NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5754 OF 2019
(ARISING OUT OF SLP (CIVIL) NO.28807 OF 2018)

STATE OF HARYANA & ORS. ....APPELLANTS

VERSUS

SUNDER LAL ....RESPONDENT

J U D G M E N T

Arun Mishra, J.

1. Leave granted.

2. The question involved in the present matter is whether possession of land has been taken after passing of award on 21.7.2003 in land acquisition proceedings initiated vide Notification dated 24.8.2000 issued under Section 4 of the Land Acquisition Act, 1894 for acquisition of land measuring 189.93 acres for the development and utilisation of land for residential, commercial and institutional area in Sector 57 of Gurgaon *inter alia* at village Tigra. On the date of passing of award, according to appellants, possession had been obtained and handed over to the representative of Haryana Urban Development Authority (for short, 'HUDA') vide Rapat No.583. The compensation has admittedly been collected by the respondent vide cheque no.191045 dated 31.7.2003.

3. The respondent herein filed a writ petition in the year 2015 in the

High Court of Punjab & Haryana at Chandigarh. He has set up the case that he owned the land measuring two Kanal. The same was acquired by the issuance of Notification under Section 4 of the Land Acquisition Act, 1894 and the award was also passed. Compensation has been obtained. However, the acquisition has lapsed as per provisions contained in Section 24(2) of the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013'), as the possession has not been taken. He has constructed residential houses and shops.

4. The High Court by the impugned judgment and order has held that the two constructed rooms existed admeasuring 15'x12' and 18'x12' with boundary wall in Khasra No.16//23/1/2(2-0). Though the State has claimed that the possession had been taken, there is no proof that the respondent was physically dispossessed. The Act of 2013 has come into force on 1.1.2014. The State may, if needed, acquire the property again for a public purpose. The development has not been undertaken so far. Owners of such land/property are entitled to compensation under the Act of 2013. Direction has been issued to Land Acquisition Collector, Gurgaon to determine the total amount to be refunded by the respondent within one month. Aggrieved by the same, the appeal has been preferred by the State of Haryana.

5. Dr. Monika Gosain, learned counsel appearing for the appellants has submitted that possession had been taken. She has attracted the attention

of this Court to the Rapat dated 21.7.2003. She has further submitted that in several decisions, this Court has held that mode of taking possession is by way of drawing of *panchnama* on the spot. Admittedly, compensation has been paid to the respondent in the year 2003 itself. The acquisition has attained finality and encroachment made thereafter is not going to help the respondent.

6. Mr. Siddharth Mittal learned counsel appearing for the respondent has submitted that there were two rooms in existence, of which possession has not been taken following the law. Paper possession cannot tantamount to taking physical possession. The physical possession remains with the respondent. As such as mandated by the provisions contained in Section 24(2) of the Act of 2013, the acquisition has lapsed. He has further submitted that 'the Policy for Return of Un-utilized Land' has been framed under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2017 and notified on 14.9.2018, by the State Government. He has also submitted that on two sides of land in question in the case of similarly situated landowners, the State Government has already passed release orders on 30.10.2006 and 21.2.2014. The respondent cannot be discriminated with. He has also attracted the attention of this Court to the photographs (Annexure R-6) and the site plan (Annexure R-5).

7. The first question to be examined is whether possession had been taken over by the State Government and handed over to HUDA. Rapat of

possession dated 21.7.2003, clearly shows that possession of total 172.52 acres has been taken over in the presence of landowners and interested persons by offering compensation. The award was also announced, possession was taken by the Land Acquisition Collector, Urban Estates, Gurgaon by walking around the land and marking land using Kassi. Shri Om Prakash Kanungo, Representative of Estate Officer, Gurgaon was handed over the possession of the same and the possession was handed over to HUDA. A watchman was also posted to look after the land and the announcement was also made of taking_possession by beating drums. The *panchnama* was signed by the Land Acquisition Collector, Watchman, and the concerned *Patwari*.

8. The drawing of *panchnama* of taking over of possession is not disputed. However, it was submitted that since there were two rooms, possession could not have been taken over in the manner in which it is stated in the aforesaid *panchnama*.

9. It is a settled proposition of law that when the State acquires the large tract of land and draws the *panchnama* of taking possession, the same is enough for taking possession of the land. In the instant case not only the *panchnama* had been drawn, State has taken the possession by marking the land and a watchman was also posted to look after the land.

10. In *Balwant Narayan Bhagde v. M.D. Bhagwat,* (1976) 1 SCC 700, it has been opined that the act of Tahsildar in going to the spot and inspecting the land was sufficient to constitute a taking of possession.

Therefore, it was not open to withdraw the land acquired under Section 48(1) of the Act. The Court observed:

> "28. We agree with the conclusion reached by our brother Untwalia, J., as also with the reasoning on which the conclusion is based. But we are writing a separate judgment as we feel that the discussion in the judgment of our learned Brother Untwalia, J., in regard to delivery of 'symbolical' and 'actual' possession under Rules 35, 36, 95 and 96 of Order 21of the Code of Civil Procedure, is not necessary for the disposal of the present appeals and we do not wish to subscribe to what has been said by our learned Brother Untwalia, J., in that connection, nor do we wish to express our assent with the discussion of the various authorities made by him in his judgment. We think it is enough to state that when the Government proceeds to take possession of the land acquired by it under the Land Acquisition Act, 1894, it must take actual possession of the land since all interests in the land are sought to be acquired by it. There can be no question of taking 'symbolical' possession in the sense understood by judicial decisions under the Code of Civil Procedure. Nor would possession merely on paper be enough. What the Act contemplates as a necessary condition of vesting of the land in the Government is the taking of actual possession of the land. How such possession may be taken would depend on the nature of the land. Such possession would have to be taken as the nature of the land admits of. There can be no hard and fast rule laying down what act would be sufficient to constitute a taking of possession of land. We should not, therefore, be taken as laying down an absolute and inviolable rule that merely going on the spot and making a declaration by the beat of drum or otherwise would be sufficient to constitute a taking of possession of land in every case. But here, in our opinion, since the land was lying fallow and there was no crop on it at the material time, the act of the Tehsildar in going on the spot and inspecting the land for the purpose of determining what part was waste and arable and should, therefore, be taken possession of and determining its extent, was sufficient to constitute taking of possession. It appears that the appellant was not present when this was done by the Tehsildar, but the presence of the owner or the occupant of the land is not necessary to effectuate the taking of possession. It is also not strictly necessary as a matter of legal requirement that notice should be given to the owner or the occupant of the land that possession would be taken at a particular time, though it may be desirable where possible, to give such notice before possession is taken by the authorities, as that would eliminate the possibility of any fraudulent or collusive transaction of taking of mere paper possession, without the occupant or the owner ever coming to know of it."

11. In *Tamil Nadu Housing Board v. A. Viswam (Dead) by LRs.*, (1996) 8 SCC 259, this Court has held that recording of the memorandum by the Land Acquisition Officer (LAO) in the presence of witnesses signed by them would constitute taking possession of the land. The Court observed:

> "9. It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchnama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

12. In *Banda Development Authority, Banda v. Moti Lal Agarwal*, (2011) 5 SCC 394, this Court has held that if acquisition is of a large tract of land, it is not possible to take possession of each and every parcel of the land and it would be sufficient that symbolic possession is taken by preparing an appropriate document in the presence of independent witnesses and obtaining their signatures. The Court observed:

> "37. The principles which can be culled out from the above-noted judgments are:
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> (*i*) No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the acquired land.
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> (*ii*) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.
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> (*iii*) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the authority concerned will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land

> and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.
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> (*iv*) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.
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> (*v*) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3-A) and substantial portion of the acquired land has been utilised in furtherance of the particular public purpose, then the court may reasonably presume that possession of the acquired land has been taken."

13. The question also came for consideration in *State of T.N. v. Mahalakshmi Ammal,* (1996) 7 SCC 269, in which this Court observed that possession would be taken by drawing memorandum. The Court observed:

> "9. It is well-settled law that publication of the declaration under Section 6 gives conclusiveness to public purpose. Award was made on 26-9-1986 and for Survey No. 2/11 award was made on 31-8-1990. Possession having already been undertaken on 24-11-1981, it stands vested in the State under Section 16 of the Act free from all encumbrances and thereby the Government acquired absolute title to the land. The initial award having been made within two years under Section 11 of the Act, the fact that subsequent award was made on 31-8-1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this Court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11-A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made under Section 11 does not become invalid. Award is only an offer on behalf of the State. If compensation was accepted without protest, it binds such party but subject to Section 28-A. Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm. It would not be possible to take any

> physical possession. Therefore, subsequent continuation, if any, had by the erstwhile owner is only illegal or unlawful possession which does not bind the Government nor vested under Section 16 divested in the illegal occupant. Considered from this perspective, we hold that the High Court was not justified in interfering with the award."

14. In *Balmokand Khatri Educational and Industrial Trust, Amritsar v. State of Punjab,* (1996) 4 SCC 212, it has been observed that the normal rule of taking possession is drafting the *panchnama* in the presence of *panchas*. This Court observed:

> "4. It is seen that the entire gamut of the acquisition proceedings stood completed by 17-4-1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.
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> 5. Under these circumstances, merely because the appellant retained possession of the acquired land, the acquisition cannot be said to be bad in law. It is then contended by Shri Parekh that the appellant-Institution is running an educational institution and intends to establish a public school and that since other land was available, the Government would have acquired some other land leaving the acquired land for the appellant. In the counter-affidavit filed in the High Court, it was stated that apart from the acquired land, the appellant also owned 482 canals 19 marlas of land. Thereby, it is seen that the appellant is not disabled to proceed with the continuation of the educational institution which it seeks to establish. It is then contended that an opportunity may be given to the appellant to make a representation to the State Government. We find that it is not necessary for us to give any such liberty since acquisition process has already been completed."

15. In *P.K. Kalburqi v. State of Karnataka,* (2005) 12 SCC 489, this Court held that if the land was vacant and unoccupied, taking symbolical possession would be enough.

16. In *Sita Ram Bhandar Society, New Delhi v. Lieutenant Governor, Government of NCT, Delhi,* (2009) 10 SCC 501, it was observed that mode of taking possession is by way of drawing of *panchnama*. Similar view has been reiterated in *Omprakash Verma v. State of Andhra Pradesh,* (2010) 13 SCC 158.

17. In *M. Venkatesh v. Commissioner, Bangalore Development Authority,* (2015) 17 SCC 1, again it was reiterated that mode of taking possession is by drawing a *panchnama*. It is further held that the mode of taking possession adopted by BDA was permissible.

18. In *State of Madhya Pradesh v. Narmada Bachao Andolan,* (2011) 7 SCC 639, this Court held that it would depend upon the facts that of the individual case whether possession has been taken or not. We are of the considered opinion that possession has been taken as is apparent from the memorandum dated 21.7.2003 placed on record.

19. Learned counsel for the respondent has submitted that there were two rooms in existence admeasuring 15'x12' and 18'x12' with boundary wall. He has taken us to the site plan, in which, now 10 shops are shown, besides that there are three rooms, one kitchen, and *verandah*. Thus, most of these structures have been erected subsequently. Even if there were two outhouses in existence at the time of issuance of Notification under Section

4 of the Land Acquisition Act, 1894 in the shape of rooms admeasuring 15'x12' and 18'x12' and boundary wall, obviously it was not meant for the residential purposes, but meant for agricultural purposes. It appears that once possession had been taken after making a trespass upon the land, construction has been raised. Most of these structures were not in existence as per the finding recorded by the High Court. Thus, the site plan rather than espousing the cause of the respondent, defeats the same. Once possession had been taken and compensation has been admittedly collected by the respondent, it was not open for him to apply for de-notification of land under Section 48 of the Land Acquisition Act, 1894 or for its release.

20. The submission raised that land of two other incumbents has been released in 2006 and 2014, is of no avail. There is no concept of negative equality and the respondent cannot be permitted to take advantage of his wrong. The land had been acquired and thereafter respondent has trespassed upon the land and has raised construction, in completely illegal manner. He is not entitled to protect it. Based on such encroachment, he is not entitled to release of the land.

21. It cannot be said that land acquired is unutilised land, as a matter of fact, lot of development has taken place as there is encroachment made, as such, land could not have been utilised and by making unwarranted interference by the High Court, the acquisition was ordered to be quashed. We are of the opinion that the prayer made by the respondent to apply for releasing the land as per the Notification dated 14.9.2018, cannot be

entertained. The respondent cannot be given such a right as he has not come to the Court with clean hands. He is an encroacher and cannot be said to be entitled to any indulgence.

22. It is apparent that acquisition has attained finality, the award was passed, compensation was collected and possession was taken long back in the year 2003. Resultantly, we find the impugned judgment and order to be unsustainable, the same is hereby set aside. The appeal is allowed. No order as to costs.

.....J.
(Arun Mishra)

.....J.
(M.R. Shah)

July 22, 2019.
New Delhi;