

In the High Court of Punjab and Haryana at Chandigarh

1. CWP No. 6274 of 2015 (O&M)
Reserved on : 8.1.2024
Date of Decision: 22.1.2024

Shri Anandpur Trust Petitioner

Versus

Union Territory, Chandigarh and others Respondents

2. CWP No. 6328 of 2000 (O&M)

M/s Arizona Agros Petitioner

Versus

Chandigarh Administration and others Respondents

3. CWP No. 12812 of 2014 (O&M)

Raj Sandhu Petitioner

Versus

Union Territory, Chandigarh and others Respondents

4. CWP No. 22311 of 2015 (O&M)

Gurdial Singh Petitioner

Versus

Union Territory, Chandigarh and others Respondents

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

Argued by: Mr. Puneet Bali, Senior Advocate with
Mr. Uday Agnihotri, Advocate
for the petitioner(s) (in CWP-12814-2014).

Mr. Rajesh Garg, Senior Advocate with
Mr. Mandeep Singh, Advocate and
Ms. Neha Matharoo, Advocate
for the petitioner(s) (in CWP-6328-2000).

Mr. Tushar Sharma, Advocate
for the petitioner (in CWP-6274-2015).

Mr. Anil Mehta, Senior Standing Counsel with
Mr. Aman Bahri, Advocate,
Mr. Sumeet Jain, Advocate,
Mr. Shobit Phutela, Advocate,
for the respondent-U.T., Chandigarh

Mr. Abhinav Sood, Advocate
Mr. Nitish, Advocate and
Mr. Arsh Bhatti, Advocate
Ms. Sukhmani Patwalia, Advocate
for the respondent-U.T. (in CWP-12812-2014).

SURESHWAR THAKUR, J.

1. Since in all the writ petitions, a challenge is made to a common notification issued under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act of 1894'), besides when a challenge is made to a common declaration made under Section 6 of the Act of 1894. Moreover when a challenge is made to an award, as, made in respect of the petition lands, resultantly thereby all the writ petitions are required to be decided through a common verdict being made thereon.

2. The writ petitions (supra) are a sequel of theirs becoming remitted, to this Court by the Hon'ble Apex Court, thus through a verdict made, on 11.4.2023, on Civil Appeal No. 2052 of 2023 titled, as ***Haryana State Industrial and Infrastructure Development Corporation Ltd. (HSIIDC) and others versus M/s Honeywell International (India) Pvt. Ltd.*** along with connected therewith civil appeals. Consequently, it is but necessary to extract the scope of the remand jurisdiction, as becomes conferred, upon, this Court, thus by the Hon'ble Apex Court, through the verdict (supra).

3. The scope of the remand jurisdiction to be exercised by this Court, on the writ petitions, on remand thereof becoming made to this Court by the Hon'ble Apex Court, is set-forth in para 7 of the verdict

(supra), as recorded by the Hon'ble Apex Court, para whereof becomes

extracted hereinafter.

“In view of the above and for the reasons stated above, all the civil appeals as per para 3 of the judgment, arising out of the impugned common judgments and orders passed by the High Court of Punjab and Haryana at Chandigarh in CWP No. 4015/2006 and other allied writ petitions are allowed. The impugned judgment(s) and order(s) passed by the High Court declaring that the acquisition with respect to the lands in question is deemed to have lapsed under Section 24(2) of the Act, 2013 is/are hereby quashed and set aside. However, the matters are remitted back to the High Court to decide and dispose of the main writ petitions afresh in accordance with law and on their own merits on other issues except the applicability of Section 24(2) of the Act, 2013. We request the High Court to finally decide and dispose of the writ petitions on remand at the earliest and preferably within a period of nine months from the date of receipt of the present order. All contentions and defences which are available to the respective parties are kept open to be considered by the High Court in accordance with law and on their own merits (except the submission of applicability of Section 24(2) of the Act, 2013).”

Submissions of the learned counsels for the petitioner(s)

4. Annexure P-3 (in CWP-6274-2015), has been signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, though it is stated in the opening of the said annexure, that the application of mind, qua the issuance of the said notification, has been made by the Administrator, U.T., Chandigarh. Therefore, it has been argued, that for lack of occurrence of signatures of the Administrator on the apposite notifications, thereby rather no closest, and, keenest application of mind was made by the Administrator, to the necessity of the acquisitions being made.

In consequence, it is submitted, that the said notification is an ill-informed

notification, thus made without the required application of mind to the subject matter.

5. Tritely put, the learned counsel for the contesting litigants contend, that the question of law, which is to be answered by this Court relates to whether paragraphs 65 and 66, as carried in the verdict (supra), paras whereof become extracted hereinafter, require to be affirmatively applied vis-a-vis, the present petitioners concerned, or are required to be negated by this Court.

“65. The issue deserves to be considered from another angle. While delegating the power, authority or jurisdiction vested in him by or under any law, rules or regulations as applicable to the Union Territory of Chandigarh the Administrator had used the expression "on the date of this notification". This necessarily implies that the power of "the appropriate Government" conferred upon or entrusted to the Administrator by the President under Article 239(1) after 25-2-1988 were not delegated to the Adviser. It is also apposite to note that the Notification dated 14-8-1989 was issued under Article 239(1) in supersession of all previous notifications relating to the exercise of power and functions under the Act by the Administrators of various Union Territories. Therefore, even if it is assumed that vide Notification dated 25-2-1988 the Administrator had authorised the Adviser to exercise the power of "the appropriate Government" under the Act, after the issuance of the Notification dated 14-8-1989, the said delegation will be deemed to have ceased insofar as the exercise of power of "the appropriate Government" under the Act and the Rules framed thereunder is concerned and in the absence of fresh delegation by the Administrator, the Adviser could not have exercised the power of the appropriate Government and sanctioned the acquisition of land for the purposes specified in the Notifications dated 27-6-2006 and 2-8-2006 nor could he symbolically accept the

recommendations of the LAO and record his satisfaction on the issue of need of land for the specified public purposes.

66. *In view of the above discussion, we hold that the Adviser to the Administrator was not competent to accord approval to the initiation of the acquisition proceedings or take decision on the reports submitted by the LAO under Section 5-A(2) of the Act and record his satisfaction that the land was needed for the specified public purpose.”*

6. The learned counsels for the petitioner(s) contend, that the above extracted paras, do underscore, that the powers of the “appropriate government” are vested solitarily in the Administrator, U.T., Chandigarh, thereupon, such powers are to be, thus exercised only by him, and, that his Advisor is incompetent to exercise, thus the functional powers of the appropriate government nor is he competent to make a notification, thus under Section 4 or under Section 6 of the Act of 1894 rather under any purported delegation of apposite powers to him.

7. The learned counsels for the petitioner(s) further submit, that the ex-post facto validation to the notification issued under Section 4 of the Act of 1894, thus through Annexure A-1, annexure whereof, became obtained by the petitioner concerned, under the Right to Information Act, and, which occurs at page No. 17 of the miscellaneous application bearing No. 14319 of 2015, whereby through an office noting, which becomes extracted hereinafter, an ex-post facto validation or ex-post fact delegation was made to the issuance of notifications under Section 4 and under Section 6 of the Act of 1894, so as to validate the same, but also naturally contravenes a verdict made by the Hon’ble Apex Court in ***Surinder Singh Brar and others versus Union of India***, reported in ***(2013) 1 Supreme Court Cases 403***. Therefore, they argue, that the said Annexure based on the hereafter extracted speakings, is also required to be negated.

in 1987 Land Acquisition is covered under it. The 1989, 14th August notification of MHA, GOI only stated that land acquisition powers of the President of India shall also be exercised by the Administrators of UTs. As per this understanding practically all acquisitions since 1987 have been done at the level of the AA. In case of few major projects like 17 park in principle decision was approved at the level of Administrator. As proposed in the note above as petitioners are taking this as one of the grounds to get acquisition annulled may be worthwhile to get these acquisition ratified at the level of Administrator (post facto)”

8. The learned counsels further submit, that the above ex-post facto approval is apparently meted on a date when the relevant provisions of the Act of 1894 were made dysfunctional or became repealed. Uncontrovertedly the said Act was made dysfunctional or became repealed, upon coming into force of the Act of 2013. Resultantly, it is submitted, that thereby prima facie a repealed Act, through the above made office noting, rather making the ex-post facto validation or ex-post facto delegation of power, by the Administrator to the signatory of the notification, who is not even the Advisor, but is the Secretary Engineering, Engineering Department, U.T., Chandigarh, but prima facie has been impermissibly re-activated.

9. The learned counsels for the contesting litigants are, however, *ad idem*, that the legal conundrum, which is required to be engaging the attention of this Court, and, is also required to be receiving an adjudication from this Court, is not, in relation to a lapsing declaration being made, rather in terms of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ‘the Act of 2013’). On the other hand, the learned counsels are *ad idem*, that the challenge, as made to the launching of the acquisition proceedings under Section 4 of the Act of 1894, is strictly confined to the trite factum, that the

1894, becoming so issued either within or outside the domain of the declaration of law made by the Hon'ble Apex Court, in case, titled as ***Surinder Singh Brar and others versus Union of India***, reported in ***(2013) 1 Supreme Court Cases 403***.

10. Before proceeding to make a further adjudication, upon the instant writ petitions, it is deemed appropriate to also delineate the factual matrix, as appertains to each of the writ petitions.

CWP-6274-2015

11. The petitioner trust is being run by a number of trustees as per the declaration of the trust dated 22.4.1954. The petitioner challenges the notification dated 4.5.2000 issued under Section 4 of the Act of 1894, and, the declaration issued under Section 6 of the Act of 1894, besides the award dated 21.3.2003, whereby the land of the petitioner measuring 0-16½ marla was sought to be acquired. The petitioner had earlier filed CWP 11348 of 2004 thus challenging the present acquisition proceedings, which became disposed of by this Court vide order dated 9.8.2004, thereby directing the respondent-Administration to make a final decision on the request of the petitioner for allotment of an alternate site. Pursuant to the said order, the respondent-Administration passed the order dated 11.2.2005 whereby the claim of the petitioner was rejected. Aggrieved against the said decision, the petitioner-trust approached this Court vide CWP No. 4705 of 2005, which was disposed of by this Court vide order dated 29.3.2005, thus directing the respondent-Administration to consider the application of the petitioner trust as and when fresh applications for allotment of other institutions are considered. In pursuance thereof, the petitioner made several representations, however, no decision has been made on the said

representations. It is further averred in the petition, that the other writ

petitions challenging the acquisition proceedings came up for hearing before this Court on 21.9.2005, which became disposed of vide a common order by this Court, thus directing the respondent-Administration to constitute a High Powered Committee. However, the order (supra) was not implemented by the respondents, and, it became challenged before the Hon'ble Apex Court, by filing various SLPs, which became dismissed vide a common order date 19.8.2013. It is further averred, that after the dismissal of the SLPs, the respondents vide order dated 20.1.2014 constituted a High Powered Committee, in terms of the order dated 21.9.2005 passed by this Court, and, issued notice to the petitioners in the writ petitions concerned. However, despite the petitioner trust being similarly situated to those petitioners, it has not received any notice from the respondent-Administration.

CWP-12812-2014

12. The petitioner challenges the notification dated 4.5.2000 issued under Section 4 of the Act of 1894, and, the award dated 21.3.2003. The initiation of the acquisition under Section 4 of the Act of 1894 was on 4.7.1989 for the development of third phase of Chandigarh city. However, the said notification was de-notified due to shortage of funds. Thereafter the notification in question was issued for acquisition of 116.231 acres of land situated in village Kajheri. It is averred in the petition, that on 21.9.2005, CWP-19145-2002 was disposed of by this Court vide order dated 21.9.2005, directing the respondent-Administration to constitute a High Powered Committee which shall hear the objections of the land owners. On 7.9.2005, the petitioner submitted a detailed representation to the Administrator of Chandigarh. However, the said order became challenged before the Hon'ble Apex Court, by filing various SLPs by the respondent-Administartor, which

became dismissed vide a common order date 19.8.2013. On January, 2014,

High Powered Committee was constituted, and, notice for hearing of objections was issued by the Committee for 9.7.2014 and 10.7.2014.

CWP-22311-2015

13. The petitioner challenges the notification dated 4.5.2000 issued under Section 4 of the Act of 1894, and, the award dated 21.3.2003. It is averred in the petition that the petitioner is the owner, and, in possession of the land measuring 0-3 marlas (3/120) shares, bearing khewat No. 82, khatauni No. 105 min, khasra No. 22//14/2 (6-0) in village kajheri, HB No. 198, vide jamabandi for the year 1978-79. The initiation of the acquisition under Section 4 of the Act of 1894 was on 4.7.1989 for the development of third phase of Chandigarh city. However, the said notification was de-notified due to shortage of funds. It is averred in the petition, that before passing of the impugned award, CWP-19145-2002, became filed before this Court, which was disposed of by this Court vide order dated 21.9.2005, directing the respondent-Administration to constitute a High Powered Committee which shall hear the objections of the land owners. It is further averred therein that during the pendency of the aforesaid petition, the impugned award became passed on 21.3.2003. However, the said order became challenged before the Hon'ble Apex Court, by filing various SLPs by the respondent-Administration, which became dismissed vide a common order date 19.8.2013. On January, 2014, High Powered Committee became constituted, and, notice for hearing of objections was issued by the Committee for 9.7.2014 and 10.7.2014. It is further averred in the instant petition, that the Act of 1894 became repealed in view of commencement of the Act of 2013, which became notified by Central Government vide notification dated 26.9.2013.

CWP-6328-2000

14. In the instant petition, the petitioner prays for issuance a mandamus, upon the respondent concerned, to allot an industrial plot to it for setting up of an industrial unit in lieu of acquisition of its industrial unit M/s Arizona Agros, situated in village Nizampur Kumbra, opposite Sub-Jail, Chandigarh, acquired vide award dated 24.3.2000 in pursuance to the notification dated 20.8.1998 issued under Section 4 of the Act of 1894, and, declaration made on 15.12.1998 under Section 6 of the Act of 1894. It is averred in the petition that the petitioner had made several representations to the respondents concerned, that an alternative site with dwelling unit of the same area be provided to it, however, no action has been taken on the said representations.

Analysis of the submission of the learned counsels for the petitioners

15. Be that as it may, the Act (supra) became repealed, thus prior to the issuance of the validating order, whereby an ex-post facto delegation was made subsequently on 7.12.2015. It thereby appears, that the said ex-post facto validation made to a statutory function done under the repealed Act, thus is an ill-stratagem deployed by the respondent concerned, thus to overcome the efficacy of the verdict, recorded by the Hon'ble Apex Court in *Surinder Singh Brar's* case (supra), wherein, in the above extracted paragraph, it has been clearly expostulated that the power of the appropriate government conferred, upon or entrusted to the Administrator by the President under Article 239(1) after 25.2.1998, rather were not required by the Administrator, to be delegated to the advisor or to any other Head of the Department of the Union Territory, Chandigarh. Furthermore, when in the said judgment, it has been declared, that the assigning of such delegations of

Department of U.T., Chandigarh, whereby, the latter proceeded to issue notification under Section 4 of the Act of 1894, and, the declaration under Section 6 of the Act of 1894, thus being construable to be flawed delegation, resultantly thereby, the relevant notification(s) for acquisition being made to the petition land(s), thus become disrobed of their legal worth.

16. The learned senior counsels for the petitioner(s) submitted, that the expostulation of law (supra), as made in *Surinder Singh Brar's* case (supra), is with aplomb applicable to the impugned notification issued under Section 4 of the Act of 1894. They submit, that though in the opening of the said notification, a speaking occurs, that the said notification has been drawn on satisfaction being made by the Administrator to the U.T., Chandigarh. However, yet the said notification carries the seal, and, signature of the Secretary Engineering, Engineering Department, U.T., Chandigarh. Consequently, it is contended, that when in the judgment (supra), as made by this Court, it has been explicitly expounded, that when the Administrator is solitarily required to effectively function, as “appropriate Government” in his, thus making an application of mind, with respect to the necessity of launching of acquisition proceedings. Therefore, it is submitted, that the delegation, if any, of the said powers by the Administrator, thus to any other subordinate to him, rather does not assign any aura of validity to the notification issued under Section 4 of the Act of 1894.

17. The learned counsels for the petitioner(s) also submitted, that the ex-post facto validation, as became assigned to the prior thereto, but impermissibly assigned delegation of powers by the Administrator, to the author of the notification issued under Section 4 of the Act of 1894, thus

Apex Court, in Surinder Singh Brar's case (supra). The counsels further submitted, that the said ex-post facto validation, to the yet impermissible delegation made by the Administrator to the Union Territory, Chandigarh, to his subordinate, in the latter, drawing the notification under Section 4 of the Act of 1894, rather also has been made, but after the coming into force of the Act of 2013, inasmuch as, it has been made on 7.12.2015, whereas ,the Act of 2013 came in force on 1.1.2014. Therefore, it is contended, that the said ex-post facto validation of delegation of powers, as, made by the Administrator to the U.T., Chandigarh, thus to an officer subordinate to him, whereby the latter took to issue a notification under Section 4 of the Act of 1894, thereby too, also does not confer any aura of any validity thereto, significantly when the initially made notification was but legally infirm.

**Analysis of the submissions of the learned counsel for
the respondents-U.T.**

18. The learned counsels for the respondent-U.T., has vigorously argued, that since in the previous round of litigation, the litigants concerned, have waived or abandoned the plea relating to the applicability to the facts at hand of the verdict made by the Hon'ble Apex Court in Surinder Singh Brar's case (supra). Therefore, they argue, that thereby the petitioners cannot, in the instant writ petitions, raise the said ground, rather for making an onslaught to the acquisition proceedings, as became launched under the Act of 1894. The reason, which they advance for curtailing the petitioners, from making an onslaught, to the launching of the acquisition proceedings, under the Act of 1894, thus on the above premise, is rested or is grooved in the factum, that when in the earlier writ petition, the said ground was not taken, as a ground of challenge, to the launched acquisition proceedings, thereby the omission in the taking of the said ground in the earlier round of

litigation by the petitioners concerned, and, yet theirs taking it as a ground, thus for challenging the launched acquisition proceedings, thereupon too, qua the said omission the estopping principle, as constituted in Order 2 Rule 2 of the CPC, rather becomes sparked.

19. The learned counsel for the respondents-U.T., have also argued, that irrespective of the Act of 1894, becoming repealed, but yet there is an empowerment in the authority concerned, to assign ex-post facto validity to the notification issued under the Act of 1894, and/or they submit, that any ex-post facto delegation of powers conferred, through an office noting to the Secretary Engineering, Engineering Department, U.T., Chandigarh, thus overcomes the inefficacy, if any, or the defect, if any, in the Secretary Engineering, Engineering Department, U.T., Chandigarh, to in purported exercise of power of delegation, as made to him by the Administrator concerned, rather making the notification under Section 4 of the Act of 1894.

20. They also submit, that in paragraph 19 of the verdict recorded by the Hon'ble Apex Court in case titled as ***Raj Kumar Gandhi versus Chandigarh Administration and others***, to which ***Civil Appeal Nos. 4265-4266 of 2008*** becomes assigned, para whereofs, becomes extracted hereinafter, rather the Hon'ble Apex Court, has endorsed the ex-post facto approval made, to the award of the Collector, thus by the Advisor to the Administrator, thereby in terms of said paragraph, the above ex-post facto delegation of powers or the ex-post facto validation, as, made to the notification issued under Section 4 of the Act, which otherwise was signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, rather is also required to be validated.

which have attained finality, it would not be appropriate to take a different view. Reliance has been placed by learned counsel for the appellant on the decisions of this Court in Surinder Singh Brar & Ors.v. Union of India & Ors. (2013) 1 SCC 403 and Gurbinder Kaur Brar &Anr. v. Union of India & Ors. (2013) 11 SCC 228. In both the cases, the matter was with respect to sanction for land acquisition which was not granted by the appropriate Government i.e., the Administrator. In the instant case, the Advisor had approved the award. Since there is ex-post facto approval and a large number of other matters have already been dismissed, it is not considered appropriate to make interference in this matter on the aforesaid ground, particularly when sanction for acquisition had been granted by the appropriate authority, is not in dispute in the instant matter.”

21. It is also submitted, before this Court, that thereby when in the above extracted paragraph of the verdict (supra), as made by the Hon’ble Apex Court, especially when readings thereof, make clear voicings, that thereby the Hon’ble Apex Court, rather had after dismissing the challenge made by the land losers concerned, to the dismissal of their writ petitions by the High Court, rather had validated the ex-post facto approval, as became made to the acquisition proceedings. Consequently, thereby the instantly made ex-post facto also is strived to be validated.

Reasons for accepting the submissions made by the learned counsels for the petitioner(s) and for rejecting the submissions made by the learned counsels for the respondent-U.T.

22. For the reasons to be assigned hereinafter, the submissions addressed before this Court by the learned counsels for the petitioners, are accepted, and, the submissions (supra) as made before this Court, by the learned counsels, for the respondents-U.T., are rejected.

23. It is not in dispute that the notification issued under Section 4 of the Act of 1894, though became drawn to the satisfaction of the Administrator to the U.T., Chandigarh, but the said notification rather has been signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh. The above uncontested fact, but leads this Court, to employ thereons, the declaration of law, as made by the Hon'ble Apex Court in *Surinder Singh Brar's* case (supra), wherein, the Hon'ble Apex Court has tritely emphasized, that when the Administrator, thus is to effectively function, as "the Appropriate Government", besides when it is impermissible for him, to delegate, the function of "the Appropriate Government", thus to any subordinate to him. Resultantly, when in the said case, a notification, alike to the instant case, was thus issued in the name of the Administrator, but when it became signed by the Advisor. In the face of the said admitted factum, the Hon'ble Apex Court had annulled, the further launched acquisition proceedings. In sequel, when alike to the notification at hand, thus a notification became challenged, and, also became annulled, thus on the plank of its also suffering from an alike defect, inasmuch as, the same becomes impermissibly signed by the Secretary Engineering, Engineering Department, U.T., Chandigarh, through purported delegation of powers of "the Appropriate Government" by the Administrator, to the signatory thereof. In consequence, with the said likeness, this Court applies even to the instant notification, the expostulation of law, as, made in *Surinder Singh Brar's* case. Resultantly, this Court quashes, and, sets aside the said notification, besides also proceeds to consequentially set aside, and, annul the subsequent thereto embarked upon acquisition proceedings, which ultimately led to the making of the award, which also but necessarily is also required to be quashed, and,

set aside.

24. Though, the learned counsels for the respondent-U.T have vigorously argued, that since in the earlier round of litigation, the petitioners concerned, had omitted to raise the said ground, as a valid ground of challenge to the acquisition proceedings concerned, and, thereby they submit, that the said omission attracts to the raising of the said ground, in the instant writ petition, the estopping principle, engrafted in Order 2 Rule 2 of the CPC.

25. However, since law is not required to be pleaded, as a ground for any valid onslaught, being made to the otherwise defectively launched acquisition proceedings. Therefore, any non-pleadings or omissions in the raisings of the said otherwise raisable legal ground, but anviled, upon, the expostulation of law, made by Hon'ble Apex Court in *Surinder Singh Brar's* case (supra), rather cannot but necessarily attract qua the said omission the relevant estopping principle. Therefore, the said submission is rejected.

26. The submission, as addressed before this Court by the learned counsels for the petitioners, as anchored upon the judgment made by the Hon'ble Apex Court in *Raj Kumar Gandhi's* case, also is of no avail to the learned counsel for the respondent-U.T. The reason for drawing the above conclusion, but stems from the factum, that the ex-post facto validation or ex-post facto sanction, rather made by the Administrator, to the discharging of delegated functions, by an officer subordinate to him, rather was an ex-post facto sanction, but only to the awards concerned, but evidently was not in respect of the defectively launched acquisition proceedings, as, comprised in the making of a defective notification under Section 4 of the Act of 1894.

27. Be that as it may, in paragraph 19 of the verdict (supra), the

made in *Surinder Singh Brar*'s case (supra), nor has set at naught, the trite expostulation, as made therein, insofar as relating to the issuance of a notification under Section 4 of the Act of 1894, thus by an officer subordinate to the Administrator, through the latter making impermissible delegation of apposite functions to him. Moreover, for reasons (supra), the invalidation to such impermissible delegation(s), as, made by the Administrator to the officer subordinate to him, in the latter making a notification under Section 4 of the Act of 1894, did lead, the Hon'ble Apex Court, to thereby annul the launched acquisition proceedings. Therefore, when, as stated (supra), this Court has aligned the facts therein with the facts at hand, and, which but obviously are almost similar. In consequence, when no departure is made by the Hon'ble Apex Court, in *Raj Kumar Gandhi*'s case, thus to the expostulation (supra), as, made in *Surinder Singh Brar*'s case (supra). Therefore, the therein ex-post facto sanction granted by the Administrator, but only to the awards, and, not to the issuance of the apposite notification, does not thereby constrain this Court, to yet conclude that the verdict (supra), does also overcome the defectively launched acquisition proceedings, through the makings in the mode (supra), thus of a defective notification under Section 4 of the Act of 1894.

28. Furthermore, since the ex-post facto approval became granted post the coming into force of the Act of 2013, besides, when the Act of 1894 became repealed, and, thus lost its efficacy for all relevant purposes. Therefore, thereby too, the ex-post facto validation, as made on 7.12.2015, thereby approving the impermissible exercising of the delegated powers by the apposite signatory, but necessarily, does not overcome nor erases, the initially occurring defect in the notification issued under Section 4 of the Act

29. Even otherwise, the application of mind to the necessity of launching of acquisition proceedings, was required, as mandated in Surinder Singh Brar's case (supra), to be thus made by the Administrator concerned, whereas, when at the relevant stage, no application of mind was made, by the Administrator concerned, to the necessity of launching of acquisition proceedings, thereby lack of application of mind by the Administrator concerned, thus at the relevant stage, rather his making an ex-post facto application of mind, thereby also the said ex-post facto application of mind, is of no legal worth. Conspicuously also, when the Administrator concerned, who made the ex-post facto delegation or ex-post facto validation but on 7.12.2015, may be not the one, nor is shown to be the same Administrator in whose name the apposite notification became initially drawn. Therefore, too, there is no personal application of mind by the Administrator concerned, who made the relevant ex-post facto delegation or the ex-post facto validation, thus in the year 2015, to the necessity of the launching of the acquisition proceedings in the year 2000, whereas, personal application of mind, as mandated in the Surinder Singh Brar's case (supra) is a prima donna necessity, rather for validating the issuance of the apposite notification. Predominantly also when the said ex-post facto validation is made to the statutory provisions, carried in the apposite repealed Act.

30. Moreover for the further reason to be assigned hereafter, there cannot be any retrospective assigning of validation to the initially defectively issued notification under Section 4 of the Act of 1894.

31. The prime reason for making the above inference stems, from the factum, that it is a cardinal principle of construction, that every statue is prima facie prospective, unless it is expressly or by necessary implication

thus assigned a retrospective effect. Therefore, unless there are words in the

statute, sufficient to show the intention of the legislature, to affect the existing rights, thereby it is deemed to be prospective only. Moreover, presumption against retrospectivity is also to be rebutted by necessary implication, inasmuch as, especially when a new law is made.

32. Therefore, since the initially defectively made notification under Section 4 of the Act of 1894, which has been assigned untenable validity through the making of the above office noting, as made subsequent to the coming into force of the Act of 2013, thereby the rights against the vesting of the acquired lands, thus in the land losers concerned, would but become gravely prejudiced. Moreover, when the legally impaired notification, is made under the earlier relevant statute, which however, has been repealed on the coming into force of the Act of 2013, thereby too, there cannot be any retroactivity or retrospective assignments of validity, thus to the notifications (supra), as became issued under the relevant repealed Act, as thereby a disfunctional or a dead statute, would rather assume untenable force, and, revitality.

Final order

33. Accordingly, this Court finds merit in the instant petitions, and, is constrained to allow them. Consequently, all the petitions (supra) are allowed. The impugned notifications as well as the impugned award, are quashed, and, set aside.

34. Since Section 24(2) of 2013 Act itself, in so many words contemplates, the possibility of re-acquisition of the land/property, in respect whereof the previous acquisition has lapsed. Therefore, it is necessary to direct the petitioner(s) 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.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

January 22nd, 2024
Gurpreet

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