

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

(124)

**CWP No.15688 of 2023
Date of Decision: 22.08.2023**

Naresh Kumar Jain and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prithviraj Yadav, Advocate, for the petitioners.

Mr. Shivendra Swaroop, DAG, Haryana.

HARKESH MANUJA, J.(ORAL)

1. By way of present writ petition, prayer has been made for issuance of a writ in the nature of Certiorari for quashing of an order dated 07.07.2020 (Annexure P-13) passed by Assistant District Attorney with the approval of the Administrator, HSVP, Panchkula, Haryana, whereby, the claim made by the petitioners for award of compensation under proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “2013 Act”) has been declined.

2. Briefly stating, the land of the petitioners, situated in Village-Garhi Mundo, District Yamuna Nagar was sought to be acquired vide notification dated 28.01.2002 issued under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as “1894 Act”) followed by notification dated 23.01.2003 issued under Section 6 thereof. Award under Section 11 was announced on 20.01.2005.

3. Aggrieved thereof, the petitioners filed reference petition under Section 18 of the 1894 Act, wherein, enhancement was awarded in their

favour on 30.07.2009. Still aggrieved, petitioners filed Regular First Appeal No. 238 of 2014 which came to be allowed on 05.01.2015 and in pursuance thereof, compensation was released in favour of petitioners on 14.05.2015.

4. Much thereafter, on 20.01.2020, the petitioners submitted a representation to the Administrator HSVP for grant of compensation to them as per the proviso to Section 24(2) of the 2013 Act, claiming assessment of compensation under the 2013 Act. Facing inaction on the part of respondents, repeated representations asking for similar relief were submitted before the authorities. Subsequently, the claim of the petitioners was rejected vide order dated 07.07.2020 with the following observations:

“Therefore, the proviso that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act is applicable only in case where claim is made for lapse of acquisition under Section 24(2) of the 1894 Act. Therefore, your claim for higher compensation is completely misplaced. Thus, the entire claim made by you for higher compensation is based on gross misinterpretation and misconstruing of the judgment of the Hon’ble Supreme Court in Indore Development Case which has been done deliberately to raise an undue non maintainable claim.”

5. Despite rejection, the petitioners continued to submit representations to the authorities, praying for the same relief followed by submission of a petition under Section 64(1) of 2013 Act before the Land Acquisition Collector, HSVP, but the same was also declined vide order dated 05.01.2022. Impugning the order dated 05.01.2022, the petitioner invoked

writ jurisdiction of this Court by way of CWP No.8548 of 2022 with the following prayer:-

“It is therefore respectfully prayed that this Hon’ble Court may be pleased to:

*(i) Issue a writ of **Certiorari** setting aside the order bearing no.43 dated 05.01.2022 (Annexure P-5) passed by respondent no.3/Land Acquisition Collector vide which, the Application filed by petitioners under Section 64(1) of Right to Fair Compensation and transparency in Land Acquisition, rehabilitation and Resettlement Act, 2013; has been dismissed on merits, by observing is baseless; being illegal, without jurisdiction and contrary to the provisions of Section 64(1) of Right to Fair Compensation and transparency in Land Acquisition, rehabilitation and Resettlement Act, 2013; law settled by Hon’ble Supreme Court of India in Indore Development Authority versus Manoharlal and Ors., as well as by **Division Bench** Hon’ble Allahabad High Court in 2018(3) ALL WC 2776 Ayub Hasan and others Vs. State of UP. And others and;*

*(ii) Issue a writ in the nature of **Mandamus** for directing the respondents to refer the matter to the Authority Constituted under Section 51 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and;*

(iii) Issue any other appropriate writ, order of direction, which this Hon’ble Court deems fit and proper in the peculiar facts and circumstances of the present case;

(iv) Call the records of the case;

(v) Filing of the certified copies of Annexures be dispensed with;

(vi) Cost of the petition be allowed in favor of the Petitioners and against the respondents.”

26.04.2022 wherein the following order was passed:

“Anil Kshetarpal, J.

1. *The learned counsel representing the petitioners, after arguing for some time, prays for permission to withdraw the present writ petition with liberty to avail an alternative remedy.*

2. *Ordered accordingly.”*

7. Instead of availing any alternate remedy, the present writ petition has been filed with the following prayer :-

- i) *summon the entire record of the case:*
- ii) *issue a writ in the nature of **Certiorary** for quashing order dated 07.07.2020 (**Annexure P-13**) passed by the Assistant District Attorney with the approval of the Administrator, HSVP, Panchkula, Haryana, being illegal, arbitrary and contrary to the provisions contained in proviso to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as well as judgment of the Hon'ble Supreme Court in **Indore Development Authority Versus Manohar Lal and Ors.** Reported as 2020 (8) SCC 129 and consequently to grant higher compensation to the petitioners under proviso to Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 along with the same had become due:*
- iii) *issue any other writ, order or direction which this Hon'ble Court may deem proper in the facts and circumstances of the present case;*
- iv) *exempt the petitioners from filing certified and typed copies of Annexures and permit the petitioners to place on record photocopies of the same in place of typed copies in prescribed font and space:*
- v) *exempt the petitioners from serving advance notices upon*

the Respondents;

vi) *grant costs in favour of the petitioners.”*

8. Justifying the invocation of writ jurisdiction instead of availing any alternate remedy as prayed for in the present writ petition, learned counsel for the petitioners submits that at the time of filing first writ petition, the order dated 07.07.2020 was never impugned under the impression that the same was not passed by the competent authority though it was pleaded in the petition as a fact. In view of the aforesaid, he submits that withdrawal of the previous writ petition would not act as a bar for filing fresh writ petition impugning the said order. In support, he places reliance upon **“Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh”** reported as 1962 AIR (SC) 1334, **“Amar Singh v. Man Phool”** reported as 1991(1) PLR 645 and **“Nirmala v. Hari Singh”** reported as 2001(4) R.C.R.(Civil) 308, to contend that once the previous writ petition was not decided on merits, the procedural bar of Order (2) Rule 2 was not applicable qua entertaining of the present writ petition. He also pointed out that determination of compensation in favour of landowners on account of acquisition of their land stemming from Article 300A of the Constitution of India being a recurring cause of action, the withdrawal of the previous writ petition could not be treated as a bar for the purpose of filing fresh petition.

8 (i). On merits, learned counsel for the petitioners pointed out that the petitioners were entitled for grant of award of compensation under the provisions of 2013 Act and for the said purpose, he places reliance upon the decision of the Hon’ble Supreme Court in **Indore Development Authority Vs. Manoharlal and Ors. (2020) 8 SCC 129** as well as proviso to sub-Section 2 of Section 24 of the 2013 Act to contend that since the

compensation in respect of majority of land holdings against the present acquisition was not deposited in the account of beneficiaries, the petitioners/landowners besides all other beneficiaries were entitled for grant of compensation in accordance with the provisions of 2013 Act. Section 24(2) of the 2013 Act, which is material for consideration, is reproduced as under:

“Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

8 (ii). While referring to the averments made in the representation dated 12.03.2020 (Annexure P-11), learned counsel for the petitioners also submits that in the present acquisition as well, the majority of compensation was never deposited in the accounts of beneficiaries and thus, petitioners were entitled for the benefit of aforementioned proviso for assessment and release of compensation under 2013 Act. The relevant extract from the representation dated 12.03.2020 which has been relied upon by learned counsel for the petitioners is reproduced hereunder:-

“.....The entire amount of compensation under award of the majority of land holdings was not deposited in the account of beneficiaries, instead kept in revenue deposit. The non deposit of the amount in the account of beneficiary is evidence from the ‘copy of award’ as well as challan copy of award of Late Mahabir Prasad Jain (copy enclosed), showing the award compensation was received from Treasury.....”

9. I have heard learned counsel for the petitioners and gone through the paper-book. I am unable to find substance in the submissions made on behalf of petitioners, both on the issue of maintainability as well as on merits of their claim.

Discussion on merits of the Claim

10. The entire claim of the petitioners is based on proviso to sub-section (2) of Section 24 of 2013 Act. A meaningful reading thereof shows that in case land acquisition proceedings have been initiated under 1894 Act and an award has been made; but compensation in respect of majority of land holdings, if not deposited in the accounts of the beneficiaries they are entitled for compensation in accordance with 2013 Act. A conjoint reading of sub-section (2) to Section 24 alongwith the proviso further makes it clear that the beneficiaries would be entitled for award of compensation under 2013 Act, only in case of non-deposit of compensation in the account of beneficiaries in respect of majority of land holdings as on the date of commencement of 2013 Act i.e 01.01.2014 which fact has neither been pleaded; nor established on record by the petitioners.

11. The reliance placed upon by learned counsel for the petitioners on representation dated 12.03.2020 appears to be wholly misplaced, as the same merely points out the position immediately after passing of the award

under Section 11 of 1894 Act. At the cost of repetition, but with the purpose to make the facts clear, relevant portion is again reproduced hereunder:-

“Meeting the above referred conditions, we have to state as under :-

(1) Award under Section 11 of the Land Acquisition Act, 1894 has been made on 21.01.2005 (copy of Award enclosed).. The conditions of award should have been made 5 years or more prior to the commencement of RFCT Act, 2013 i.e. 01.01.2014, has been met.

(2) Copy of Haryana Government Gazette Extraordinary for Section 4 of the Land Acquisition Act, 1894 dated 28.01.2002 (copy attached) showing the majority of land holdings as 46.94 acres comprising of several land holdings under several Khasra nos, The award dated 20.01.2005 (copy attached) has been passed for 44.76 acres and the entire amount of the award was kept in revenue deposit. Kindly refer to the 'Mode of Payment' clause of the award stating the amount to be kept in revenue deposit.

The entire amount of compensation under award of the majority of land holdings was not deposited in the account of beneficiaries, instead kept in revenue deposit. The non deposit of the amount in the account of beneficiary is evident from the 'copy of award' as well as challan copy of award of Late Mahabir Prasad Jain (copy enclosed), showing the award compensation was received from Treasury.

From the above clarifications it is clear that :-

(1) Award under Section 11 of Land Acquisition Act, 1894 has been passed 5 years or more prior to RFCT Act, 2013 which became effective from 01.01.2014.

(2) Award compensation for majority of land holdings had been kept in revenue deposit instead of depositing in the account of beneficiaries.”

A bare reading of the extract reproduced hereinabove, which forms part of representation made by the petitioners, clearly shows that the said averments were made with respect to the deposit of compensation at the time of passing of the award under Section 11 of 1894 Act i.e. in the year 2005 only. No averments at all have been made in any of the representations that by the time when 2013 Act was made applicable (w.e.f. 01.01.2014), the compensation in respect of majority of land holdings had not been deposited in the accounts of beneficiaries of the acquisition proceedings commenced in 2002. Even no documentary or any other kind of proof has been brought on

record to substantiate the same even in the writ petition. In the absence thereof, the reliance placed upon proviso to Section 24(2) of 2013 Act is wholly misconceived and misplaced. A bare reading of the proviso shows that the landowner would be entitled for compensation under the provisions of 2013 Act, only in case the compensation in respect of majority of land holdings has not been deposited in the accounts of beneficiaries by the time, 2013 enactment came into force i.e. on 01.01.2014, while it is admitted position that on 13.05.2015, even the enhanced compensation as awarded in RFA 5083 of 2009 was deposited in the accounts of petitioners.

12. In the present case, the Award under Section 11 of the 1894 Act was passed on 20.01.2005 and thereafter, the Reference Court in exercise of powers under Section 18 thereof passed the Award on 30.07.2009 followed by determination of compensation by this Court in RFA No.238 of 2014 vide judgment dated 05.01.2015. Learned counsel for the petitioners has not been able to point out even a single document attached with the present writ petition either in the shape of the reference filed under Section 18 of the Act or the grounds of appeal filed under Section 54 of the 1894 Act, or even any representation so as to show that the compensation in respect of majority of land holdings pertaining to the present acquisition proceedings was not deposited in the accounts of beneficiaries. This plea was raised for the first time in representation dated 12.03.2020 i.e. after more than 5 years of the decision passed by this Court in the RFA No. 238 of 2014 on 05.01.2015 as an afterthought and almost 15 years of the passing of the Award by the Land Acquisition Collector on 20.01.2005 that too without any substantive or fundamental basis by merely making some bald averment without even mentioning foundational details in support.

13. While the petitioners have placed extensive reliance on ***Indore Development Authority's*** case (Supra), however, it appears that the findings of the Hon'ble Apex Court in sub-para 9 of concluding para 363 were lost sight of, which is reproduced as below:

"363. ****

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."

Detailed discussion for this finding is in para 242 which categorically holds that consequence of higher compensation as per proviso to Section 24(2) of 2013 Act would follow only if money has not been deposited with the Land Acquisition Collector or in the treasury or in Court with respect to majority of landholdings otherwise interest would follow as envisaged under Section 34 of Act of 1894. Relevant part of this para is reproduced below:

"242. The proviso to Section 24(2) of the Act of 2013, intends that the Collector would have sufficient funds to deposit it with respect to the majority of landholdings. In case compensation has not been paid or deposited with respect to majority of land holdings, all the beneficiaries are entitled for higher compensation. In case money has not been deposited with the Land Acquisition Collector or in the treasury or in court with respect to majority of landholdings, the consequence has to follow of higher compensation as per proviso to Section 24(2) of the Act of 2013. Even otherwise, if deposit in treasury is irregular, then the interest would follow as envisaged under Section 34 of Act of 1894. Section 24(2) is attracted if acquisition proceeding is not completed within 5 years after the pronouncement of award. Parliament considered the period of 5 years as reasonable time to complete the acquisition proceedings i.e., taking physical possession of the land and payment of compensation. It is the clear intent of the Act of 2013, that provision of Section 24(2) shall apply to the proceeding which is

*pending as on the date on which the Act of 2013, has been brought into force and it does not apply to the concluded proceedings. ***”*

14. More importantly, a Division Bench of this Court while deciding a bunch of petitions (lead case being **CWP No. 8878 of 2018 titled as Sehdev Singh and others v. State of Haryana and others**) on 11.11.2020, laid down to the following effect:-

“32. *****

(e) While reading the proviso to section be part of section 24(2) of the Act of 2013, the Hon'ble Supreme Court has clarified that in case, the offer for payment has been made but not deposited, liability to pay amount along with interest subsist and if not deposited for 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. Regarding the deposit, it has been clarified in para 242 of the judgment that for the higher compensation to follow, the money should not have been deposited with the Land Acquisition Collector or in the treasury or in the Court with respect to majority of land holdings, meaning thereby if it was deposited in any of the three modes with respect to majority of holdings, the higher compensation will not follow, but interest under section 34 of the Act of 1894 would be the consequence.”

A perusal of these findings categorically shows that claim of the petitioners is completely misconceived and based on misconstrued reading of law as well as **Indore Development Authority's** case (supra).

Discussion on the issue of maintainability

15. Moreover, by way of present writ petition, challenge has been laid to an order dated 07.07.2020 whereby, the aforementioned claim made at the instance of the petitioners before the authorities concerned was considered and declined on merits. Even after passing of the order dated 07.07.2020, the petitioners invoked the provisions of Section 64(1) of the 2013 Act for the

Acquisition Collector, HSVP, which was declined vide order dated 05.01.2022 referring to the previous order dated 07.07.2020 passed by Additional District Attorney. It may be pointed out here that previously the petitioners have assailed order dated 05.01.2022 by way of CWP No.8548 of 2022. The said petition came up for hearing before this Court on 26.04.2022 and the same was withdrawn with liberty to avail alternate remedies.

A conjoint reading of orders dated 07.07.2020 and 05.01.2022 show that the claim of the petitioners, based on proviso to Section 24(2) of the 2013 Act was rejected, initially on consideration of representation whereas, later on, rejection of petition under Section 64(1) of 2013 Act, but in any case the substance of both the orders was the same and therefore, a fresh writ petition could not be entertained merely on the ground that in previous writ petition, order dated 07.07.2020 was not challenged.

16. That apart, CWP No. 8548 of 2022 was withdrawn by the petitioners to avail alternate remedy, probably after finding that this Court was not willing to exercise its jurisdiction in favour of the petitioners, however, without availing any alternative remedy present writ petition has been filed, which in my considered opinion, is wholly uncalled for in the absence of any fresh cause of action to the petitioners. If no challenge to order dated 07.07.2020 was the only ground, then this infirmity would have been easily rectified by the petitioners by making a prayer for amending the previous petition; but no such course was adopted, which apparently shows that this ground has been taken only to bypass the order dated 26.04.2022 passed by this Court.

17. More than that, having withdrawn the previous writ petition in order to avail alternate remedies, the filing of present writ petition challenging

the order dated 07.07.2020 which substantially covers the relief declined vide order dated 05.01.2022 is a total misuse of the process of law. Argument raised by learned counsel for the petitioners that he has a recurring cause of action as right to seek compensation on account of acquisition of land stems from Article 300-A of the Constitution of India, does not hold much substance. With the deletion of Article 19(f) of the Constitution of India, the right to property has been removed from the chapter of fundamental rights and the same now remains only a constitutional right in the wake of Article 300-A of the Constitution of India, as per which no individual can be deprived of his property saved by authority of law. In the present case, the acquisition proceedings besides award of compensation or even the enhancement thereof, is regulated under the provisions of 1894 Act, which has duly been availed by the petitioners and even released in their favour and thus by any stretch of imagination, these facts cannot be termed to provide any recurring cause of action to the petitioners. When there are specific provisions in 1894 Act as well as in 2013 Act governing the time frame within which application for enhancement/redetermination can be made, learned counsel for the petitioners has not been able to point out any law to this Court, showing that the right to claim compensation, enhancement or redetermination vests recurring cause of action in favor of land owners. Situation may be different in a case of blatant violation of article 300-A of the Constitution of India, which no doubt is missing in this case.

18. In view of the discussion made hereinabove, having no merits in the present writ petition, the same is hereby dismissed.

19. This Court cannot be oblivious to the fact that the order dated 07.07.2020 was available at the time of filing of previous writ petition but the same was never challenged before this Court whereas, despite having

withdrawn the previous writ petition with liberty to avail alternate remedies, without availing the same, the present writ petition has been filed on the pretext of assailing the order dated 07.07.2020, thereby, consuming the valuable time of the court. Considering it to be an abuse of process of law, costs of Rs.50,000/- is imposed on the petitioner as arrears of land revenue by the authorities concerned for its onward deposit with the Director, PGIMER, Poor Patient Welfare Fund, Sector 12, Chandigarh. Matter be again put up on 30.11.2023 by the Registry, so as to ensure the compliance of this order unless modified / stayed/ set aside.

(HARKESH MANUJA)
JUDGE

22.08.2023
anil

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No