

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 23450 of 2014 (O&M)

Reserved on : 16.4.2024

Date of Decision: 29.4.2024

Mahle Filter Systems (India) Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE AMARJOT BHATTI**

Argued by: Mr. Shailendra Jain, Senior Advocate with
Ms. Navneet Kaur, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner asks for relief qua de-notification or for release of the petition lands, thus on the ground, that the notification(s) Annexure P-2, and, Annexure P-3, as became respectively issued on 15.11.2002, and, 12.11.2003, hence in terms of Sections 4 and 6 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), thus inviting the mandate of Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short referred to as the 'Act of 2013'), whereby there occurs lapsing of the earlier launched acquisition proceedings under the 'Act of 1894'. In alternate, the petitioner seeks for a mandamus being made upon the respondents concerned, to issue notification under Section 48 of the Act of 1894, thus notifying the release of the petition lands from acquisition.

Grounds raised in the instant petition

2. The grounds, as raised in the instant petition by the petitioner, are that the land of the petitioner i.e. 1 bigha 9 biswas and 18 biswasis was sought to be acquired vide the impugned notifications. It is further averred in the petition, that the petitioner company was earlier known as Purolater India Limited, but in terms of a scheme of merger or amalgamation, sanctioned by the High Court of Delhi, vide order dated 27.5.2008, the name of the petitioner company was changed to Mahle Filter Systems (India) Ltd. It is further averred, that when the petitioner company was in the process of filing the Change of Land Use application, the impugned notification under Section 4 of the Act of 1894 was issued. The petitioner had also filed objections under Section 5-A of the Act of 1894, however, no opportunity of hearing was granted to it. It is also averred in the instant petition, that the petitioner had also challenged the impugned notifications by filing CWP No. 17741 of 2004, which was disposed of vide order dated 16.7.2005, and, in pursuance to the above order, a High Powered Committee was constituted, before whom the petitioner made its representation. However, no decision was made on the said representation. Thereafter, the petitioner approached this Court by filing CWP No. 18725 of 2005, and, this Court through an order made thereons on 8.12.2005, stayed the dispossession of the petitioner from the petition land. It is further stated that in compliance of the letter dated 1.8.2007 (Annexure P-9), the petitioner vide letter dated 13.8.2007 submitted two undertakings in the form of affidavits dated 14.8.2007, stating therein that it would pay the proportionate internal and external development charges as and when demanded by the HSIIDC, and, thereafter requested the respondents concerned, to initiate the required

process for issuance of notification under Section 48 of the Act of 1894. It is further averred in the instant petition, that vide letter dated 29.9.2007, the petitioner applied for the grant of Change of Land Use permission. Thereafter, the petition (supra) became dismissed as having become infructuous by this Court in view of letter dated 1.8.2007 (Annexure P-9) issued by the respondent-State. It is further averred in the instant petition, that in view of the decision taken by the State Govt., and, communicated to the petitioner vide letter dated 1.8.2007, all the concerned departments have initiated the process for release of the land of the petitioner-company. Moreover, despite all the conditions imposed by the respondent State being duly complied with by the petitioner company, the respondents had failed to issue a formal notification under Section 48 of the Act of 1894.

Submissions of the learned senior counsel for the petitioner

3. The learned senior counsel submits, that he does not press the prayer made under Section 24(2) of the Act of 2013, and, confines his prayer only to the alternate relief (supra) made in the instant petition relating to the makings of a direction qua the issuance of a notification under Section 48 of the Act of 1894, rather in terms of apposite compliances being made to Annexure P-9, whereby the release of the subject lands from acquisition becomes notified.

4. The learned senior counsel submits that the notification issued under Section 48 of the Act of 1894 for acquiring the petition land, as comprised in khasra No. 1671/1112/2/2 (1-11-3) of village Khandsa, Tehsil and District Gurgaon, is in contravention of the letter dated 1.8.2007 whereby the entire land of khasra No. 1671/1112/2 (1B-19B-18B) was released by the State subject to certain conditions, which were duly

complied with by the petitioner. The learned senior counsel further submits that the entire land of a similarly situated land loser, one Subhash Chand Dhingra c/o M/s Dhingra Motors was released from acquisition. Resultantly, thereby the acquiring authority concerned, is alleged to practice invidious discrimination against the present petitioners. Therefore, he submits, that since there is release of lands, thus purportedly qua a similarly situated land owner, thereby on the principle of parity therewith, the acquired lands of the petitioner be also released from acquisition.

Submissions on behalf of the learned State counsel

5. The learned State counsel submits, that vide notification dated 29.12.2016, issued under Section 48 of the Act of 1894, the land comprised in khasra No. 1671/1112/2/2 (0B-8B-5B) of village Khandsa, Tehsil and District Gurugram was released, after retaining the land falling under 50 meters wide green belt (including 18 meters wide service road) along NH-8. Therefore, the remaining land comprised in khasra No. 1671/1112/2/2 (1-11-3) stands acquired. He further submits, that the instant case was adjourned sine die awaiting the decision of the Hon'ble Apex Court with regard to question of applicability of Section 24(2) of the Act of 2013, which has now been decided by the Hon'ble Apex Court in case bearing **SLP(C) No. 9036-9038 of 2016**, titled as '**Indore Development Authority Versus Manoharlal and others**'.

6. The learned State counsel further submits, that the claim of the petitioner for the release of land in question has already been decided by this Court vide order dated 12.9.2007, passed upon CWP No. 18725 of 2005 whereby the said petition was dismissed as having been rendered infructuous, as the petitioner's land was exempted as per the decision of the

Committee concerned, after retaining the land required for green belt, and, service road. He further submits, that the land in question has been acquired on the recommendations of Haryana State industrial and Infrastructure Development Corporation Limited (HSIIDC). However, the petitioner has not impleaded HSIIDC as a necessary party in the array of respondents, therefore the instant petition is liable to be dismissed on the ground of non-joinder of necessary parties. He further submits, that the instant petition is barred by the principle of res-judicata, as the order for the release of the part of the land, and, acquisition of the land in question for green belt and service road, was accepted by the petitioner in 2007, and, the said order also remained unchallenged.

Analysis of the submissions made by the learned senior counsel for the petitioner, and, the learned State counsel

7. Pointedly, the making of Annexure P-9, relevant portion whereof, becomes extracted hereinafter, thus was in pursuance to the institution of CWP No. 18725 of 2005. Moreover, with the making of Annexure P-9, the writ petition (supra) became dismissed as having been rendered infructuous.

“X X X X X

State Govt. has agreed with the recommendations of the Ministers Committee of releasing the lands in principle bearing Khasra No. 1108/2 (1 Bigha 13 Biswa 8 Biswansi), 1115/2 (0 Bigha 18 Biswa 0 Biswansi), 1115/1 (1 Bigha 16 Biswa 0 Biswansi), 1671/1112/2/1(0 Bigha 6 Biswa 0 Biswansi), 1113(2 Bigha 17 Biswa 0 Biswansi), 1123/2/6 (0 Bigha 1 Biswa 16 Biswansi), Total 7 Bigha 12 Biswa 4 Biswansi of M/s Gabriel India Ltd. Khasra No. 1107(1 Bigha 17 Biswa 0 Biswansi) of M/s Asia Investment Pvt. Ltd. and Khasra No. 1671//1112/2/2 (1 Bigha 19 Biswa 8 Biswansi) of M/s Purolator India Ltd.

subject to the condition that you shall give an undertaking in the shape of sworn affidavit attested by the Executive Magistrate to this office within 15 days from date of issue of the letter to the effect that you will pay the proportionate internal and external development charges to the HSIDC as and when demanded and you shall seek the Change of Land Use permission from the Department of Town and Country Planning, Haryana within 90 days from the date of issue of this letter and you will furnish an undertaking in the shape of affidavit attested by the Executive Magistrate to the Department of Town and Country Planning, Haryana that you shall leave the land required for road network. You will withdraw the Civil Writ Petitions No. 18725, 18733 and 18763 of 2005 pending in the Hon'ble Punjab and Haryana High Court for the release of lands within 30 days from date of issue of this letter."

8. Assumingly, that all the conditions embodied in Annexure P-9 become complied with at the instance of the present petitioner, but since the pursuant thereto made order of release, is confined to an area of 1 Bigha 19 Biswa 8 Biswansi, comprised in khasra No. 1671/1112/2/2. Resultantly, when therebys, the relief asked for in the instant petition by the petitioner to make directions, upon, the respondent in terms of Annexure P-9, rather becomes granted. Moreover, when through the unchallenged order (Annexure P-9), the lands as are carried therein become released from acquisition. Consequently, the reliefs, as asked for by the petitioner for making release of those lands, which may not be covered by Annexure P-9, but which are otherwise covered within the notification for acquisition, thus are completely misfounded reliefs, and, are liable to be rejected. The reason for drawing the above inference becomes grooved in the factum, that when during the pendency of the earlier writ petition, Annexure P-9 became

rendered, and, resultantly on its drawing, the petitioner's relief, as, claimed in the petition (supra), thus became mitigated. In sequel, when therebys, the earlier writ petition became dismissed, as having become infructuous, thus pointedly in the wake of rendition of Annexure P-9. Therefore, if the present petitioner did omit to raise grounds for claiming the releases of those lands, other than the ones which are carried in Annexure P-9, therebys the said omission attracts against the present petitioner rather the bar of estoppel created under Order II Rule 2 CPC, provisions whereof become extracted hereinafter, wherebys any omission on the part of the litigant(s) to plead a fact, which was pleadable in the earlier motion, thus estops the litigant(s) concerned to plead the earlier omitted plea, rather in a fresh motion.

“ORDER II- FRAME OF SUIT

1. x x x x

2. Suit to include the whole claim—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

9. In the wake of the above, thus no parity can be claimed by the petitioner with one Subhash Chand Dhingra c/o M/s Dhingra Motors,

especially in the wake of compliances being made by the petitioner to the condition spelt in Annexure P-9 relating to its furnishing an undertaking in the shape of an affidavit, attested by the Executive Magistrate to the Department of Town and Country Planning, Haryana, that it shall leave the land required for road network. Resultantly, if the said affidavit has been furnished, thereby the petitioner, thus cannot renege from the said echoings made in the apposite affidavit, thus drawn in terms of Annexure P-9, wherebys it appears that some part of the petition land has been permitted by it to be available for raising thereons a road network. Therefore, therebys the said acquiescences for the acquisition of the said part of the subject land whereons a road network is to be constructed, but also estops the present petitioner to yet claim the release of the said land.

10. The reason for making the above inference becomes rested on the factum, that a reading of the reply on affidavit, furnished to the instant petition by the respondent concerned, discloses, that it has been forth-rightly stated therein, that the subject lands have been retained for green belt and service road. If so, since the subject lands are an integral component of the layout plan, besides are imperatively required for furthering the requisite public purpose. In sequel, this Court does not deem it fit, and, appropriate to tinker with the layout plan, which becomes drawn by the Engineering Cell of the acquiring authority concerned. Consequently, also this Court does not deem it fit, and, appropriate to release the subject lands from acquisition.

11. Be that as it may, reiteratedly the further reason for declining the writ relief to the present petitioner ensues from the trite factum, of the petitioner omitting to challenge Annexure P-9 wherebys only an area of 1 Bigha 19 Biswa 8 Biswansi, comprised in khasra No. 1671/1112/2/2 became

conditionally released, lands whereof are acquiesced by the petitioner to be amenable for release rather for the public purpose of maintaining the green belt, besides for construction thereovers of service road. Therefore, for want of any valid challenge being made to the makings of conditional Annexure P-9, therebys the petitioner is estopped from claiming any relief, that the subject lands be yet released from acquisition, rather in terms thereof.

Final Order of this Court.

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

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

(SURESHWAR THAKUR)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 29, 2024
Gurpreet

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