

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-11945-2008 (O&M)

Reserved on: 03.10.2023

Date of decision : 09.10.2023

SMT. MIRDULA JOSHI

-PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Babbar Bhan, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana and
Ms. Kushaldeep Kaur, Advocate.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate
for the respondent(s)-HSVP.

Mr. Divanshu Jain, Advocate and
Mr. Prateek Sodhi, Advocate
for the applicants.

Mr. Sanjeev Sharma, Advocate
for the respondent No.5.

SURESHWAR THAKUR, J.

1. The petition lands became acquired for their development and utilization as residential, commercial and institutional Sector 1, 2, 3, 5B, 5C and 6 for Panchkula Extension (Mansa Devi Complex).

2. The acquisition proceedings became launched through issuance of a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), thus on 16.03.1999. The said notification became succeeded by a declaration, under Section 6 of the Act of

1894, becoming issued on 15.03.2000. Subsequently, an award, in terms of Section 11 of the Act of 1894, became announced on 09.10.2003.

3. The acquisitions, as became made under the award (supra), was in respect of lands comprised in an area of 46.10 acres. The left over lands comprised in an area of about 4.77 acres, whereon(s) existed orchard(s), was re-notified for acquisition, through a respective notification and declaration under Section 4 and 6 of the Act of 1894, becoming respectively issued, on 16.05.2007, and, on 27.03.2008. Thereafter, an award was announced on 23.03.2009. Insofar as the award relating to the remaining lands comprised in an area of 281.38 acres is concerned, the said award could not be announced, thus to ensure compliance being meted to a stay order becoming granted by this Court in various writ petitions, which also included the writ lands.

4. Be that as it may, the writ lands are enclosed in Khewat/Khatoni No.224/370, 69//32/3, and, measure 3 Kanals 0 Marlas.

5. The learned counsel for the petitioner has argued:-

(i) that since on the acquired lands exist an orchard or garden(s), therefore, the relevant policy for making releases of the acquired lands, thus facilitated the makings of release(s) of acquired lands, thereby the writ lands be released from acquisition;

(ii) that the objections under Section 5-A of the Act of 1894, as became filed by the petitioner, becoming neither considered, nor becoming decided in accordance with law;

(iii) that the acquiring authority concerned releasing the lands of various influential persons, but not releasing the writ lands vis-a-vis the present petitioner, thereby the respondent-State practicing

invidious discrimination vis-a-vis the present petitioner;

(iv) that the award, as became announced, did not become announced within the statutorily ordained period of limitation, for its construed to be validly rendered.

CONTENTION OF THE LEARNED COUNSEL FOR THE PETITIONER

6. Be that as it may, one amongst the above contentions, as becomes raised in the instant writ petition, and, as relates to the respondent-State practicing hostile or invidious discrimination vis-a-vis the present petitioner, and, as stems from the respondent(s) concerned rather releasing the lands of influential persons, thus similarly situated to the writ lands, whereas, it not releasing the writ lands, rather is concerned, yet the said contention is liable to be rejected.

REASONS FOR REJECTING THE ABOVE CONTENTION

7. The reasons for rejecting the above made contention(s) ensues from the relevant observation(s), as occurs in the judgment made by this Court, upon, the instant writ petition, on 10.12.2008. Through the verdict (supra), the contention (supra) rather became dispelled by this Court. More pertinently, the order of release of lands, as made to the landlooser(s) concerned, who are purportedly similar to the one as in the case at hand, became quashed and set aside, through verdict (supra). Moreover, Clause (1) of the Policy Instructions dated 26.10.2007 was declared illegal. In addition, the respondent-State was directed to issue comprehensive instructions to the Land Acquisition Collectors.

8. In the face of the above, since the contention (supra) of the present petitioner became earlier rejected by this Court, through rendition of

verdict (supra), therefore, it acquires a binding and conclusive effect. Consequently, the binding and conclusive effect of rejection of the contention (supra), does completely estop, the petitioner to re-raise the said contention, before this Court.

9. Though the aggrieved from the verdict (supra), preferred respective SLPs before the Hon'ble Apex Court, but the said SLPs respectively bearing Civil Appeal No.381 of 2012, Civil Appeal No.384 of 2012, and, Civil Appeal No.790-791 of 2012, were disposed of by the Hon'ble Apex Court, in terms of the decision made in Civil Appeal No.286 of 2012, titled as "State of Haryana and others V. Hari Chand". The operative part of the apposite verdict is extracted hereinafter.

"13. In view of the above, the judgment and order of the High Court cannot be sustained by us. In the result, we allow this appeal, set aside that portion of the order passed by the High Court where the High Court has given its opinion on the validity of the policy of the State Government and remand the matter back to the High Court for fresh disposal in accordance with law, after affording opportunity of hearing to both the parties.

14. We permit the writ petitioners, if they so desire, to amend the prayers made in the Writ Petition subject to the objection that may be raised by the State Government.

15. The order of "status quo" passed by this Court with respect to possession shall enure to the benefit of the Writ Petitioners during the pendency of the Writ Petition before the High Court.

16. All the contentions of both the parties are kept open to be agitated before the High Court. No costs."

10. The impact of the above extracted order, is necessarily that, the directions made in paragraph 22 of the verdict (supra) drawn by this Court, on 10.12.2008, whereby, Clause (1) of the Policy Instructions dated 26.10.2007 were declared illegal, thus becoming quashed and set aside. However, the

Hon'ble Apex Court, evidently did not set aside or quash rather the annulment(s), as became made by this Court, qua the apposite release orders. Since the order (supra), as became made by this Court, whereby this Court annulled the apposite order releasing the apposite lands, rather did not beget reversal from the Hon'ble Apex Court. Therefore, thus finality and conclusivity is to be assigned to the orders of annulment, as carried in the verdict (supra), whereby, this Court annulled the apposite orders of releases of land(s), as became made vis-a-vis the person(s) mentioned in the verdict (supra). Consequently, thereby too, the present petitioner becomes estopped, to thus claim, that she be assigned parity along with the landlooser(s) concerned, in whose favour releases were made by the State of Haryana, especially when orders qua releases thereof, rather became clinchingly annulled, even upto the Hon'ble Apex Court.

2ND CONTENTION OF THE LEARNED COUNSEL FOR THE PETITIONER

11. The secondary ground, as becomes raised by the learned counsel for the petitioner, relates to the petitioner's objections, as became filed under Section 5-A of the Act of 1894, becoming not lawfully decided.

REASONS FOR REJECTING THE ABOVE CONTENTION

12. The above raised contention does also but staggers, on the premise, that in the reply on affidavit, as becomes furnished to the writ petition by the respondent(s) concerned, thus thereins, it becoming declared that neither any objection became received, nor became filed by the petitioner qua the writ lands.

13. Moreover, it has also been pointedly stated in the reply (supra), that the reference made to the said objections, rather in the writ petition,

relates to lands other than the lands of the present petitioner. Moreover, when the above factum remains uncontroverted, thereby too, the petitioner cannot well claim, that she had filed any objections under Section 5-A of the Act of 1894, besides, also cannot argue that thereby the said objections did not become validly adjudicated upon, or, that thereby the acquisition proceedings be thus declared to become lapsed.

3RD CONTENTION OF THE LEARNED COUNSEL FOR THE PETITIONER

14. The other contention, as raised by the learned counsel for the petitioner, appertains to the rendition of the impugned award rather occurring beyond the statutorily prescribed period of two years, since the making of the declaration under Section 6 of the Act of 1894, thereby the said award be declared to be null and void.

REASONS FOR REJECTING THE ABOVE CONTENTION

15. However, the above ground is also meritless, as the acquisition proceedings were stayed by this Court, vide an order made on 18.05.2001, upon, CM-13086-2001 filed within CWP-876-2001, titled as “Dr. B. Singh V/s Union of India and ors.”, and, wherein lands similar to the acquired lands became thus encapsulated.

16. Since the longevity of the said order of stay, thus continued uptill 07.02.2003, rather upon termination of the writ petition (supra). The disposal of the writ petition (supra) was with a simpliciter direction to the petitioner to make a representation before the authorities concerned, and thereafter, the respondent(s) concerned, was directed to make an objective expeditious decision thereon, but within three months from the date of receipt of copy of the order. Consequently, the period when the stay was in operation against the

launching of further acquisition proceedings, in pursuance to issuance of the relevant notification, therefore rather the said period, is in terms of the explanation of Section 11-A of the Act of 1894, provisions whereof become extracted hereinafter, thus required to be deducted for making the apposite computation.

[11A. Period shall be which an award within made. - The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), the award shall be made within a period of two years from such commencement.

Explanation - In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.]

17. Significantly, when the period, wherein, the respondent(s) concerned were restrained from launching further acquisition proceedings commenced from 18.05.2001 and lasted upto 02.07.2003 (777 days), and, which period requires, its becoming excluded, from the statutorily ordained period of limitation of 2 years, thus commencing from the issuance of the relevant notification. Therefore after excluding the said period, the makings of an award on 09.10.2003, thus appears to become well covered within the statutorily ordained period of limitation, rather for the making of a valid award thus subsequent, to the issuance of a declaration under Section 6 of the Act of 1894.

4TH CONTENTION OF THE LEARNED COUNSEL FOR THE PETITIONER

18. Though the learned counsel for the petitioner has orally addressed an argument before this Court, that since the twin statutory conditions, 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; as spelt out in ***“Indore Development Authority v/s Manoharlal and Ors.”***, reported in (2020)8 SCC 129, have not been fulfilled, therefore, the acquisition proceedings, as became drawn in respect of the petitioner’s lands, be thus declared to become lapsed.

REASONS FOR REJECTING THE ABOVE CONTENTION

19. However, the above made argument by the learned counsel for the petitioner is also meritless. The reason being, that it is clearly detailed in the written signed synopsis, as becomes supplied by the learned State counsel, that the apposite discharging evidence becoming adduced, thus in respect of the twin statutory ingredients (supra), as become embedded in the evident possession of the acquired lands, rather becoming assumed through Rapat No.61 of 09.10.2003. Furthermore, it has also been detailed therein, that the entire compensation amount, became tendered at the time of announcement of the relevant award. Moreover, it has also been detailed therein, that yet the petitioner did not receive the compensation amount, therefore it became deposited in the court of learned A.D.J., Panchkula, vide DD No.812759 dated 09.03.2022, for its becoming available for being claimed to become released to the petitioner/landowner(s) concerned.

20. Therefore, there is evident completest affirmative satisfaction qua the twin statutory ingredients (supra), thus at the instance of the State of Haryana, thereby, the petitioner cannot claim the benefit of the apposite

lapsing statutory provision(s), as enclosed in Section 24(2) of the Act of 2013).

21. In taking the above view, this Court gathers corroboration from the judgment rendered by the Hon'ble Apex Court in ***"Indore Development Authority v. Manoharlal"***, 2020 AIR (Supreme Court) 1496.

22. Moreover, the written signed synopsis (supra) also make speakings qua the petitioner's estate being an integral component of the developmental activities being made thereon. Resultantly, thereby the writ reliefs cannot be claimed, rather the petitioner is completely estopped, from the above evident material existing on record, thus from staking any claim vis-a-vis the estates of the present petitioner, rather becoming exempted or becoming released from acquisition.

23. Furthermore, irrespective of the above, the present petition is barred by the gross vices of delay and laches, inasmuch as, the award becoming announced on 09.10.2003, and, a challenge thereto being belatedly thrown in the year 2008.

24. The courts of law in construing the ill effects of delay and laches and concomitant thereto waivers and abandonments, at the instance of the writ petitioner, thus have made expostulations in judgments titled as ***"Aflatoon v. Lt. Governor of Delhi"***, 1974 AIR (SC) 2077, as ***"State of T.N. and others v. L. Krishnan"***, 1996(1) SCC 250, as ***"Mutha Associates and others v. State of Maharashtra and others"***, (2013) 14 SCC 304, and, as ***"Northern India Glass Industries v. Jaswant Singh and others"***, 2003 AIR (SC) 234. Moreover, even this Court, in judgment titled as ***"Desraj and others v. State of Haryana and others"***, 2022 (4) RCR (Civil) 298, has in the relevant paragraph thereof, paragraph whereof becomes extracted hereinafter, made a vivid articulation, that the evident emergences of vices of delay and laches

rather encumber upon the petitioner concerned, the estopping principles of waiver and abandonment, besides of acquiescence. Therefore, the evident emergences of gross vices of delay and laches rather makes the petitioner, who has accessed the writ jurisdiction of this Court, to become completely barred from mounting or making any successful challenge to the relevant motions drawn by the respondent concerned.

“....26. While discussing this aspect, a reference has been made to the instances where the Courts have declined to interfere in the acquisition proceedings on the ground of delayed challenge after the possession of the land is taken and the land vests in the State free from all encumbrances. "Delay and laches" are one of the foremost hurdles which a litigant has to cross before invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. Likewise, if the challenge to acquisition proceedings is delayed i.e., is being made after announcement of award, same cannot be entertained as they have acquiesced to the acquisition proceedings. Once it is so, and the landowners' let the land vest in the State free from all encumbrances, they cannot come and plead that such vesting, which is otherwise as per law, should be reversed. Such an approach towards acquisition is neither intended in the scheme of Acquisition Act 1894 nor is approved by the Courts owing to the fact that such approach would ultimately have an effect of frustrating the entire public purpose for which the land was acquired...”

25. The above expostulations, do require reverence, being meted thereto, as upon theirs becoming discountenanced by this Court, it would result in the paramount public purpose becoming completely frustrated, besides would untenably result in this Court revering individual self interest. If that be so, the evident emergence of gross delay and laches, but militates against the present petitioner, and thereby, the present petitioner is barred to maintain the instant writ petition before this Court.

26. Even otherwise, since the apposite layout plans suggest that the acquired lands are imperative for facilitating the public purpose, and, when the said drawn layout plans cannot be interfered with by this Court, in exercise of its writ jurisdiction, thereby the present petitioner cannot at all prevail upon this Court to release the writ lands from acquisition.

27. In aftermath, this Court finds no merit in the writ petition and is constrained to dismiss it. Since the instant writ petition is a frivolously raised motion, it is dismissed with costs of Rs.50,000/- to be forthwith deposited with the Treasurer of the Punjab and Haryana High Court Bar Association.

28. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

09.10.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No