In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6585 of 2022 (O&M)
Reserved on : 11.12.2023
Date of Decision: 22.12.2023

Sarmishtha Devi and others .....Petitioners

Versus

State of Haryana and others .....Respondents

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

Argued by: Mr. Chetan Mittal, Senior Advocate with
Mr. Sandeep Sharma, Advocate,
Mr. Rohit Johar, Advocate and
Ms. Gitanjali Sharma, Advocate for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate,
Mr. Shivam Garg, Advocate,
Mr. Jugam Arora, Advocate for HSVP.

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SURESHWAR THAKUR, J.

1. In the instant petition, the petitioners pray for issuance of directions to the respondents concerned, to release the petition lands, situated in village Kanhai, Tehsil and District Gurugram in view of policy dated 14.9.2018 (Annexure P-14).

2. In the present case, notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894') became issued on 20.4.1990 (Anneuxre P-1), and, the same became succeeded by a declaration made under Section 6 of the Act of 1894 on 18.4.1991 (Annexure P-2). In pursuance to the above made notifications, an award became pronounced on 23.3.1993 (Annexure P-3).

Submissions of the learned counsel for the petitioners

3. The learned senior counsel for the petitioners submits that the

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petitioners have constructed residential houses on the lands in dispute prior to the issuance of notification under Section 4 of the Act of 1894. He further submits, that the lands of the other similarly situated land owners were also released from acquisition after notification under Section 4 of the Act of 1894. He further submits, that the State of Haryana vide notification dated 24.5.2018, incorporated Section 101-A in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2013 (for short 'the Act of 2013'), thus for thereby de-notifying the acquired lands, therefore, it is prayed that in view of the amendment (supra), the acquired lands of the petitioners be released from acquisition.

Submissions of the learned State counsel

4. The learned State counsel submits, that the power under Section 101-A of the Act of 2013 can only be exercised, only in case where the Government is satisfied, that the public purpose for which the lands were acquired, has become unviable or non-essential. He further submits, that Section 101-A of the Act of 2013 does not give any right to the individual land owner concerned, to seek release of his acquired land. He further submits, that the land in question is essential for the public purpose, and, has been duly planned for the sector concerned. He also submits, that the constructed portion, as comprised in khasra No. 34//20 (0-5) and 19/1/2 (0-5) became released from acquisition proceedings, and, only the vacant land was acquired.

Analysis of the submissions made by the learned counsel for the petitioners as well as of the learned State counsel

5. Before analyzing the submissions made before this Court, by

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the learned counsels for the contesting litigants, it is deemed necessary to allude to the factum, that the earlier petition filed by the husband of petitioner No. 2, and, father of petitioners No. 1, 3, and 4, namely Ram Chander, raising therein the pleas of discrimination, and, lapsing declaration under Section 24(2) of the Act of 2013, became dismissed by this Court, through an order made thereons, on 17.11.2020. Therefore, thereby the present petition is barred by the norm of constructive *res judicata*.

6. Significantly, thereby since the acquired lands are an integral component of the lay-out plan, as it affects the planning of one group housing site, Ashiana Scheme site, plots of various categories, internal road, and, park site, and, thus thereby when they became ably acquired for the requisite public purpose. Consequently, the said layout plan cannot be tinkered with by this Court, nor the land losers concerned, become entitled to claim releases of the acquired lands.

7. Even otherwise, this Court while dealing with the claims for releases of the lands, being made in terms of the amended provision (supra), has, in a judgment rendered in a case bearing ***CWP No. 12423 of 2023*** titled ***Anil Suri and another versus State of Haryana and others***, thus made the hereinafter expostulations of law, which occur in paragraphs 72 to 81 thereof, paras whereof become extracted hereinafter.

> *"72. Moreover, this Court in* ***CWP-15174-2023,*** *titled as* ***"The Press Employees and Friends Co-operative Group Housing Society Ltd. V/s State of Haryana and others", decided on 19.07.2023,*** *made the hereinafter extracted observations:-*
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> > *"29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of*

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Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become "unviable" and "non-essential" for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to de-notify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest."

73. In view of the above alluded settled legal proposition, since in the present writ petitions also, the acquisition proceedings stood lawfully terminated, as elaborated hereinabove, therefore, since Section 101-A of the Act of 2013, which is only an enabling clause for the State Government/acquiring authority to de-notify the acquired land, but only if it becomes "unviable" and "non-essential" for any efficacious public purpose, thereby the said statutory provision does not endow any right in the erstwhile landowners to either challenge the validity of already lawfully concluded acquisition proceedings, or, to seek release of their acquired lands, on mere oral assertions, without bringing any cogent material on record.

74. The power to de-notify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients thereins, i.e. the acquired lands becoming "unviable" and "non-essential" for any public purpose, rather are satisfactorily fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands evidently fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form an objective opinion, while taking into consideration the larger public interest.

75. Conspicuously, in the formation of the said objective opinion,

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only the executive has the prerogative to take, or, to form the said objective opinion and the landlooser(s) concerned cannot dictate the manner of making of such objective opinion(s), nor can thrust his standpoint, vis-a-vis, the executive, in the latter taking a view, that the benefits of said statutory ingredients are to be compulsorily assigned to the landlooser(s) concerned. The reason being, that the landlooser(s) concerned has an individualistic interest in his seeking exemption of his acquired lands, whereas, the executive in his making objective contemplations about the meteing of benefits thereof to the landlooser(s) concerned, or, not meteing benefits thereof to the landlooser(s) concerned, thus is required to be bearing in mind the larger public interest. Therefore, in the manner(s) of making of objective contemplations, vis-a-vis, meteings or assignments of benefits of the said statutory conditions, to the landlooser(s) concerned, the imperative factor may be the inclusion of the disputed lands in the layout plans concerned. If so, the inclusion of the disputed lands in the layout plans renders them to be working towards a public purpose, and/or, thereby the disputed lands become an insegregable component of an imperative public purpose. Therefore, when even otherwise, this Court is barred in the exercise of its writ jurisdiction, to review or to re-examine the formulation of layout plans, thus by the engineering cell of the acquiring authority concerned. Resultantly, reverence is to be meted to the layout plans concerned, which includes thereins the disputed lands. In sequel, the release(s) of acquired lands, but on the above statutory conditions, thus may be barred to be claimed by the landlooser(s) concerned.

76. In making the above inference, this Court finds support from the replies respectively furnished to the writ petitions, wherein, it has been categorically stated, that the acquired lands are essential for facilitating the public purpose(s), as carried in the respectively drawn Final Development Plans concerned. Therefore, when the acquired lands are an insegregable component of emergent public purposes and are also but required for developmental activities, thereby their release would prejudicially affect the relevant public purposes. Therefore, for ensuring that the relevant public purposes are not impeded, thus predominance is to be assigned to public interest, than to the individualistic interest of the erstwhile

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landowners concerned.

77. Nonetheless, it is also no more res integra that if after utilization of the acquired land for the relevant public purpose, rather some lands, yet remain unutilized, thereby they need not be returned to the original landowner, rather they can either be utilized for any other public purpose or it can be sold by way of public auction, so as to achieve the larger public interest. Gainful reference in this regard can be placed upon case titled ***"State of Kerala v. M. Bhaskaran Pillai", AIR 1997 SC 2703,*** *wherein, the Hon'ble Supreme Court has held as under:-*

> *"...3. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges: Whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting higher value....."*

78. Also, the provisions of Section 101-A does not vest any discretionary power in the State Government for de-notification of the lands, which remained unutilized for a long span, rather the only permissible ground for de-notification is "unviability" or "non-essentiality" of the acquired lands for being put to any efficacious public purpose.

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79. Therefore, but obviously, non-utilization(s) of the acquired lands for a prolonged duration of time does not thereby render them to be "unviable" or "non-essential" for the requisite public purpose. The reason being, that public purpose is the cornerstone for acquisition(s) of the disputed lands, and, rather on retention of the acquired lands, than making release(s) thereof to the landlooser(s) concerned, thus the public purpose rather would still remain intact or alive. In consequence, the ever alive public purpose is required to be effectively galvanized. The above would happen only on retention of the acquired lands, than their release(s) or exemption(s) being meted to the landlooser(s) concerned, but, irrespective of the fact, that the disputed lands remain unutilized for an inordinately long spell of time.

80. In the non-purveying of enablements, vis-a-vis, the landlooser(s) concerned qua the beneficent grace of the above statutory conditions of "unviability" or "non-essentiality", thus would be construed to be well exercised, rather by the executive, only upon evident occurrence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable. Therefore, to the considered mind of this Court, the limits or the domains, besides the functionality of the above statutory conditions, is thus, within the realm of evident emergence(s) of vis major or upon exorbitant and excessive sums of compensation monies, becoming determined by the statutory authority, thereby making the relevant project to be financially unviable.

81. The hereinabove elaborately assigned reasons are ample for rejecting the principal argument of the learned counsel(s) for the petitioner(s), which generates from Section 101-A of the Act of 2013, as well as, the policy dated 14.09.2018. "

8. Therefore, in terms of the above made expostulations of law, thereby the claim for releases from acquisition(s) of the acquired lands, as made by the petitioners, thus in terms of the amendment (supra), but naturally cannot be validated by this Court.

9. Furthermore, paragraphs 87 to 93 of the judgment (supra),

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which become extracted hereinafter, do also lead, to an irresistible conclusion, that in terms of the therein made expostulations of law, that thereby the writ claims are amenable for becoming declined to the petitioners.

> *"87. The import of the verdict of the Hon'ble Supreme Court, as rendered in the case of* ***"Indore Development Authority v. Manoharlal" (supra)****, is that, upon the twin statutory conditions embodied therein, inasmuch as, (a) the necessity of tendering of compensation for its becoming claimed for being released to the landowners concerned; (b) the assumption of possession being evidently assumed by the acquiring authority, thus through the drawing of a Rapat Roznamcha, thus becoming fulfilled, as has happened in the instant case(s), thereby the petitioners become disentitled to claim lapsing of the earlier drawn acquisition proceedings under the Act of 1894.*
>
> *88. Consequently, the provisions of Section 101-A, which have been introduced in the Act of 2013, through Haryana Act No.21 of 2018, thereby they prima facie cannot undo the effect of the above wants of declaration(s) being made, vis-a-vis, the landlooser(s) concerned, as thereby there would be an unwanted conflict inter se the non-makings of declaration(s), vis-a-vis, the lapsing of the earlier drawn acquisition proceedings under the Act of 1894, and, the provisions (supra). Necessarily, the above inter se conflict is to be avoided. Therefore also, the parameters of "unviability" or "non-essentiality" require theirs being aligned with the rendition of affirmative discharging evidence by the acquiring authority, thus in satiation of the twin statutory parameters (supra), whereby, the claim for lapsing of the earlier launched proceedings under the Act of 1894, thus is required to be negated.*
>
> *89. Therefore too, unless the above alluded to evidence, vis-a-vis, evident vis major erupting, and/or, evident exorbitant and excessive sums of compensation monies being determined by the statutory authority, thereby making the acquired lands respectively "unutilizable", and/or, "unviabile" or "non-essential", for theirs being retained for the apposite public purpose, thereupon, their releases from acquisition, rather would undo, the public purpose, which is paramount for nation building, and, for the economic growth of the country. Significantly, then paramountcy is to be assigned to public purpose, than to individualistic interest of landlooser(s) concerned, and thereby also, the landlooser(s) concerned cannot, at this belated stage, claim the benefit of the mandate comprised in Section 101-A of the Act of 2013, and that too, pointedly on the ground of the lands remaining unutilized for a long spell of time, especially when the above factum of non-utilization of the acquired lands for a long duration of time has been dealt with earlier to be not the relevant factor for making release(s),*

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or, exemption(s) of the acquired lands from acquisition.

90. The paramount effect of the above, is that, but restrictive interpretation(s) are to be assigned, thus on harmonizing the provisions of Section 24(2) of the Act of 2013 with the provisions, as occur in Section 101-A of the Act of 2013. Consequently, thereby the public purpose which the acquired lands would subserve upon their acquisitions being made, through the exercisings of the power of eminent domain, thus cannot be whittled down, merely on capricious exercise of powers (supra) vested in the executive, as thereby the economic growth of the country, as would become ensured through public purpose(s) becoming subserved, rather would become forestalled. Necessarily, nation building, which is more important than individualistic building, becomes the cornerstone for retention of the acquired lands.

91. Irrespective of the above, the claim(s) of the petitioner(s) is stained with the gross pervasive vice of delay and laches, as the relevant acquisition proceedings, as elaborated hereinabove, were evidently legally terminated prior to the institution of the present writ petitions. The present writ petitions are aimed at reviving stale and time barred claims. However, it is not more res integra that a person who raises his claim after a considerable delay, has to be told that such delay and laches estop him to knock at the doors of the courts of law.

92. To the above formed inference, ample corroboration is lent by the Hon'ble Apex Court, as in a judgment rendered in case titled ***"Star Wire (India) Ltd. V/s State of Haryana and others", reported in (1996) 11 SCC 698,*** *Hon'ble Apex Court has declared that any belated challenge, as made to the lawfully terminated acquisition proceedings, is hit by the vice of delay and laches, therefore, the said belated motion is required to be declared as misconstituted.*

Expanse of the doctrine of eminent domain

93. Be that as it may, the doctrine of eminent domain has a very wide and expansive scope, and, is restricted only when no just and fair compensation becomes assessed, vis-a-vis, the acquired lands. Therefore, any other fetter or restriction on the exercisings of powers of eminent domain, as may become employed, through release(s) of acquired lands being made, excepting upon the above parameters, thus regulating the exercise of the executive jurisdiction, as invested under Section 101-A of the Act of 2013, rather would pause economic growth and nation building. The above is required to be avoided, as the nation is paramount, or, is supreme than any individualistic interests. Therefore too, the individualistic interests are to succumb to the supreme interest of the nation, which is but its economic prosperity becoming ensured through public purpose being subserved, through well made acquisitions of lands of private landowners."

10. Though, the learned counsel for the petitioner submits, that the judgments made by this Court in CWP-12425-2023, CWP-12379-2021,

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CWP-23371-2021, CWP-8881-1989, CWP-12432-2023, CWP-7573-2023, CWP-9666-2023, CWP-11295-2023, CWP-834-1992, CWP-14077-1992 and CWP-11383-2023 have resulted in SLP(C) Nos. 25603-2023, 24787-2023, 25276-2023, 25426-2023, 25274-2023, 25038-2023, 20841-2023, 32520-2023, 22771-2023, 22589-22590/2023 and 23936-2023, become filed before the Hon'ble Apex Court. Therefore, the expostulations of law, as made thereins, are now inapplicable to the instant case. However, a reading of the interim orders, as made thereons, does not disclose, that excepting the Hon'ble Apex Court, in one or the other matters ordering for status quo, being granted in respect of the disputed lands, that the operation of the verdicts made by this Court, rather becoming stayed. Therefore, uptil the verdicts made by this Court earlier, upon the writ petitions (supra) become annulled or set aside by the Hon'ble Apex Court, thus thereupto, this Court would even in the instant writ petition, thus follow the expostulation of law, as made in *Anil Suri*'s case (supra).

11. Moreover, the claim made by the petitioners, in respect of making of a lapsing declaration, thus in terms of Section 24(2) of the Act of 2013, rather is also declined. The reason for making the above inference becomes sparked from the factum, that through rapat bearing No. 425 of 23.3.1993, thus possession of the acquired lands becoming assumed, by the acquiring authority concerned, and, the assessed compensation amount becoming also received by the petitioners except for the land falling in khasra No. 34//29(0-18) and 30(0-8). Therefore, when both events (supra) evidently occurred prior to the coming into force of the Act of 2013. Resultantly, the petitioners cannot become well entitled to claim a lapsing declaration, in terms of the verdict drawn by the Constitutional Bench of the Hon'ble Apex Court in ***Indore Development Authority versus Manohar Lal***

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and others, reported in (2020) 8 SCC 129.

12. Moreover, the averment as to the respondent practicing invidious discrimination(s), vis-a-vis the petitioner(s) herein, though also makes allusions to specific instances of discrimination(s) vis-a-vis the land losers concerned. However, since this Court for reasons (supra) has made a firm conclusion that the acquired lands are an integral component of the layout plans. Thus, the said conclusion also ousts the land-losers concerned to claim parity with other purportedly similarly situated estate holders concerned qua whom release(s) were made, but on the premise that their released lands were not an integral component of the layout plans. Thus, the argument (supra) is merit-less, and, is rejected.

Final order

13. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

14. Accordingly, the instant petition is dismissed.

15. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 22, 2023
Gurpreet

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

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