

(2015) 10 P&H CK 0147

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 6924, 8220, 8221, 8257, 8444, 8842, 8845, 8923, 9088, 9245, 9483, 9647, 9688, 10458, 10561, 10951, 10973, 11075, 11102, 11112, 11151, 12662, 11083, 10037, 15962, 7559, 7567, 7331, 7577, 8106, 11067, 8334, 21104, 8746, 23832, 23834, 24089, 25789 o

Chattar Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24, 24(2)

Citation : (2015) 10 P&H CK 0147

Hon'ble Judges : Satish Kumar Mittal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Rupinder S. Khosla, Shailendra Jain, Kanwaljit Singh, Ashish Aggarwal, Sunil Chadha, Senior Advocates, K.S. Mamrat, Mannu Chaudhary, Kunal Dawar, Nonish Kumar, Advocates, Mohit Singh, Advocate for Manoj Bajaj, Advocate, K.S. Dadwal, Vandana Malhotra, S.S. Narula, Rajiv Joshi, R. Kartikeya, Rahul Bhargava, Ajay Pal Singh, P.K. Mutneja, Abhishek Yadav, Chandan Singh Rana, Anita Balyan, Namit Khurana, Advocates, Vinod Kumar, Advocate for Harkesh Manuja, Advocate, Sunita Punia, Ram Bilas Gupta, Jai Bhagwan, Shiv Kumar, N.C. Kinra, Advocates, for the Appellant; Lokesh Sinhal, Additional AG and Ajay Nara, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Harinder Singh Sidhu, J.—This judgment shall dispose of above 49 writ petitions, as the questions for consideration raised in all these petitions are similar.

2. The main contention of the petitioners in these petitions is that the proceedings for the acquisition of their land under the Land Acquisition Act, 1894 (hereafter referred to as "the L.A. Act") have lapsed in view of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "RFCT Act")

3. The claim is based on the premise either that they are in physical possession of the land or that compensation has not been paid to them and in some cases both conditions are said to exist.

4. For decision of all these cases, the illustrative facts are being taken from CWP No. 6924 of 2014.

5. The petitioners have sought quashing of the notifications dated 8.3.1989 and 7.3.1990 (Annexures P-3 and P-4) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (herein, for short "the Act"), as also the consequent Award dated 5.2.2002 (Annexure -5), whereby, their land has been acquired by the respondent - State of Haryana.

6. The petitioners are owners in possession of plots/houses situated in Khasra No. 16/10 & 16/11 measuring 15 Kanal 11 Marlas situated in village Kadipur, Tehsil and District Gurgaon. Respondent No. 1 - State of Haryana vide notification dated 8.3.1989 (Annexure P-2) issued under Section 4 of the Act followed by notification dated 7.3.1990 (Annexure P-3) under Section 6 of the Act acquired their land for the purpose of developing residential and commercial area Sectors 9, 9-A and 10 at Gurgaon under the Haryana Development Authority Act, 1977. The notifications were challenged by the petitioners by filing CWP No. 7876 of 1990 before this Court, which was dismissed along with a bunch of writ petitions vide order dated 25.7.2000 (Annexure P-4). Thereafter, respondent No. 2 - Land Acquisition Collector passed the award dated 5.2.2002 (Annexure P-5).

7. The sole contention raised on behalf of the petitioners is that they are in physical possession of the land and no compensation has been paid to them. In such circumstances, in view of provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein for short "the 2013 Act"), the notifications in question have lapsed.

8. The scope and interpretation of Section 24(2) of the RFCT Act has been considered by this Court in CWP No. 6652 of 2014 Sunita Sehrawat and ors v. State of Haryana decided on 29th May, 2015.

9. After a detailed reference to the case law, it was held that the acquisition proceedings lapse even if one of the contingencies mentioned in Section 24(2) exists, namely either physical possession of the land has not been taken or the compensation has not been paid. The Court also decided the question as to when can the compensation be said to not have been paid and when can it be said that physical possession of the land has not been taken.

10. In the said case, before starting to analyse the legal provisions the Ld. Bench observed as under:

"There are, we are informed, over a thousand similar petitions. We, however, decided to hear only three of them leaving it to the parties to obtain orders in the other petitions in accordance with the directions issued in this judgment. It was agreed before us that a finding on facts as to whether the proceedings have lapsed or not in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter called "the RFCT Act") ought not to be given in these writ petitions, but that, based on our finding on the various contentions, the authorities would decide each case on its own merits. To enable the authorities to do so the Government has set up High Level Committees by issuing a notification which we will refer to at the end. We have, therefore, decided the above petitions where the issues decided in this judgment arise. The parties may obtain appropriate orders from the other Benches as per the roster in accordance with this judgment."

11. In some of the present petitions, the Ld. Counsel for the petitioners have consented that their cases be referred to the Committees set up for the purpose with a direction to the Committee to look into the representations to be filed by the petitioners expeditiously within a time bound manner. The 18 petitions, where the Ld. Counsel have so consented are as under:

12. In the remaining petitions, the petitioners have reservations about their cases being referred to the Committees. Their objections are mainly the following:

"(i) The respondent- authorities in their written statements having admitted the factum of the compensation not having been paid or the possession not having been taken or both, a reference to the Committee is not necessary and the petitions are liable to be allowed straightaway on the basis of the admission.

(ii) Section 24(2) creates a deeming fiction in favour of the landowners that where one of the contingencies specified therein exists, the acquisition shall be deemed to have lapsed. Where a deeming fiction is created, a declaration from a competent court is mandatory to conclusively establish the rights of any party to the lis.

(iii) The notification constituting the Committees is illegal, is against the provisions of the 2013 Act read with the provisions of the 1894 Act as well as in the teeth of the principles of natural justice.

(iv) The Committees have been apparently constituted in pursuance of various orders of this Court vide which the petitioners have been directed to file representations before the appropriate authority within a specified time and the Authority shall grant an opportunity of hearing to the petitioner and pass speaking orders in accordance with law. The orders of the High Court cannot vest the Committees so constituted with any powers to pass any declaratory decree in favour of or against the landowners.

(v) The notification constituting the Committees does not lay down the relevant guidelines to be followed by the Committee while making recommendations/passing orders with regard to the rights of the landowners.

(vi) The members of the said Committees who are executive officers are not eligible and also not equipped in law to decide contentious issues of facts and return findings thereon.

(vii) The Draft Rules dated 14.10.2013 framed under the RFCT Act, have proposed the constitution of an independent Land Acquisition Rehabilitation and Resettlement Authority (LARR) for hearing of such disputes. In the absence of finalization of such disputes by the statutory authority under the Act, only the writ court can fill up the lacuna. No other authority has jurisdiction to do so, nor can such a jurisdiction be conferred upon it.

(viii) The composition of the Committee is detrimental to the protection of the rights and interests of the land owners.

(ix) The Hon"ble Court in Sunita Sehrawat's case has held that the said Committees are only for convenience and a party cannot be compelled to approach the same. The Court also observed that the decision of the Committee would not be binding on the landowners/persons interested in the land sought to be acquired. In view thereof sending the cases to the Committee would be a futile exercise and only result in waste of time."

13. We have minutely examined the aforesaid objections of the petitioners and are of the view that the apprehensions and objections raised by them regarding reference to the Committee are without merit.

14. In our view, these petitions need to be decided and disposed of in terms of the decision of the Division Bench of this Court in Sunita Sehrawat's case (supra)

15. The prefatory observations of the Division Bench have already been quoted above. The Division Bench noted the pendency of about a thousand petitions, wherein, similar issues had been raised. It decided to hear only three petitions leaving the parties to obtain orders in the other petitions in accordance with directions issued in that case. The petitioners in those cases agreed that the findings of facts as to whether the proceedings have lapsed or not in view of the Section 24(2) of the Act would be given by the Authorities in each case, in the light of the law laid down by the Court. It was also directed that the parties in the other cases may obtain appropriate orders from the other Benches as per roster in accordance with the judgment.

16. Regarding the issue of compensation having been paid or not, the Division Bench noted as under:

"34. It will be necessary, therefore, in each case to ascertain whether the compensation has been paid to the land-owners/persons interested or deposited in a Court or not. If it has not been paid at all or even if it has been deposited

only in the Government treasury and not in Court, it must be held that "the compensation has not been paid" within the meaning of that expression in Section 24(2) of the RFCT Act."

17. Regarding the issue of physical possession, the Court concluded as under:

"38. The position to our mind that even under Section 24(2) actual physical possession is contemplated is fortified by the language of Section 24(2). As Mr. Chopra, learned counsel appearing on behalf of petitioners in CWP No. 2126 of 2015 and Mr. Bali, learned counsel appearing on behalf of petitioners in CWP No. 6652 of 2014 rightly submitted, the legislature must be deemed to be aware of the law laid down by the Supreme Court. Section 24(2) is a legislative recognition of the pronouncements of the Supreme Court as is evident from the expression "physical possession" therein. The expression "physical possession" in Sub-section (2) makes it clear that mere formal possession is not sufficient. Actual physical possession is necessary to take the case out of the ambit of Section 24(2) of the RFCT Act. In other words, if "physical possession" of land has not been taken, the landowners/persons interested would be entitled to contend that the proceedings are deemed to have lapsed.

39. Having said that, it appears equally clear to us that there is no strait jacket formula for taking physical possession and accordingly for determining whether or not physical possession was taken. Whether actual physical possession has been taken or not would depend on the facts of each case. Whether actual physical possession has been taken or not cannot be evidenced only in a particular manner. Whether physical possession has been taken or not can be evidenced, proved and established in any manner permissible in law. It will be necessary to consider the entire evidence in each case to ascertain, as a matter of fact, whether physical possession has been taken or not. A single fact or some of the facts alone cannot determine the issue. A fact may be irrelevant in one case but may tilt the balance or even be determinative in another. We do not read the judgments to hold that the documentation and records such as a "rapat roznama" are irrelevant. They may not by themselves be determinative but they may when added to other facts and circumstances be relevant. This would be so even with respect to other Revenue records such as "rojnamcha vakyatis" and "sat bara utaras". However, physical possession it must be to take the case out of the ambit of Section 24(2) of the RFCT Act."

18. The Hon"ble Court further took note of the notifications constituting the High Level Panel/Zonal Committees to decide the representation of the petitioner and observed as under:

"51(A) As we mentioned earlier, the issues of fact, which arise in such cases including in the above writ petitions, are complex. While the question whether the compensation was paid or not may not admit of complexity, the issue as to whether possession was taken in accordance with the aforesaid principles or not is a different matter altogether. The question regarding possession which arises

in many cases, is bound to involve substantial consideration especially an analysis of the facts. We were informed that there are over a thousand petitions pending in this Court. We were invited to decide only these three petitions as Mr. Amar Vivek had stated, at the outset, that depending upon our decision in these cases, the Government would decide each of the cases on facts in accordance with the judgment subject of course to any challenge thereto. For this purpose, he had stated, the Government would devise a procedure. They have done so. During the course of the hearing, Mr. Amar Vivek tendered a letter dated 20.02.2015 addressed by the Director General, Urban Estates Department, Haryana, to the Advocate General, Haryana, intimating that the Government has decided to constitute a High Level Panel to decide the claims in view of Section 24(2) of the RFCT Act. The constitution of the proposed High Level Panel was also mentioned. The letter mentions the salient policy parameters to be followed by the Panel would be to adjudicate all the cases in a time-bound manner. The Panel would be competent to examine if the lands are to be released or reacquired or whether the government ought to renegotiate the compensation at enhanced rates to avoid release of land and the Panel would make its recommendations to the Government about urgent measures to be taken in such situations where the Panel feels that there is no other option but to release the land. The letter finally requests the Advocate General to request the Court to dispose of all the pending writ petitions seeking reliefs similar to those sought in the present writ petitions.

(B) At the time of pronouncement today, Ms. Palika Monga, learned Deputy Advocate General for the State of Haryana, tendered a notification dated 22nd May, 2015 of the Haryana Government. By this notification, the Governor of Haryana has notified a Zonal Committee for each of the five zones to decide the representations of the petitioners as well as of other land owners not only in these writ petitions but in other writ petitions as well who may not have approached the Court seeking lapse of acquisition proceedings in terms of Section 24(2) of the RFCT Act. Clause-3 of the Notification states that the recommendations sent by the Committee will be examined in the Urban Estates Department, after which the Department will submit its proposal to the Government for approval/orders and that the approval/orders received from the Government will be conveyed to the Zonal Administrator-cum-Additional Director, Urban Estates of the concerned zones, who will pass appropriate speaking orders accordingly.

The letter dated 20.02.2015 and the above notification only pertain to the acquisition proceedings initiated by the Department of Urban Estates, Haryana.

52. The High Level Panel is, of course, only for convenience. A party cannot be compelled to approach the High Level Panel. Obviously, the decision of the High Level Panel would not be binding at least on the land owners/persons interested in the land sought to be acquired."

19. The Court noted that though the issue of payment of compensation may not

involve much complexity, but the question whether physical possession has been taken or not is bound to involve substantial consideration especially an analysis of facts.

20. The Hon'ble Court also took note of the constitution of the Zonal Committees in respect of acquisition proceedings initiated by the Department or Urban Estates, Haryana and the manner in which their recommendations would be processed, initially in the Urban Estates Department, after which the department would sent its proposals to the Government for approval/orders. The approval/orders received from the Government would be conveyed to the Zonal Administrator-cum-Additional Director Urban Estates of the concerned zones, who would then pass appropriate speaking orders.

21. It needs to be emphasized that remitting the matter to the Committees is only for the purpose of deciding the questions of fact as to whether the compensation has been paid or the physical possession has been taken or not and consequently whether the claim under Section 24(2) of the RFCT Act, is made out or not. As noted by the Division Bench these facts are of considerable complexity and may involve leading of evidence in support of the claims.

22. In our considered view also, this is not a matter which may appropriately be decided merely on the basis of affidavits in writ proceedings as the petitioners who oppose reference to the Committees would urge.

23. The Committees would obviously be bound to make the above determination in the light of the principles as enunciated in the Division Bench judgment. The decision of the Committees would also be open to challenge at the hands of any aggrieved party.

24. The contention of the Ld. Counsel for the petitioners that no reference to the Committees is required in cases where there is admission in the written statement about either the compensation not having been paid or possession not having been taken or both, and in such cases the declaration regarding the acquisition proceedings having lapsed ought to be given by the Court also cannot be accepted. The question as to in what circumstances can the compensation be said to have not been paid or physical possession not been taken, has only now been settled by the Division Bench. It is not known whether the admission in the written statements have been made on a correct and proper appreciation of the legal and factual position. Now that the law on the subject has been settled, the Committees would be competent to arrive at a conclusion regarding the factual position after hearing the affected parties. This would not prejudice anybody.

25. The other objection that there is provision in the draft rules for constitution of The Land Acquisition, Rehabilitation and Resettlement Authority" which will also have the mandate to hear disputes relating to the payment of compensation and application of Section 24 of the 2013 Act, and hence the cases be not referred to the Committees is also without substance. It is not the case of the petitioners that such an authority with the mandate to decide issues regarding

applicability of Section 24(2) has been constituted and is functioning and hence reference to the committees bypassing the competent Statutory Authority is impermissible. Hence this objection need not detain us at present. If and when any such Authority is constituted, it would be open to the petitioners to raise the issue, as per law.

26. Accordingly, without expressing any opinion on the merits of the cases, these petitions are disposed of by granting liberty to the petitioners to file a detailed and comprehensive representation raising all the pleas as raised in the writ petitions before the appropriate authority. It is directed that in the event of a representation being filed by the petitioners within a period of two months from today, the same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of four months from the date of receipt of representation. The petitioners shall be entitled to lead any evidence to substantiate their claim before the concerned authority. Till the matter is decided by the said authority, status quo shall be maintained by the parties. It is, however, made clear that in case no such representation is filed within the stipulated period as noticed above, the interim order shall cease to operate, thereafter.