IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11495 of 2015

Date of decision:8.9.2015

Kartar Kaur and others ….Petitioners

VERSUS

Union of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. A.K. Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate for the petitioners.

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HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the legality of sub-section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act') particularly the expression 'prior to commencement of the Act'. The challenge is also to the notifications dated 25.01.2008 and 18.03.2008, issued under Sections 4 and 6 of the Land Acquisition Act, 1894 respectively acquiring the land of the petitioners and subsequent Award dated 23.12.2009.

For the facility of reference, sub-section (2) of Section 24 of the Act is reproduced as under:-

> "24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.-
>
> (1) xx xx xx
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> (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition

> Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.
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> Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

It may be noticed that the petitioners have withdrawn the amount of compensation awarded by the Learned Land Acquisition Collector and have also sought reference under Section 18 of the Land Acquisition Act, 1894 which is pending consideration before the Reference Court.

The argument of learned counsel for the petitioners is that the Legislature has created two classes of the land-owners. One where the award has been given 5 years prior to the commencement of the Act and another where the award is within 5 years but possession has not been taken. Therefore, the discrimination between two classes of the landowners is not permissible. It is argued that the purpose of the enactment of the new legislation is to grant benefit of the land once owned by the landowners for the reason that the land has remained unutilized for five years, therefore, the time fixed of five years prior to the commencement of Act is unreasonable and has no reasonable nexus with the objective to be achieved.

We do not find any merit in the argument raised. In a judgment reported as Model Town Residents Association v. State of Punjab and others (2002) 3 PLR 88, the provisions of Section 3 of the Punjab Municipal Act, 1911 was struck down by a Division Bench of this Court on the ground that there is no reasonable basis of a classification of a building, whether let out or self occupied. Hon'ble Supreme Court in a judgment reported as Municipal Committee, Patiala v. Model Town Residents Association and others (2007) 8 SCC 669, set aside the Division Bench judgment holding that Legislature is competent to have different classification for the purpose of taxation. The Hon'ble Supreme Court observed as under:-

> " 14……….Essentially, in this case we are concerned with commercial property. It is the tax on the scarce resources, mainly the land whose prices are escalating, which provides an intelligible differentia (rational basis) having requisite connection with the object sought to be achieved. There cannot be a straight-jacket formula for determination of the annual value. The State is always entitled to raise resources by way of imposition of tax……
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> 15. In our view, the classification made between premises occupied by tenants on one hand and those occupied by the owner himself is wholly reasonable and has direct nexus with the object sought to be achieved. In our view, properties occupied by the tenants and properties which are self occupied constitute two separate classes. The amount of tax on the capital value has been recognized valid by this Court in the judgment of Patel Gordhandas (supra)……….. In the circumstances, the High Court had erred in holding that the amended Section 3(1) (b) made an invidious discrimination/distinction between premises in occupation of the tenant and premises which are self occupied.
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> 16. In the present case, the High Court has further held that Section 3(8aa) was ultra vires and unconstitutional for want of guidelines which gives wide powers to the officers in the matter of fixing annual value. This finding of the High Court is equally erroneous. Under the amended Section 3(1)(b), as stated above, a formula has been evolved by which in

> the case of self occupied premises the tax has to be imposed on annual value calculated on the basis of the present market value of the land plus the cost of construction minus 10% deduction on account of depreciation. Section 3 (8aa) states that while estimating the present market value of the land the Assessing Officer ("A.O.") will keep in mind the principles mentioned in the Land Acquisition Act, 1894 whereas under the above formula, the A.O. will keep the registered sale instances of buildings before him in order to compare the cost of construction of houses in the same locality, area etc. When it comes to land, the A.O. will gather the market value dependant on the sale instances in the surrounding areas. He will keep in mind the principles of Land Acquisition Act, 1894 for arriving at the market value of the land. On the other hand, under the above formula, which is the composite formula, the A.O. has to take into account the cost of construction. This is because the building might have been constructed ten years ago. In such cases, the A.O. shall keep in mind the cost of construction prevailing in the area when the house was constructed. For such an exercise, the A.O. has to refer to the instances mentioned to properties registered under the Registration Act. As stated above, there is no straight-jacket formula in matters of valuation. Therefore, leeway has to be given to the A.O. for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the cost of construction of the houses by invoking the instances of registration on transfer of houses under the Registration Act. Therefore, in our view, the High Court had erred in striking down Section 3(8aa)."

In Union of India v. Nitdip Textile Processors (P) Ltd., (2012) 1 SCC 226, Hon'ble Supreme Court was considering Kar Vivad Samadhana Scheme wherein the benefit of Scheme was available to the assessees who paid tax arrears "on or before the 31st day of March 1998" under Section 87 (m)(ii)(b) of the Finance Act, 1998. The Court held to the following effect**:-**

> "38. Shri Kuhad further submits that the High Court has correctly struck down the words "on or before the 31st day of March 1998"

in Section 87 (m) (ii) (b) and, thereby, created a right in favour of the assessee to claim benefit under the Scheme for all arrears of tax arising as on 31-3-1998. He further submits that by application of the doctrine of severability, the Scheme can operate as a valid one for all purposes.

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47. It is now well settled by a catena of decisions of this Court that a particular classification is proper if it is based on reason and not purely arbitrary, caprice or vindictive. On the other hand, while there must be a reason for the classification, the reason need not be a good one, and it is immaterial that the statute is unjust. The test is not wisdom but good faith in the classification. It is too late in the day to contend otherwise. It is time and again observed by this Court that the legislature has a broad discretion in the matter of classification. In taxation, "there is a broader power of classification than in some other exercises of legislation". When the wisdom of the legislation while making classification is questioned, the role of the courts is very much limited. It is not reviewable by the courts unless palpably arbitrary. It is not the concern of the courts whether the classification is the wisest or the best that could be made. However, a discriminatory tax cannot be sustained if the classification is wholly illusory.

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66. To sum up, Article 14 does not prohibit reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. To satisfy the test of permissible classification, it must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The taxation laws are no exception to the application of this principle of equality enshrined in Article 14 of the Constitution of India. However, it is well settled that the legislature enjoys very wide latitude in the matter of classification of objects, persons and things for the purpose of taxation in view of inherent complexity of fiscal adjustment of diverse elements. The power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. Even so, large latitude is allowed to the

> State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill- equipped to investigate."

In Basheer *v*. State of Kerala, *(2004) 3 SCC 609*, the court examined the question of law as to the constitutional validity of the proviso to sub-section (1) of Section 41 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (Act 9 of 2001). By this section, Parliament has declared its intention to apply the amended provisions of the Act to: (*a*) all cases pending before the court on 2-10-2001; (*b*) all cases under investigation as on that date; and provides that these categories of cases shall be disposed of in accordance with the provisions of the 1985 Act as amended by the Act of 2001. In other words, the benefit of the rationalised sentencing structure would be applicable to these categories. The proviso, however, makes an exception and excludes the application of the rationalised sentencing structure to cases pending in appeal. The Court negated challenge holding to the following effect:-

> "14. Counsel contend that there may be cases where the trial may have concluded before 2-10-2001; equally, for reasons not within the control of the accused, there may be cases where the trials may have continued beyond 2-10-2001. Therefore, on account of the fortuitous reason of quick disposal of trials prior to 2-10-2001, appeals might have been filed and these could be pending on the date on which the amending Act came into force. It is argued that these fortuitous circumstances should not determine the fate of the accused nor whether they should get the benefit of the mollification of the rigour of the law. Counsel contends that persons similarly situate would be subject to discriminative yardsticks of punishment only because of fortuitous circumstances. According to them, the proviso hostilely discriminates against the class of cases pending in appeal, the classification is unsupported by any rational basis or intelligible differentia having nexus with the objective of the amending Act. Thus, according to the appellants, the proviso to sub-

section (1) of Section 41 of Act 9 of 2001 infringes Article 14 and is, therefore, unconstitutional."

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18. Before we do that, we may dispose of a subsidiary contention based on fortuitousness. In *State of A.P.* v. *Nallamilli Rami Reddi (2001) 7 SCC 708* a similar contention, urged to impugn a statutory provision as infringing Article 14 of the Constitution, was dismissed by this Court in the following words: (SCC at p. 715, para 8)

> "*8*. What Article 14 of the Constitution prohibits is 'class legislation' and not 'classification for purpose of legislation'. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (*i*) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (*ii*) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of (sic) peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation."

19. We think that these observations are equally applicable to the cases before us.

20. Merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation. As long as the extent of overinclusiveness or underinclusiveness of the classification is marginal, the constitutional vice of infringement of Article 14 would not infect the legislation."

The express provision of the Statute cannot be struck down for the reason that the benefit of the Statue would not be available to a set of landowners. The legislature is competent to create classification, which cannot be interfered with only on the basis of cut-off period, fixed by Statue, when the provisions of the Statue are clear and categorical.

Learned counsel for the petitioners raised another argument that even acquisition is illegal. We do not find any merit in the said argument. Not only that similar writ petition challenging the same notifications remained unsuccessful such as CWP No.8097 of 2008 titled M/s Padmini VNA Mechatronics Private Limited v. State of Haryana and others, decided on 29.05.2010 and other connected cases but in the present case, the petitioners have also received the amount of compensation. Once, the amount of compensation is received, the land-owners are estopped to dispute the acquisition.

In view of the above, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 8, 2015 **(RAJ RAHUL GARG)**
'D. Gulati' **JUDGE**