

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No. 1448 of 2015 (O&M)
Date of decision: 5.9.2017

M/s Dasmesh Charitable Trust .. Petitioner
vs
State of Haryana and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. Shailendra Jain, Senior Advocate with
Mr. Sahil Nayyar, Advocate, and
Mr. Chiranji Lal, Advocate for
Mr. Kamal Sehgal, Advocate, for the petitioner (s).

Mr. Ankur Mittal, Additional Advocate, General, Haryana and
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Mr. Aakanksha Sawhney, Advocate, for HUDA.

Rajesh Bindal, J.

This order will dispose of writ petitions bearing CWP Nos. 1448 and 9283 of 2015, as common questions of law and facts are involved therein.

The petitioners herein have challenged the acquisition of land where notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') were issued on 9.12.2013 and 5.12.2014, respectively. The land was sought to be acquired for the development and utilization thereof for Sector Part Road, Sector 9-B, and Open Space Zone at Gurgaon (now Gurugram).

Learned counsel for the petitioners submitted that the acquisition in question has lapsed as only notification under Section 4 of the 1894 Act, had been issued prior to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, 2013 (for short, 'the 2013 Act'). In terms of Section 24(1) of the 2013 Act, initiation of acquisition has to be there under the old Act, namely, the 1894 Act, which is with issuance of notification under Section 6 thereof. In the present case, notification under Section 6 of the 1894 Act was issued on 5.12.2014. The issue has been gone into by a Full Bench of this Court in CWP No. 4371 of 2015 -Deepak Aggarwal and another vs State of Haryana and others. Vide judgment dated 31.8.2017, it has been opined that only the cases where notification under Section 6 of the 1894 Act had been issued prior to 1.1.2014, that further proceedings can be carried on in terms of the 2013 Act, after the repeal of 1894 Act.

Section 24(1) of the 2013 Act is reproduced hereunder:-

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

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

The final opinion expressed by the Full Bench of this Court in Deepak Aggarwal's case (supra), is extracted below:-

(a) The proceedings in pursuance of notification under Section 4 of the Old 1894 Act are limited only

for purposes of conducting a preliminary inquiry for carrying out the survey and suitability of the land proposed to be acquired. Besides, apprise the landowners of the appropriate Government's intention to acquire the land so that they can file objections, if any and also hear the objections.

(b) For the purpose of payment of compensation, the date of notification under Section 4 of the Old 1894 Act is to be taken for the purpose of fixing the rate to be paid as after publication of a notification the land prices freeze and there are no further transactions, besides, if there are sales at the said stage, these are mostly distressed sales. Therefore, even though the date of notification under Section 4 of the Old 1894 Act is taken as the date for the determination of the rate of compensation but nevertheless is not to be taken as the date of initiation of proceedings under the Old 1894 Act. The proceedings for acquisition of land can be said to be initiated only after due application of mind which is the stage of declaration under Section 6 of the Old 1894 Act.

(c) The Legislature by Section 24 (1) of the New 2013 Act has provided for the land acquisition process deemed to have lapsed in certain cases under the Old 1894 Act. It is provided that notwithstanding anything contained in the New 2013 Act in any case the land acquisition proceedings 'initiated' under the Old 1894 Act where no award under Section 11 thereof had been made, then all the provisions of the New 2013 Act relating to determination of compensation are to apply. The applicability of the provisions of the New 2013 Act for payment of compensation would only be if proceedings under the Old 1894 Act had been initiated before 01.01.2014 which is the appointed day for the

enforcement of the New 2013 Act.

(d) The applicability of Section 114 of the New 2013 Act which deals with repeal and savings is clear to the extent it envisages that the Old 1894 Act shall stand repealed. The effect of Sub Section (2) is that save as otherwise provided in the New 2013 Act, the repeal under Sub Section (1) shall not be held to prejudice or effect the general application of Section 6 of the 1897 GC Act. Repeal is not a matter of mere form but is of substance depending on the intention of the Legislature. If the intention indicated either expressly or by necessary implication in the New 2013 Act was to abrogate or wipe off the Old 1894 Act wholly or in part then it would be a case of total or *pro tanto* repeal. The repeal in respect of the Old 1894 Act is total insofar as Sub Section (1) of Section 114 of the New 2013 Act provides; however, by Sub Section (2) it does not prejudice or affect the general application of Section 6 of the 1897 GC Act.

(e) The New 2013 Act provides for several contemporary, progressive and socially beneficial legislative measures breaking away from the confines of the past archaic law and provides mechanisms for determination of social impact and public purpose which is not there in the Old 1894 Act. The New 2013 Act is to be leaned towards providing for the beneficial provisions of legislation to the landowners whose land is sought to be acquired so that they get the benefits of the new legislative dispensation.

(f) The notification issued under Section 4 of the Old 1894 Act before the appointed day i.e. 01.01.2014 under the New 2013 Act would continue to remain operative in terms of Section 6 and Section 24 of the 1897 GC Act only if the proceedings under the Old

1894 Act have been 'initiated' before 01.01.2014 which would be that there has been due application of mind followed by declaration under Section 6 of the Old 1894 Act.

(g) A notification published under Section 4 of the Old 1894 Act in the official Gazette but in the newspaper later after the commencement of the New 2013 Act on 01.01.2014 would not be sustainable in law as the last dates of such publication and the giving of such public notice is to be taken as the date of the publication of the notification. It is only on the publication of the last of the notification that it can be said that there was notice to the affected parties so as to enable them to file objections.

(h) The hearing of objections under Section 5-A and the publication of notification under Section 6 of the Old 1894 Act would not be permissible after its repeal and after commencement of the New 2013 Act from 01.01.2014 as the proceedings cannot be said to have been 'initiated' under the Old 1894 Act in case the declaration under Section 6 thereof had not been issued and it is only when the declaration is issued that the land acquisition process can be said to have been 'initiated'. In other words, in case a declaration in terms of Section 6 of the Old 1894 Act is not notified before 01.01.2014, the land acquisition proceedings cannot be said to have been initiated and therefore, would lapse by virtue of Section 24 (1) of the New 2013 Act."

Learned counsel for the State does not dispute the aforesaid legal position. In this case, the award of the land acquired was announced by the Land Acquisition Collector on 1.12.2016. The amount was not

received by the petitioners.

After hearing learned counsel for the parties and considering the submissions noticed above and the view expressed by Full Bench of this Court in Deepak Aggarwal's case (supra), in our view, the notification under Section 4 of the 1894 Act, dated 9.12.2013, has lapsed qua the petitioners, as declaration under Section 6 of the 1894 Act had not been issued before repeal of the 1894 Act and enactment of the 2013 Act on 1.1.2014. In the present case notification under Section 6 of the Act was issued on 5.12.2014.

However, the State shall be at liberty to either initiate fresh proceedings for acquisition of land or negotiate with the landowner for purchasing/ retaining the land in accordance with law, in case the land in question is required for completion of any project or otherwise. The petitioners shall maintain status quo regarding the land in question for a period of six months to enable the State to take decision. All other issues raised in the writ petitions are left open as this Court has not expressed any opinion thereon.

The writ petitions are disposed of accordingly.

(Rajesh Bindal)
Judge

5.9.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No