

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 8355 of 2014 (O&M)

Reserved on 24.8.2023

Date of Decision: 29.8.2023

Mir Singh and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

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

Argued by: Mr. Rajan Goel, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana for the respondents-State.

Mr. Rajeev Anand, Advocate
for respondent No. 10.

Mr. Amit Prashar, Advocate
for NCR Planning Board-respondent No. 8.

Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate
for the applicant-respondent.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur Manchanda, Advocate
for the respondent-MC, Manesar.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek quashing of the acquisition proceedings, as became initiated under Section 4 read with Section 17(1) of the Land Acquisition Act, 1894 (for short 'the Act of 1894') (Annexure P-10), besides seek relief for quashing of the declaration issued under Section 6 read with Section 17 of the Act of 1894 (Annexure P-11). Furthermore, the petitioners also seek the setting aside of the award made on 14.6.2010. The further relief, asked for in the instant petition, is for

declaring the acquisition proceedings to become lapsed hence in terms of

Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013).

2. The disputed lands are comprised in khasra No. 8//18, 19, 23/1 measuring 4 kanals situated in village Sikanderpur Badha, District Gurgaon.

The contentions of the learned counsel for the petitioners

3. (i) The contention raised before this Court, by the learned counsel for the petitioners, to impugn the drawing of acquisition proceedings, in respect of the disputed lands, is grooved in the factum, that no possession of the acquired land has been taken, nor compensation has been paid. Therefore, it is argued before this Court, by the learned counsel for the petitioners, that thereby there is lapsing of the earlier drawn acquisition proceedings, rather under the Act of 1894. (ii) The further contention raised by the learned counsel for the petitioners, before this Court to impugn the acquisition proceedings, as became launched by the acquiring authority concerned, in respect of the petition land, is rested on the ground, that the major portion of the land in Sectors 81 to 95, Gurgaon, stands already developed by the private builders, and, that the disputed land is not required for residential and commercial purposes, rather the apposite acquisition is made only to provide roads in the sectors developed by the private colonizers.

Reasons for rejecting the above submissions

4. The impugned award was made on 14.6.2010 in terms of Section 11 of the Act of 1894. However, the instant petition has been instituted with a delay of almost four years since the making of the award (supra), and, a challenge thereto being caused through the institution of the

5. The above occurred delay thus invites thereons the vices of delays and latches, besides also the vices of estoppel thus created by evident waivers, abandonments, and, acquiescence, also get attracted to the belatedly instituted petition before this Court. Fortification to the above, is garnered from a judgment rendered by this Court in ***Desraj and others versus State of Haryana and others, 2022(4) RCR (Civil) 298***, wherein, it has been expounded that thereby the said belated motion requires, its being termed to be misconstituted.

6. Even if assuming, that the said vices of delay and latches are not attracted to the instant petition. However, the petitioners are not entitled to receive the benefit of the verdict, as made by the Hon'ble Apex Court in a judgment rendered in '***Indore Development Authority versus Manoharlal and others***' AIR 2020 SC 1496, as evidently the determined compensation amount was in terms of Section 31 of the Act of 1894, thus tendered, and, thereby when it became available for becoming released qua the land losers concerned. Therefore, and, also when evidently rapat possession of the acquired land has been assumed vide rapat No. 635 of 14.6.2010. Consequently, when the above conditions, on becoming evidently established, thus become declared in ***Indore Development Authority's*** case's case, to incapacitate the land losers concerned, to claim the benefit of the apposite lapsing provision, as comprised in Section 24(2) of the Act of 2013. In sequel, the claim made in the instant writ petition, that the acquisition proceedings, as became drawn under the Act of 1894, be declared to become lapsed, thus in terms of the provisions as contained in Section 24(2) of the Act of 2013, is hereby rejected.

7. The further contention, as made by the learned counsel for the petitioners, before this Court that the acquisition of the disputed land, is

made not for residential, and, commercial purpose, but is made only to provide roads in the sectors, which are already developed by the private colonizers, and, thereby the acquisition, made of the disputed land, is vitiated, and/or is capricious, thus is also amenable for becoming rejected. The reason for making the above inference does but evidently become rested on a reading of the reply, as furnished to the instant writ petition, wherein, a disclosure occurs, that the sectoral roads in general, and, the alignment of 75 meter wide Sector Road, and, 60 meter wide multi utility corridor, are thus in accordance with the provisions of final development plan of Gurgaon Manesar Urban Complex Development Plan 2021. Consequently, when it has also been spelt therein that in the drawing of the said plan rather the builders/developers have no role. Therefore, and, also when it has also been further contended, in the reply, on affidavit, filed by the respondents concerned, that the construction of all roads but is necessitated for ensuring that no traffic congestions exist. Resultantly when the provisions for construction of roads, does thereby but comprises the basic amenities hence relating to the right of life, as enshrined in Article 21 of the Constitution of India.

8. As but a natural corollary thereof, the above raised contention before this Court, by the learned counsel for the petitioners, loses its vigour, and, is resultantly rejected.

9. Imminently also, the acquisition proceedings relating to the disputed land were earlier challenged by the petitioners therein, through their filing CWP No. 21572 of 2011, before this Court. In the said writ petition, in terms of Government Policy dated 26.10.2007, as modified on 24.1.2011, the hereinafter directions were passed:-

Government has felt the need to review the policy referred to above. The amended policy regarding release of land will be as under:-

1. Only those requests will be considered by the Government for release of land under Section 48(1) where objections under Section 5-A were filed in following cases:-

a) Any request or application where structure has been constructed provided the structure existed prior to Section 4, is inhabited and is being used by the owner for his own residential purposes.

b) Any factory or commercial establishment which existed prior to section 4 provided it was functional at the time of Section 4 and is also functional at the moment.

c) Any religious institution or any building owned by community which is being used for community purposes.

2. That the Government may also consider release of land belonging to individual applicants involving self inhabited structures, factory or commercial establishment or community or religious buildings, where the owner has approached the Hon'ble High Court and has obtained stay dispossession/status quo or any restraint order. In such cases, the decision will be taken on the merits of each individual case keeping in view the benefit to the development agency in terms of providing linkages, services and in the interest of planned development. However, this clause will not be invoked for grant of licence for development of colonies.

3. xx xx" [Emphasis applied]

[11]. The modified version of this policy dated 24.01.2011 says that:-

"1. Only those requests will be considered by the Government for release of land under Section 48[1] where objections under Section 5A were filed in following cases:-

[a] Any request or application where structure has been constructed provided the structures existed prior to

section 4, is inhabited and is being used by the owner for his own residential purposes.

[b] Any factory or commercial establishment which existed prior to Section 4 provided it was functional at the time of Section 4 and is also functional at the moment.

[c] Any religious institution or any building owned by community which is being used for community purposes;

2. xx xx

3. xx xx”.*[Emphasis applied]*”

10. However, apparently in respect of those land losers, who did not file any objections under Section 5-A of the Act of 1894, thus qua them the benefit of the verdict (supra) appears to become hence not assigned. Since the present petitioners are not arrayed as petitioners therein, nor when there is any tangible material on record to suggest, that for them to claim relief paramateria to the relief, as assigned to the petitioners therein, that they had filed objections under Section 5-A of the Act of 1894. In consequence, the benefit of the judgment (supra), as assigned to the petitioners therein, when became conferred qua them, thus on the plank of theirs filing objections under Section 5-A of the Act of 1894, whereas, with the present petitioners herein evidently not filing the said objections. Therefore, the above made directions by this Court in CWP-21572-2011, are not applicable to the petitioners. On the other hand, the impugned acquisition proceedings acquire conclusivity, and, finality, especially when for want of theirs preferring objections under Section 5-A of the Act of 1894, thereby they became estopped, from impugning the acquisition proceedings. In sequitur, the petitioners are but forestalled from challenging the acquisition proceedings, as became launched by the respondents concerned.

Final Order

11. In summa, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned annexures are maintained and affirmed.

12. Since the instant petition is a frivolously raised petition, therefore, this Court deems it fit, and, appropriate to dismiss it with cost of Rs. 50,000/-. The said cost shall be forthwith deposited in the Himachal Pradesh Chief Minister Relief Fund, as set-forth for mitigating the present disaster.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 29th, 2023
Gurpreet

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