

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 18655 of 2006 (O&M)

Reserved on : 10.4.2024

Date of Decision: 29.4.2024

Bhup Singh and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. M.L.Sareen, Senior Advocate with
Mr. Nitin Sareen, Advocate and
Mr. Ritesh Aggarwal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

Mr. Arun Gosain, Senior Govt. Counsel
for respondent No. 4.

Mr. Arvind Seth, Advocate
for the respondent-HSVP.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seek the quashing of notification dated 2.6.2004 (Annexure P-5) issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), and, also seek the quashing of notification dated 31.5.2005 issued under Section 6 of the Act of 1894 (Annexure P-6). Furthermore, the petitioners also seek the quashing of the notification dated 28.7.2005 (Annexure P-7) issued under Section 4 of the Act of 1894, and, also seek the quashing of the notification dated 24.7.2006 issued under Section 6 of the Act of 1894 (Annexure P-12).

Grounds raised in the instant petition

2. The grounds, as raised in the instant petition by the petitioners, are that the petitioners are owners of land comprised in khasra Nos. 20//24/3; 22//4 min, 5 min, 7 min, 8 min, 13 min, 14 min, 18 min and 26, situated in village Sarai Alawardi, Tehsil and District Gurgaon. It is further averred in the instant petition that the land in dispute is in close vicinity of the Air Force Unit No. 54 Air Store Park and a part of the land in dispute is within the restricted zone, as declared under the provisions of the Works of Defence Act, 1903 (for short 'the Defence Act'). On 29.3.1996, the respondent concerned, issued a notification dated 29.3.1996 under Section 4 of the Act of 1894 for acquiring around 60 acres of land in villages concerned. Petitioner No. 1 along with others approached this Court by filing CWP-1997 of 1998, rather challenging the said notification, but the said petition was disposed of by this Court vide order dated 6.3.2000, on the ground that the State Govt. had decided to acquire only part of the land which fell within 30 meter road. It is further averred in the instant petition that thereafter the impugned notifications Annexure P-5 and Annexure P-6 became issued to acquire over 80 acres of land in the villages concerned. Thereafter, on 28.7.2005, the respondent concerned, again issued a notification under Section 4 of the Act of 1894 for acquiring around 15 acres of lands in the villages concerned. It is also averred in the petition, that petitioner No. 3 could not file objections under Section 5-A of the Act of 1894, whereas, petitioner No. 1 and 2 filed the objections under Section 5-A of the Act of 1894. However, they were not afforded an opportunity of hearing on the said objections, and, thereafter a notification under Section 6 of the Act of 1894, became issued on 24.7.2006.

Contentions of the learned senior counsel for the petitioners

3. The learned senior counsel appearing for the petitioners makes an argument, that with evidently the subject matter lands, falling within the restrictive zone, thereby their utilizations, thus by the acquiring authority, thus for purportedly facilitating the public project, but would not become ably facilitated. The said argument becomes premised on a judgment, made by this Court in case titled as '***B.B.Yadav Vs. State of Haryana and Others reported in 2007 (3) Land L.R. 585.*** Apparently, the averred challenge made in the instant writ petition becomes also rested on a premise similar to the one which becomes orally addressed by the learned counsel for the petitioners.

Contentions of the learned counsel for the respondents

4. The learned State counsel submits, that the notification issued under Section 4 of the Act of 1894, was published in the Haryana Govt. Gazette, on the same day, and, an entry of the said notification was made vide Rapat No. 561 of 29.5.2005. It is further contended, that an opportunity of hearing on the objections filed under Section 5-A of the Act of 1894, was granted to petitioners No. 1 and 2, and, that petitioner No. 3 did not deliberately file any objections. Thereafter, declaration under Section 6-A of the Act of 1894 was made on 24.7.2006. He further submits, that the substances of the notifications (supra) were published in two daily newspapers, and, the said substances were also pasted on the notice board of Halqa Patwarkhana and Tehsil Officer. Moreover, munadi was also done through village Chowkidar by beat of drum in the vicinity concerned. Consequently, the learned counsels submit, that therebys there was not only

(supra), but also the objections became well attended to. Resultantly, they submit, that the instantly launched acquisition proceedings are flawless.

Reasons for dismissing the instant petition

5. For the reasons to be assigned hereinafter, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

6. In paragraph No. 16 and 17 of the verdict (supra), paras whereof becomes extracted hereinafter, this Court had opined, that the acquiring authority, in view of the said restriction(s), rather cannot facilitate the public purpose, being executed on the subject lands, reiteratedly in view of the subject matter lands, but falling within the restricted zone. Therefore, this Court concluded that the launching of acquisition proceedings vis-a-vis the therein subject matter lands, thus being imbued with a vice, inasmuch as, the power of eminent domain becoming colourably exercised.

16. We have perused the aforementioned provision carefully and are of the considered opinion that the State of Haryana cannot make use of the land for residential and commercial purposes in view of the restrictions imposed under Section 3 read with Section 7(b) of the Indian Works Defence Act, 1903. No construction activity would be carried out within 900 meters from the crest of the outer parapet of Explosive Area of 54, ASP, Air Force Station, Gurgaon. The State has not denied that a part of the acquired land is not within the aforementioned restricted zone. The proviso to Section 7 also shows that it is only the huts, fences or other constructions of wood or other material which can easily be destroyed or removed that can be allowed to be maintained and erected.

17. In the present case, as the residential, commercial and institutional purpose could not be achieved because of the restrictions imposed by Section 3 sub-section 7 on the part of

the land acquired therefore, we are of the considered opinion that the acquisition of the land of the petitioner in the present case is a colourable exercise of power.

7. Therefore, in the operative part of the judgment (supra), the challenge as became made, to the launching of acquisition proceedings in case (supra), thus was declared to be a validly raised challenge.

8. The above made opinion by this Court, though emanates from a Bench strength of this Court, which is co-equal, to the Bench strength of this Court, thereby unless for valid reasons, it requires becoming departed from, thereby it has binding and conclusive effect also upon this Court.

9. Be that as it may, since the exception to the principle, that the ratio decidendi (supra), as becomes expostulated in the verdict (supra), especially when the Judge Bench strength of the Court which rendered the verdict (supra), thus is co-equal to the extant Bench strength, whereby the verdict (supra) is required to be revered, rather is encapsulated, in the fine principle that departings therefrom, but can be made, in case there are sound reasons, thus for making such departures therefrom.

10. Consequently, this Court for hereinafter assigned reasons, deems it fit and appropriate to depart from the ratio decidendi (supra), as becomes enunciated in the verdict (supra), as becomes relied upon by the learned counsel for the petitioner(s).

Reasons for not applying the ratio decidendi of the verdict rendered in *B.B.Yadav case (supra)* vis-a-vis the case in hand.

11. The stark distinguishing fact as becomes unfolded, inter-se the facts thereins vis-a-vis the facts at hand, is embodied in the factum, that the petitioner therein, was a recipient of a Gallantry Award and but in lieu of his

petition (supra). Pre-eminently, the petitioner in the instant case is not a recipient of any Gallantry award. Therefore, the emergence(s) of the stark distinctivity (supra) inter-se the facts germane to the verdict (supra) with the facts at hand, does thereby coax this Court to rather not apply the expostulations of law (supra), as carried in the verdict (supra), thus to the facts at hand.

**Reasons for rejecting the submissions and averments made
in the writ petition.**

12. The ire issue which makes its stark emergence(s), is that, whether in the light of the existence of the subject matter lands, thus in the vicinity of a military zone, and when thereby, thus in terms of the relevant statutory provisions, as become engrafted in 'the Defence Act', rather restriction(s) become echoed vis-a-vis the utilization and enjoyment of the petition lands, whether thus the power of eminent domain, is yet required to be also extending or being exerciseable qua such restrictive zones.

13. If the answer to the above issue is in the affirmative thereby this Court would proceed to negate the writ relief(s).

14. For the reasons to be assigned hereinafter, the mere existence of the subject matter lands, in the militarized zone, wherein, there may be statutory restriction(s), vis-a-vis, the utilization of the subject matter lands, thus for the relevant public purpose, yet does not thereby restrict the power of eminent domain, thus vested in the acquiring authority, besides nor in its exercising by the acquiring authority, rather would invite any conclusion, from this Court that even upon its becoming potentialized, qua thereby the said power being colourably exercised.

15. This Court in a decision rendered on 31.10.2013, in writ petition bearing No. **CWP-13543-1990**, titled as **'Krishan Chand Jain and Others Versus State of Haryana and Ors.'** has while dealing with the above conundrum made reliance, upon, two decisions rendered respectively in **[Shanti Sports Club and Anr. Vs. Union of India and Ors. 2009 (15) SCC 705 and CWP Nos. 15171-18679 of 2010 [Suresh Goel and Ors. Vs. Union of India and Ors.]** and had therein proceeded to unequivocally hold, that the provisions of 'the Defence Act', are required to be assigned over-riding effect upon local laws or vis-a-vis executive policies, and that other private interests are required to be made subordinate or subservient to the national security interests as embedded in the Defence Act.

16. Though this Court had thereby assigned an over-riding effect to the Act (supra), vis-a-vis the local laws or to the executive policies, but this Court yet had not made, the power of eminent domain, as exercised by the respondent, through its launching the acquisition proceedings under the 'Act of 1894', rather subject to or subservient to the Act (supra). Therefore, the existence of the subject matter lands, in the vicinity or within the militarized zone or in an area of extreme strategic military importance, thus would not restrict the power of eminent domain, as, vested in the acquiring authority. However, in the said exercisings of the power of eminent domain, the acquiring authority is also to ensure, that the lands as become brought to acquisition rather not compromising with the national security and safety.

17. In the above regard, this Court had declared, that within the said sensitive zone, the subject matter lands are to be kept free from all types of construction(s), besides the subject matter lands are to be developed as an open green area, as thereby the national security and safety would thus,

rather not become compromised.

18. Since this Court would make alike therewith direction(s). Therefore, any argument erected on the plank of the verdict (supra) i.e. **B.B.Yadav's case**, as, made by this Court which also but for the above reasons is distinguishable from the facts at hand, rather is not amenable for becoming accepted.

19. Even otherwise, the construction(s) raised by the private individuals, thus within the militarized zone or sensitive zones, though become declared to become acquired through a notification issued in terms of the 'Act of 1894', but yet such acquired construction(s) rather are to be treated on a principle different, to the ones, as would govern the acquisition of titles over unacquired construction(s), thus by private individuals. Assuredly if a private individual raises unacquired construction(s) within the declared sensitive zone, thereby he would invite the wrath of the apposite statutory provisions as embodied in 'the Defence Act'. Such privately raised unacquired construction(s) within the militarized zones or zones of strategic military importance, rather may also require theirs becoming lawfully demolished. Moreover, on acquisition(s) of construction(s) raised, thus in the militarized zones, thereby, they would require in terms of expostulations (supra), as made by this Court, qua theirs being lawfully demolished, so that on such acquired lands, rather green areas become maintained, for thereby thus national security becoming not compromised.

20. Since thereby the power of eminent domain, to acquire lands falling within restrictive zones, thus would become rationalized and/or the acquired lands rather thereby would become aligned with the national

becoming raised by private individuals, in the restricted areas, thereby such construction(s) would definitely jeopardize the national security and safety. Therefore, too, on the above plank, the acquisition(s) made by the acquiring authority, thus of lands falling in the sensitive zones, rather would become legitimized.

21. Since the power of eminent domain also requires compensation becoming determined. Therefore, only on compensation becoming determined, but also in respect of lawfully raised acquired construction(s), rather also within the sensitive zones, thus would assign sanctity to the exercising of power of eminent domain, thus by the acquiring authority, and/or, thereby acquisition thereof, but would not be construable to be expropriatory.

22. Therefore, it has to be determined from the evident facts, whether on the subject matter lands, the apposite construction(s) were legal or were authorized, inasmuch as, such construction(s) being raised prior to the coming into force of 'the Defence Act' and concomitantly whether the land-losers concerned, were respectively entitled or did not become entitled, qua compensations becoming determined qua such lands/construction(s).

23. Therefore, since the acquired lands, which were evidently vacant at the time of their lawful acquisition(s) being made and whereafters' construction(s) became raised thereons, thereby the land-losers concerned would not become entitled to compensation, thus for those construction(s) which became evidently raised post the launching of lawful acquisition proceedings. Moreover, the said construction(s) would be un-authorized and would become subject to theirs becoming lawfully demolished.

24. Nonetheless, if the relevant construction(s) which were evidently raised prior to the launching of the acquisition proceedings, thereupon, such construction(s) are amenable for determination of compensation. However, subject to such construction(s) being raised but prior to the coming into force of 'the Defence Act'.

25. Moreover, if the said construction(s) exist within the militarized zone or in the restricted zone, thereupon, the acquiring authority may not in terms of the verdict (supra) raise construction(s) thereons, but shall maintain it as a green area, so that thereby the national interests and security, thus do not become compromised. Pre-eminently even in respect of the lands, which occur in the military zone, thus compensation amount is required to be determined, if not already determined.

Contention as to non-publication of the substance of notification under Section 4 of the 'Act of 1894' and reasons for rejecting the same.

26. Moreover, the averments, as to no wide publicity being given to the notification (supra), is merit-less, as on reading of replies, on affidavit, to the writ petition(s), by the respondent, it is revealed that the notification under Section 4 of the 'Act of 1894' rather was published in Haryana Government Gazette, on the same day. Moreover, an entry qua the notification was made in the patwari Halqa Roznamcha Wakayati vide rapat No. 561 dated 29.5.2005 vis-a-vis the land situated in the revenue estate of village concerned. In addition, the substance of the notification under Section 4 of the Act became published in two daily newspapers i.e. Dainik Bhaskar (Hindi) dated 30.7.2005 and National Herald (English) dated 30.7.2005. The substance of the said notification was also pasted on the notice board of Halqa Patwar Khana and Tehsil Office. Munadi was also

and in the vicinity of the land to be acquired.

27. Furthermore, on reading of the reply, it is revealed that the substance of issuance of declaration under Section 6 was published in the Haryana Gazette on the same day and was also published in the daily newspapers as per the requirement of the 'Act of 1894'. Moreover, the substance of the declaration (supra) was pasted on the notice board of the Halqa Patwar Khana and Tehsil office.

28. Therefore, therebys there is but complete adherence to all the mandatory statutory prescription(s), therebys the launching of the acquisition proceedings cannot be construed to become vitiated. Resultantly, therebys the petitioners had notice of the launching of acquisition proceedings. Therefore, they cannot contend, that for any purported want of wide publicity to the apposite notification, thus they did not acquire any knowledge in respect thereof, nor can they argue that thereby they became disabled to rear the apposite objections, especially when some did file the said objections.

Contention as to not granting of an opportunity of personal hearing while deciding the objections under Section 5A of the 'Act of 1894'.

29. A reading of reply to the instant petition, reveals that the petitioner No. 1 and 2 were granted opportunity to file objections under Section 5-A of the 'Act of 1894' and they also availed the said opportunity, through their filing objections to the acquisition proceedings. However, the objection(s) as became filed by the petitioners (supra) became decided against the petitioners, thus leading to the makings of the impugned notification/declaration. Therefore, the order dismissing the apposite objections is a well informed order, and, thereby it is required to be upheld.

30. So far as petitioner No. 3 is concerned, from a perusal of the reply on affidavit, furnished to the instant petition, it is evident, that despite an apposite opportunity being granted to the said petitioner(s), yet the said petitioner(s) deliberately not availing the said opportunity nor his preferring objections in terms of Section 5-A of the Act of 1894, before the Collector concerned. In the face of abandonment of the said opportunity by the petitioner concerned, to thus prefer objections under Section 5-A of the Act of 1894, before the Collector concerned, thereby the said made abandonments, thus tantamounts to his acquiescing to the valid launching of the acquisition proceedings, besides fosters a further conclusion, that the petitioners become estopped to claim before this Court, that either they became forestalled to raise objections or the said objections became summarily dismissed. Thus any averments/contention that no opportunity of personal hearing was granted, is merit-less.

Final Order of this Court

31. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned notifications, and, award are maintained and affirmed.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 29, 2024
Gurpreet

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