

15. Further, in the light of the judgments of the Hon'ble Supreme

Court in the cases of *Aflatoon* and *Northern Indian Glass Industries* (supra), the present petition is not maintainable as the impugned notifications under Sections 4 and 6 of the 1894 Act have never been challenged by the petitioners and the present petition has been filed after about 6 years of the finalization of the acquisition proceedings. The petitioners should have approached this Court immediately after the issuance of notification dated 25.09.2008 (Annexure P-2) under Section 6 when the land in question was recommended for acquisition. It appears to be the delaying tactics on the part of the petitioners to continue in illegal possession when the land stands vested in the Government free from all incumbrances and therefore, the writ petition is liable to be dismissed on the ground of delay and laches.

16. That apart, since the land in question affects the site of 12 meters wide service lane, which is essential for public purpose and thus, the same cannot be released as it would directly affect the planning.

17. In view of the above, we do not find any merit in the present writ petition 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