HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.23172 of 2014 (O&M)
Date of Decision: 09.12.2016

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Gagandeep Kang & Ors. ... Petitioners

VS.

UT Chandigarh & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA

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1. Whether speaking/reasoned?	***Yes***
2. Whether reportable?	***No***
3. Whether Reporters of local papers may be allowed to see the judgment?	***Yes / No***
4. To be referred to the Reporters or not?	***Yes / No***
5. Whether the judgment should be reported in the Digest?	***Yes / No***

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Present: Mr. NS Boparai, Advocate for the petitioners

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate;
Mr. Vishal Sodhi, Advocate for UT Chandigarh

Ms. Deepali Puri, Advocate for MC Chandigarh

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SURYA KANT, J. (Oral)

(1) There are 8 petitioners in this case whose land measuring 13 kanal 1 marla situated in the revenue estate of village Manimajra, UT Chandigarh and fully described in para 2 of the writ petition, was acquired vide award dated 05.01.1990. The said acquisition is under challenge on the ground that the same is deemed to have lapsed under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as neither the compensation was paid to the petitioners nor was it deposited with the Reference Court in accordance with Section 31 of the Land Acquisition Act, 1894.

(2) The respondents have contested the claim. Since the ownership of some of the petitioners was questioned and the petitioners, in counter, reiterated that they are the true owners of acquired land, the Land

Acquisition Collector was directed to re-verify the facts and submit a report. The Land Acquisition Officer has accordingly filed the status report dated 06.12.2016 in which the ownership of petitioners has now been admitted.

(3) As regard to the compensation, it is undeniable that petitioners No.5 to 7 have not been paid any compensation and the same was deposited with the Reference Court on 07.11.2014 only. So far as respondents No.1 to 4 are concerned, they have received the enhanced compensation determined by the Reference Court under Section 18 of the 1894 Act but the compensation awarded by the Collector was neither paid to them nor the said amount has been deposited with the Reference Court under Section 31(2) of the 1894 Act.

(4) A somewhat similar situation where only the enhanced amount of compensation as determined by the Reference Court was deposited in accordance with Section 31(2) of the 1894 Act and the compensation amount as awarded by the Collector was neither received by the landowner(s) nor was it deposited with the Reference Court in accordance with law, the Hon'ble Supreme Court in ***Working Friends Cooperative House Building Society Ltd. vs. State of Punjab & Ors. (2015) 10 SCALE 632*** has held that such deposit of enhanced compensation alone, does not amount to valid compliance of Section 31 of 1894 Act. Following the cited *dictum,* there can be no escape but to hold that in the case of petitioners No.1 to 4 also, the compensation amount cannot be said to have been paid or tendered validly and in accordance with law.

(5) The resultant effect is that the impugned acquisition *qua* all the petitioners is deemed to have lapsed under Section 24(2) of the 2013 Act for

non-compliance of one of the grounds, namely, non-payment/deposit of the compensation amount as per Section 31 of 1894 Act.

(6) Faced with this, learned senior counsel for UT Chandigarh takes us through the photographs (R1) on record to point out that after taking physical possession of the acquired land many years back commercial plots were carved out and sold in open auction. Thereafter commercial Shop-cum-Offices (SCOs)/parking space have been constructed by third parties and a full-fledged commercial market has been operational since decades.

(7) Learned counsel for the petitioners also is unable to controvert the post acquisition developments.

(8) It may be true that the impugned acquisition is deemed to have lapsed under Section 24(2) of the 2013 Act and as per the consistent view taken by us in such like matters, a one-year period is being granted to the respondents to take a fresh and appropriate decision as to whether or not the subject land is to be re-acquired. But keeping in view the subsequent events, namely, that the third party rights have been created and they have set up commercial establishments for the last many years, the respondents cannot be given such discretion. Furthermore, none of the allottees, who are bound to be adversely affected, if the acquisition is allowed to lapse, are party respondents in these proceedings.

(9) The object of Section 24(2) of the 2013 Act is essentially to compensate the owners who are left in lurch, with enhanced compensation amount as well as most of other statutory benefits admissible under the 2013 Act.

(10) There is thus a dire necessity of evolving a solution of such nature in this case that while the petitioners get the benefit of Section 24(2)

of 2013 Act but its effect does not result into invalidation of the title of hundreds of allottees.

(11) The writ petition is accordingly allowed and it is held that the impugned acquisition is deemed to have lapsed but the resultant effect would be that the petitioners shall be entitled to such enhanced compensation as may be assessed under the 2013 Act. The respondents are thus directed to re-assess and pay the additional amount of compensation to the petitioners in accordance with law within *four months* from the date of receipt of certified copy of this order. The compensation amount already paid to the petitioners shall be adjustable against the due amount to which they shall now be entitled to under the 2013 Act.

(Surya Kant)
Judge

09.12.2016
vishal shonkar

(Sudip Ahluwalia)
Judge