

CWP-26277-2016

-1-

121

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

**CWP-26277-2016 (O&M)
Date of Decision : 07.11.2023**

Rishi Pal and Another

....Petitioners

VERSUS

State of Haryana & Others

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. P.S.Khurana, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG Haryana.

SURESHWAR THAKUR, J. (Oral)

1. The petitioner had earlier instituted civil writ petition bearing No.23437 of 2014 before this Court whereby challenge was thrown to the notification made on 08.03.1989, thus, through invoking the provisions of Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act 1894') (Annexure P-1). Moreover, the award passed in pursuance thereof, was also sought to be set aside. In addition, the petitioners claimed relief, in terms of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act of 2013'), inasmuch as, the petitioners claimed the making of a declaration by this Court, thus, making the above launched acquisition proceedings to become lapsed.

2. This Court had decided the writ petition (supra) along with the other connected writ petitions. Since a prayer similar to the prayer (supra) was claimed

in the other connected writ petitions, therefore this Court proceeded to on 12.10.2020, upon, the said writ petition, thus make an order of dismissal thereon.

3. The above common verdict of dismissal, made upon the writ petitions (Supra) led the aggrieved to prefer SLPs before Hon'ble the Apex Court. The petitioners too, becoming aggrieved from the decision (supra) as became made by this Court, were led to institute SLP bearing No.2703 of 2021. On the said SLP, the Hon'ble Apex Court passed the hereinafter extracted order:-

“ We grant liberty to the petitioners to the limited extent of questioning the correctness of the finding of the High Court in reference to the report of Secretary-cum-Director General referred to above, and the effect thereof as regards the finding recorded by the High Court in paragraph 25 of the impugned judgment – that possession of the land was taken vide report No.544, dated 11.07.2001. That finding cannot be once again challenged before this Court even if the petitioners are granted liberty to file a review petition before the High Court and to approach this Court.”

4. A reading of the above extracted order reveals, that the Hon'ble Apex Court granted a limited liberty to the petitioners, inasmuch as, theirs becoming preserved with the right to challenge before this Court, the correctness of the finding, as became recorded in the verdict (supra), and, as occurs in paragraph 25 of the verdict (supra), whereby it was concluded that the possession of the acquired lands was taken vide Rapat No.544 dated 11.07.2001.

5. In consequence, this Court is led to make a fresh adjudication but to the extent (supra), upon, the instant writ petition.

6. Learned counsel for the petitioners has vehemently submitted before this Court, that the speaking made in rapat No. 544 dated 11.07.2001, qua thereto rapat possession viz-a-viz Khasra No.579 becoming assumed over the disputed lands, is ridden with a gross falsity and error. He further submits that, since the assessed compensation, though may have been deposited, before the Authority concerned, thus in terms of Section 31 of Act of 1894, but since the said deposited compensation has not been released viz-a-viz the petitioners, therefore one of the conditions mentioned in Section 24(2) of the Act, 2013, thus, relating to compensation becoming disbursed to the land losers concerned, rather remain unsatisfied. Consequently, he vehemently urges before this Court, that as such, the verdict as made by the Hon'ble Apex Court in **Indore Development Authority Versus Manoharlal and Others'**, thus requiring the Authority concerned, to adduce discharging evidence in respect of both rapat possession becoming assumed over the acquired land, and besides compensation as determined under the Act of 2013, thus by the Collector concerned rather being deposited, and, thereafter the same becoming available for becoming released to the land-loosers concerned, thus remaining not satisfied.

7. This Court is bound to revere mandate (supra) recorded by the learned Apex Court. However, it appears that the limited relief (supra) as became granted to the petitioners, was a result of a gross misprojection and misrepresentation made before the Hon'ble Apex Court. The reason(s) for making the above inference stems from the factum, that, a reading of Annexure P-4 reveals, that the petitioners had instituted CWP No.23437 of 2014, before this Court and thereon this Court had, on 17.11.2014 made, the hereinafter extracted order:-

“.....The land of the petitioners allegedly comprising a dairy and a residential house was acquired way back in the year 1990 vide notifications dated 08.03.1989 and 07.03.1990, Annexure P/1 and P/2, issued under Sections 4 and 6, writ petition has now been filed seeking compensation in accordance with the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which has come into force w.e.f 01.01.2014. The above-stated relief is sought on the premise that the petitioners are in continuing physical possession of the acquired land.

As it appears from the averments made in the writ petition, the claim put-forth by the petitioners rests upon a factual issue as to whether or not the petitioners are still in physical possession of the acquired land in the absence of any convincing documentary proof, it would not be expedient for this Court to accept or reject the petitioners' assertion. The most appropriate recourse to resolve this dilemma appears to be to direct the respondents to verify the petitioners' claim and, if found correct, to decide as to why they be not held entitled to the benefit of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013? The question whether physical possession of the entire land was taken by the authorities or the petitioners continue to retain the same without intervention by any Court, can also be effectively decided by the respondents on verification of the record.

We thus, dispose of this writ petition without expressing any views on merits, with a direction to respondents to treat this writ petition as representation-cum-claim petition on behalf of the petitioners and decide the same in accordance with law or in the light of the observations made herein-above, with a period of three months from the date of receiving a certified copy of this order.

Till the appropriate decision, is taken, demolition of dairy and residential house shall remain stayed. However, the authorities shall be at liberty to remove the encroachments from the subject land including unauthorized commercial activities.”

8. A reading of the above discloses that the Secretary-cum-Director General, Urban Estate, Haryana, has therein, thus ordered for rejection of the claim of the petitioners as became founded, upon the provisions of Section 24(2) of the Act, 2013.

9. However, even if the said Annexure becomes challenged in the instant writ petition, yet the order of remand as made by the Hon'ble Apex Court, may rather be a sequel of suppression of Annexure P-4, from the Hon'ble Court. In addition the argument as posed today before this Court, by the learned counsel for the petitioner, that the petitioners are still in physical possession of the acquired land and thereby are entitled to the making of the lapsing declaration by this Court, thus in terms of Section 24 (2) of the Act, is also not amenable for becoming accepted by this Court. The reason is trite and simple inasmuch as, in the verdict rendered by the Hon'ble Apex Court in Manohar Lal's case (supra), there is a clear, candid underlinings, that not physical possession, but only rapat possession of the acquired land, thus by Acquiring

CWP-26277-2016

-6-

Authority, is the *sine quo none* for whereby Acquiring Authority, becoming well equipped to make an argument, that thereby the land-loosers concerned, are not entitled to claim the makings of a lapsing declaration by this Court.

10. Furthermore since the Constitution Bench of the Hon'ble Apex Court while making a decision in the case (supra), has expounded, that the evident tendering of compensation or deposit of compensation in terms of Section 31 of the Act, 1894, before the Authority concerned, for thereafter its becoming available for taking disbursed to the land losers concerned, rather is a sufficient tender, of the assessed compensation amount. Therefore also the learned counsel for the petitioner cannot at all argue before this Court, since the petitioners have not received the compensation amount, thereby they are entitled to lapsing declaration being made by this Court.

11. In view of the above, we do not find any ground to interfere in the present writ petition and the same is accordingly, dismissed.

12. Pending application, if any, also stand disposed. Off.

(SURESHWAR THAKUR)
JUDGE

November 07, 2023
tripti/raman

(SUDEEPTI SHARMA)
JUDGE

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