

(2021) 03 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4306 Of 2016, 720, 2397 Of 2018

Swadeshi Handloom

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 09-03-2021

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Land Acquisition Act 1894 — Section 4, 6

Citation : (2021) 03 P&H CK 0123

Hon'ble Judges : Karamjit Singh, J

Bench : Single Bench

Advocate : Jagdish Manchanda, Nishchal Chetanya Manchanda, Vikram Punia, Renu Gautam, Ankur Mittal

Final Decision : Dismissed

Judgement

Karamjit Singh, J

Case has been heard through video conferencing on account of COVID-19 Pandemic.

Aforesaid three writ petitions are taken up together for hearing in view of the fact that all three of them involve issue of lapsing of acquisition as per Provision of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter to be referred as 'Act of 2013').

Firstly, CWP-4306-2016 was filed thereafter CWP-720-2018 and CWP-2397-2018 were filed. The facts are being taken up in same seriatim:-

CWP-4306-2016

In this case, Notification under Section 4 of the Land Acquisition Act 1894 (hereinafter to be referred as 'Act of 1894') was issued on 10.5.1989, followed

by Notification under Section 6 of the Act of 1894 dated 9.5.1990 which culminated into Award dated 7.5.1992 regarding acquisition of land measuring 377.26 acres including the land of the petitioner. Challenge has been posed to the acquisition on the ground that the land/building in question was purchased by the petitioner in the year 1990 and the acquisition proceedings qua subject land/building stands

lapsed as the physical possession of the same is with the petitioner and the compensation has not been paid to it by the Land Acquisition Collector.

On notice of motion, short reply was filed on behalf of respondents No.1 and 4, contesting the claim of the petitioner with regard to lapsing of the acquisition.

The petitioner filed replication to the said short reply.

CWP-720-2018

In this case, Notification under Section 4 of the Act of 1894 was issued on 9.11.1992, followed by Notification under Section 6 of the Act of 1894 dated 6.11.1993 which culminated into Award dated 5.11.1995 regarding acquisition of land measuring 308.43 acres of land including the land of the petitioner. Challenge has been posed to the acquisition on the ground that the land/building in question was purchased by the petitioner vide sale deed dated 13.8.1999 and the acquisition proceedings qua subject land/building stands lapsed as the physical possession of the same is with the petitioner and the compensation has not been paid to him by the Land Acquisition Collector.

The writ petition is contested by the respondents.

CWP-2397-2018

The case of the petitioners is that land in question was acquired vide Notification under Section 4 of the Act of 1894 on dated 2.12.2002 followed by Notification under Section 6 of the Act of 1894 dated 5.11.2003, which culminated into Award dated 17.11.2005 regarding acquisition of land measuring 55 acres 7 kanal 11 marlas of land including the land of the petitioners. Challenge has been posed to the said acquisition on the ground that the land in question was owned by the petitioners and the acquisition proceedings qua subject land stands lapsed as the physical possession of the same is with the petitioners and the compensation has not been paid to them by the Land Acquisition Collector.

On notice of motion, written statement was filed by respondents No.1 to 3 contesting the claim of the petitioners with regard to the lapse of acquisition. Respondent No.4 also filed separate written statement on the same lines.

We have heard the learned counsel for the parties.

The counsel for the petitioner(s) while relying upon the judgments passed by the Hon'ble Supreme Court in Pune Municipal Corporation and another vs. Harkeshchand Misrimal Solanki and others (2014) 3 SCC 183 and Delhi

Development Authority vs. Sukhbir Singh and Others (2016) 16 SCC 258, submitted that though the petitioners are subsequent purchasers yet they are entitled to declaration that the land acquisition qua their land has lapsed under Section 24(2) of the Act of 2013. It was further submitted that the physical possession of the subject land was never taken over by the respondents.

In CWP-4306-2016, the counsel for the petitioner(s) further argued that the petitioner-Swadeshi Handloom is running its factory in the land in question since the time of its purchase. The construction was already existing at the spot when the said land was purchased. During the acquisition proceedings some of the constructed area was released by the authorities. Actually the major chunk of the acquired land has already been released from acquisition and the case of the petitioner(s) is covered by the judgment of Hon'ble Supreme Court in Union of India vs. Shiv Raj and Others 2014(6) SCC 564.

In CWP-720-2018 the counsel for the petitioner(s) submitted that the compensation of the acquired land has not been paid and even the possession of the subject land was not handed over to anyone by the land owner and as such acquisition has lapsed.

In CWP-2397-2018 the counsel for the petitioner(s) while referring to letter dated 21.6.2004 (Annexure P-1) written by the Superintendent of Police, Kaithal, submitted that the authorities had already taken decision to release the land of the petitioner(s) from acquisition.

On the other hand, the State counsel while relying upon the judgment passed by the Constitution Bench of Hon'ble Apex Court in Indore Development Authority vs. Manoharlal and others, 2020 AIR (SC) 1496, submitted that in all the three writ petitions there is no lapse of proceedings, as the compensation has already been paid to the land owners. The State counsel while placing reliance on Shiv Kumar and Another vs. Union of India and Others, 2019 AIR (SC) 5347, contended that the petitioner(s) who have purchased subject land after the publication of Notification under Section 4 of the Act of 1894, are having no right to question the acquisition on any ground. The State counsel while concluding his arguments prayed for dismissal of the writ petitions.

We have considered rival submissions addressed by counsel for the parties.

In CWP-4306-2016 the admitted case of the petitioner is that the subject land was purchased by it in 1990 whereas the Notification under Section 4 of the Act of 1894 was issued on 10.5.1989.

In CWP-720-2018 it is the plea of the petitioner himself that the subject land was purchased by him on 13.8.1999, whereas Notification under Section 4 of the Act of 1894 was issued on 9.11.1992.

In CWP-2397-2018 the date of Notification under Section 4 of the Act of 1894 was 2.12.2002. However, the date of purchase of land by the petitioner(s) is not available on the record. Copy of the judgment dated 15.12.2010 passed by the

Division Bench of this Court in CWP-941-2004 titled as Rajinder Kumar Shah and Others vs. State of Haryana was produced by the petitioner(s) and from the said judgment it is clear that the earlier CWP-976-2006 filed by the petitioner(s) was dismissed vide aforesaid judgment with observation that the petitioners (therein) had purchased the land after the issuance of Notification under Section 4 of the Act of 1894.

So it is evident that the petitioner(s) purchased the subject land after the issuance of respective Notifications under Section 4 of the Act of 1894, in all the three cases. In Shiv Kumar's case (supra) a 3-Judge Bench of the Hon'ble Supreme Court observed that the purchaser of land post-notification of acquisition cannot question the acquisition proceedings on any ground whatsoever and cannot claim the lapse of the acquisition proceedings in terms of Section 24(2) of the Act of 2013. The law in this regard has been reiterated by the Constitution Bench of the Hon'ble Supreme Court in Indore Development Authority's case (supra), wherein the decision rendered in Pune Municipal Corporation's case (supra) has been overruled.

In Indore Development Authority's case (supra), the Hon'ble Supreme Court further observed that in case possession has been taken, compensation has not been paid, then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then also there is no lapse.

In CWP-4306-2016, the respondents in their written statement have specifically stated that 72.83% of the total award amount has been disbursed while balance amount of `3,10,88,527/- is lying deposited, as the land owners had not come forward to receive the same.

CWP-720-2018 is with regard to lapsing of acquisition proceedings passed in Award dated 5.11.1995. The copy of the Award is available on the record as per which the possession of the land acquired has been taken over by the authorities, after offering the compensation.

In CWP-2397-2018 respondents No.1 to 3 in their written statement have specifically pleaded that the physical possession of the land in question was taken by the department vide Rapat Roznamcha No.592 dated 18.5.2011 and the award amount was deposited with the Land Acquisition Collector, Kaithal on 5.11.2005. The petitioner(s) cannot take advantage of letter Annexure P-1 written by Superintendent of Police, Kaithal recommending release of the land of petitioners Jai Parkash and Raj Kumar. In the said letter no reason was given by the aforesaid Police Officer regarding exclusion of the subject land of the petitioners. Also as per the written statement submitted by respondents No.1 to 3 the said recommendation was not considered by the State Government and Notification under Section 6 of the Act of 1894 was issued. The petitioners challenged the same by filing CWP-976-2006 but the same was dismissed vide supra judgment dated 15.12.2010.

In the light of the above discussion and the law settled by the Constitution Bench

of the Hon'ble Supreme Court in Indore Development Authority's case (supra), the petitioners having purchased the land in question after issuance of respective Notifications under Section 4 of the Act of 1984, these petitions deserve to be dismissed. Consequently, the petitions are hereby dismissed.

Photocopy of this order be placed on the files of connected petitions.