

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 11445 of 2008 (O&M)

Reserved on : 07.12.2023

Date of Decision: 16.12.2023

Ghasitu Ram (since deceased) through LRs.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Argued by: Mr. Shreenath A. Khemka, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioner prays for the quashing of the notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), which become embodied respectively in Annexures P-3 and P-5. The said notifications became respectively issued on 11.11.2002, and, on 7.11.2003. Furthermore, the award pronounced in pursuance thereof, is also espoused to be quashed, and, set aside.

2. The writ petitioner (supra) along with others, earlier filed the instant petition along with other connected writ petitions before this Court, which became decided on 27.10.2016, whereby this Court, in terms of a decision rendered by the Hon'ble Apex Court in ***Pune Municipal Corporation and another versus Harakchand Misirimal Solanki and others, (2014) 3 SCC***, in its operative part, thus made the hereinafter

extracted decision, thus declaring the acquisition proceedings launched under the Act of 1894, to become lapsed.

“(73) Having held so, we are further of the view that since Section 24(2) of 2013 Act itself in so many words contemplates the possibility of reacquisition of the land/property in respect whereof the previous acquisition has lapsed, it is necessary to direct the petitioners to maintain status quo re:creation of third party rights; to keep the land/property free from all types of encumbrances and not to change the nature of land/property for a period of one year so that meanwhile the respondent-State may, if such property is needed for a “public purpose”, again acquire it. Such a direction is necessitated also for the reason that in numerous cases State or its agencies have taken possession in part and development works have been executed except over that land/property in litigation. Those development works ought to be completed in public interest and the only consequence of lapsing of previous acquisition, mostly due to fault of the Government Officers/Officials, would be that the owners of such land/property will be entitled to compensation and other benefits admissible under the 2013 Act.

3. The aggrieved therefrom, State of Haryana preferred Civil Appeal No. 2839 of 2022 before the Hon’ble Apex Court. Through a decision rendered thereons, on 08.4.2022, the Hon’ble Apex Court, after quashing the judgment (supra), as became rendered by this Court, remanded the writ petitions to this Court for making a decision thereons, thus in terms of expostulations of law, made by the Constitutional Bench of the Hon’ble Apex Court in ***Indore Development Authority versus Manohar Lal and others, reported in (2020) 8 SCC 129***. Furthermore, it was also stated therein, that all the contentions available to both sides are left open to become addressed by them, before this Court.

4. Therefore, not only a decision is required to be made on the lis, in respect of availability to the petitioner of the expostulation of law, as made by the Constitutional Bench of the Hon'ble Apex Court in *Indore Development Authority's* case (supra), but also when liberty is assigned to the petitioner herein to address all other contentions. Resultantly, the other contentions, if any, which the learned counsel for the petitioner strives, to espouse on the plank of the judgment (supra), are thus available to become addressed before this Court.

5. However, at the outset, the learned counsel for the petitioner has fairly submitted, that he would be abandoning his plea relating to the petitioner's claim for a lapsing declaration, being made, thus in terms of expostulations of law, made by the Hon'ble Apex Court in *Indore Development Authority's* case (supra).

6. Nonetheless, the learned counsel for the petitioner has vehemently argued, that yet the petitioner is entitled to the claimed exemption or of releases of the acquired lands, thus on the premise, that the petitioner had constructed a dwelling unit, and, is residing therein, for about 25 years, and, as such in terms of Para 1(a) of the State Policy (Annexure P-8), the said dwelling unit is required to be exempted or released from acquisition. He further submits, that when in respect of the lands of identically situated co-sharers, releases have been made but post the making of an award, thus on 30.1.2008, therefore, at par with such estate holders concerned, the petitioner also becomes entitled to the writ properties becoming released from exemptions from acquisitions.

Reasons for declining the above relief to the petitioner

7. The initially made contention before this Court, is that, in terms of the relevant policy, rather creating a leverage in the land losers concerned, to claim release of their dwelling unit(s), thus thereby the petitioner becomes entitled to claim, thus releases of the writ property, yet the above contention is rudderless.

8. The reason for making the above inference, becomes sparked from the factum, that in an affidavit sworn by the successor-in-interest of the petitioner, he has in paragraph 4 thereof, admitted that despite the rapat possession over the writ lands, becoming assumed by the acquiring authority on 28.10.2005, yet the petitioner continuing to retain the possession of the acquired land, through his establishing thereons a dhaba. If so, besides when the said admission qua the petitioner establishing a dhaba on the acquired land, is supported by a submission addressed before this Court by the learned Additional Advocate General, on instructions, imparted to him by the officer concerned. Therefore, the said established dhaba on the acquired land, is but not a dwelling unit, nor in terms of the relevant policy, if any, if it yet has any force, thus the petitioner can be assigned any benefit thereof.

9. Further, it has been revealed in the reply on affidavit, furnished to the instant petitioner, by the respondents concerned, that compensation, as became determined, became deposited in terms of Section 31 of the Act of 1894, before the Collector concerned, for the same becoming available for being released to the land losers concerned. Moreover, when it has also been categorically spelt in the reply on affidavit, that post the making of the award by the Collector concerned, the present petitioner filed a petition seeking enhancement of compensation, as became earlier determined, thus

before the learned Reference Court, and, that the said petition becoming

decided on 30.5.2009. Therefore, the institution of reference petition (*supra*) by the petitioner, whereby he sought enhancement of compensation, in sums higher than the one as became assessed qua him, by the learned Collector concerned, but tantamounts to the petitioner acquiescing to the validity of the award, as became made by the Collector concerned, thereby he becomes estopped to lay a challenge to the launched acquisition proceedings under the Act of 1894.

10. The further sequel of rapat possession becoming assumed viz-a-viz the acquired land(s), and, that too much prior to the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'), besides when compensation, did also become deposited in terms of Section 31 of the Act of 1894 before the Collector concerned, for thereafter it becoming amenable for becoming released to the land losers concerned, is that, thereby complete vestment of right, title and interest in the acquiring authority, did thus evidently occur. The further concomitant effect thereof, is that, thereby any retention of possession of the acquired land(s), thus by the petitioner is completely unlawful, and/or that, such retention of possession by the petitioner rather is in the untenable capacity of his being a trespasser thereon, nor thereby the petitioner can well claim that he is entitled to, at this belated stage, rather claim releases, if any, from acquisitions of his acquired land(s). Contrarily, the acquired property, but free from all encumbrances, is required to be forthwith delivered by the petitioner to the acquiring authority concerned.

11. The learned counsel for the petitioner, has also argued, that since post the making of the award, some releases were made viz-a-viz the co-owners concerned, and, that thereby the respondents concerned, has

practiced invidious discrimination viz-a-viz the present petitioner, as emanates from yet his claim for exemption or release from acquisition of his acquired property, rather not being well considered. However, the above argument is also lacking in tenacity, and, is required to be dismissed. The reason for making the above conclusion, emanates from a reading of reply on affidavit, furnished to the petition, by the respondents concerned, wherein, it is stated, that the purportedly similarly situated to the present petitioner, thus co-owners, rather became assigned the benefit of their lands, being released from acquisition, thus on the premise, that the said released land being used for social, and, religious purposes, as a samadhi of his/their ancestor(s) existing thereons, whereas, the petitioner's land was then found lying vacant. If so, the said releases on the above grounds, being made to the land losers concerned, if are on similar grounds, as claimed by the petitioner, which grounds similar to the successful grounds raised by the co-owners concerned, but evidently are not raised by the present petitioner. Contrarily, the releases, of his acquired property, as claimed by the petitioner, thus is rested on the ground, that he raised a dwelling unit thereons, ground whereof too, for reasons (supra), is a mis-projected or a false reason, thus his claim for parity with the releases, as made qua one Ved Pal, and, one Bharat Singh, but is completely pretextual, nor the said claim can be accepted by this Court.

12. Be that as it may, it is candidly projected in the reply, on affidavit, furnished to the instant petition, by the respondents concerned, that the writ lands, became acquired for the development, and, utilization of Transport Nagar, Sector-33, Kurukshetra. Moreover, it is also projected therein, that the retention of the acquired land(s) by the present petitioner,

affects the planning of 100 meter wide green belt, and, as such when it is an

integral part of the planning sector. Resultantly, thereby the claimed releases of the acquired land(s), thus are completely impermissible.

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 16th, 2023
Gurpreet

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