

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

105

Civil Writ Petition No.18779 of 2020

Date of Decision: December 1st, 2020

Vidya Nand

...Petitioner

Versus

The State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
for the respondents.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court praying for issuance of a writ of certiorari quashing the notifications dated 27.01.2003 (Annexure P-1) and 23.01.2004 (Annexure P-2) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 and the award dated 20.01.2006 (Annexure P-3), whereby the land of the petitioner to the extent of 14/184 share comprised in Rectangle No.66, Khasra No.79, Mustatil No.6, Killa No.13 (9-4) i.e. 14 marla as per *jamabandi* for the year 2003-04 situated at Village Padiawas, Tehsil and District Rewari, stood acquired for the purpose of development and utilization of land for residential/commercial Sectors 18, 19 and 20 at Rewari. Mandamus has also been prayed to be issued for directing the respondents to declare the acquisition proceedings in respect of the land in dispute as having lapsed in view of Section 101 A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter referred to as the '2013 Act').

2. Petitioner is owner in possession of 14 marlas of land as detailed above at Village Padiawas, Tehsil and District Rewari. *Jamabandi* for the year 2003-04 reflects the ownership of the petitioner over the said land. Vide notifications dated 27.01.2003 (Annexure P-1) and 23.01.2004 (Annexure P-2) issued under Sections 4 and 6 of the Land Acquisition Act, 1894, this land of the petitioner was sought to be acquired. Land Acquisition Collector, Urban Estate, Haryana, Gurgaon, announced the award on 20.01.2006 (Annexure P-3). Petitioner accepted the acquisition as it was not challenged by him on merits.

3. For the first time, petitioner in the year 2014, filed CWP No.26212 of 2014 challenging the above said notifications and the award on the ground that in view of Section 24 (2) of the 2013 Act, the acquisition proceedings had lapsed. Petitioner was in physical possession of the said land and no compensation has been received by him. The said writ petition was disposed of by this Court vide order dated 13.07.2015 granting liberty to the petitioner to file a detailed representation raising all the pleas, as had been taken in the writ petition, before the appropriate authority and the authority was directed to decide the same by passing a speaking order and after affording an opportunity of hearing to the petitioner. Till then, *status quo* was ordered to be maintained by the parties.

In pursuance thereto, petitioner submitted a representation (Annexure P-9), which came to be decided by the Chairman-cum-Zonal Administrator, HUDA-cum-Additional Director Urban Estate, Gurgaon, on 21.09.2016 (Annexure P-10) rejecting the claim of the petitioner. The stand of the respondent authority was that physical possession of the land had

been taken by HUDA vide Rapat No.344 dated 20.01.2006. Petitioner had encroached upon the land and is in unauthorized possession of the same because of the passing of the *status quo* order. The land is to be utilized for development of Sector 18, Defence, Rewari and is reserved for existing Rewari Kotkasim Road, which is to be widened up to 45 meters and 12 meter wide service road with further land kept reserved for primary school. The whole work of development of Sector 18, Rewari, is completed except the area of stay from Court and the development work adjoining the petitioner's land is complete. 912 numbers of residential plots are allotted in Sector 18, Defence, Rewari, and the remaining infrastructure provision affected by the land in question is to be developed, which have been earmarked as per the norms proportionate to Sector 18 as per the approved demarcation plan. It has further been pointed out that the payment stands deposited and thus the provisions of Section 24 (2) of the 2013 Act are not attracted.

4. This order dated 21.09.2016 (Annexure P-10) was challenged by the petitioner by filing *CWP No.24331 of 2016* titled as *Vidya Nand Versus State of Haryana and others*. During the pendency of this writ petition, judgment dated 06.03.2020 of the Constitution Bench of the Supreme Court in *Indore Development Authority Versus Manohar Lal and others AIR 2020 S.C. 1496* came to be pronounced. This writ came up for hearing on 24.08.2020, when this Court, in the light of the above judgment of the Supreme Court, rejected the claim of the petitioner for declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the 2013 Act and for release of the land in question. At the statement of the counsel for the petitioner that the petitioner desired to invoke Section 101-A

of the 2013 Act, which is a provision exclusive to the State of Haryana inserted by way of amendment, which vests right in the State Government to denotify as considered expedient by the State Government, the land acquired under the Land Acquisition Act, 1894, had become unviable or non-essential. Liberty was granted as prayed but while dismissing the writ petition, *status quo* order passed in favour of the petitioner, was specifically vacated.

5. Petitioner submitted a representation (Annexure P-12) to the Principal Secretary, Urban Estate Department, Haryana, in pursuance to the provisions of Section 101-A of the 2013 Act as amended by the State of Haryana. Petitioner has now approached this Court again challenging the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894, as also the award taking the plea that the land of one Gian Parkash Yadav located in Mustatil No.6//8 of Village Padiawas, Tehsil and District Rewari, has been released vide order dated 26.08.2016 (Annexure P-15) alleging violation of Article 14 of the Constitution as the claim of the petitioner is not being considered by the respondents. The claim of release of the land from acquisition proceedings is based upon the policy dated 24.01.2011 (Annexure P-14) issued by the Government of Haryana, Urban Estates and Town and Country Planning Department.

6. When confronted by this Court as to how the present writ petition would be maintainable in the light of the fact that the challenge by the petitioner to the notifications dated 27.01.2003 (Annexure P-1) and 23.01.2004 (Annexure P-2) issued under Sections 4 and 6 of the Land Acquisition Act, 1894 as also the award dated 20.01.2006 (Annexure P-3), have attained finality vis-a-vis the petitioner, when the

petitioner had not challenged it earlier, counsel for the petitioner asserts that the cause of action has arisen to the petitioner with the issuance of the order dated 26.08.2016 (Annexure P-15), whereby the land of the similarly placed person i.e. Gian Parkash Yadav stands released and thus violating the provisions of equality as enshrined under Article 14 of the Constitution. This contention of learned counsel for the petitioner cannot be accepted in the light of the fact that there is an inordinate delay on the part of the petitioner in approaching this Court for challenging the notifications, referred to above, and the award. Further, as far as the claim of the petitioner for release of the land in the light of the provisions of Section 24 (2) of the 2013 Act, whereby the deemed lapsing of land acquisition proceedings were pressed into service stands rejected vide order dated 21.09.2016 (Annexure P-10), which has been upheld by this Court in CWP No.24331 of 2016 preferred by the petitioner vide order dated 24.08.2020 (Annexure P-11) in the light of the judgment of the Supreme Court in Indore Development Authority's case (supra).

7. As regards the representation submitted by the petitioner in the light of Section 101-A of the 2013 Act praying for denotifying the land acquired, the said aspect stands considered by a Division Bench of this Court in *CM No.9051 of 2020 in CWP No.22241 of 2016* titled as *Raghubir Singh and another Versus State of Haryana and others*, where this Court, after analyzing the provisions of Section 101-A of the 2013 Act, has concluded that the said provision enables the State Government and vests a right in it to denotify as considered expedient by the State Government, the land acquired under the Land Acquisition Act, 1894, in case the public purpose for which the land has been acquired has become

unviable or non-essential. In the light of the language of the Section, it has been held that no right accrues in favour of the landowner to represent the State Government to denotify his/her land. The Court thereafter had proceeded to analyse as to whether this Court, while exercising the powers under writ jurisdiction, can issue a writ of mandamus to the Government or authority to exercise the discretionary powers granted under the statute, which does not confer any corresponding legal right on the individual. The Court after referring to various judgments passed by the Hon'ble Supreme Court on this issue, concluded as follows:-

“Therefore, when at once it is clear that the power is discretionary and does not confer any corresponding legal right upon the individual right owner, same is thus, outside the purview of the jurisdiction of this Court. Grant of such a liberty would mean commending the Government to consider the case under Section 101A of the Act, 2013 which is though only an enabling provision that too denotifying the entire acquired land and not just a parcel of land if in the opinion of the State Government the ‘public purpose’ for which the land was acquired has become unviable or non-essential, without giving any right to the land owners.”

Thereafter the Court, in the light of the judgment passed by the Hon'ble Supreme Court in Indore Development Authority's case (supra), held as follows:-

“At the end, it can safely be concluded that when Hon’ble the Apex Court has specifically held that after vesting of land in the State, the land owners cease to have any right over the land in dispute especially when the acquisition proceedings have been upheld in the earlier round of litigation and no liberty can be given as the same would not be in consonance with the settled law and the

judgment delivered by Hon'ble the Apex Court in the present context.”

8. In the light of the above, the claim of the petitioner, which is based upon the provisions of Section 101-A of the 2013 Act as amended by the State of Haryana, would not survive, especially in the light of the order dated 09.10.2020 passed by a Division Bench of this Court in *CWP No.16273 of 2020* titled as *Ramesh Kumar and others Versus State of Haryana and others*.

9. Counsel for the petitioner has, at this stage, sought to rely upon the pendency of a bunch of writ petitions, wherein notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 and the award passed thereafter, which is subject matter of the present writ petition, where the cases have been remanded by the Supreme Court on the limited question vide order dated 05.09.2014 (Annexure P-13) in *Civil Appeal No.8512 of 2014* titled as *Shanti Devi and others Versus State of Haryana and others*. The said order of remand is based upon the concession given by the counsel for HUDA before the Hon'ble Supreme Court and that order was passed, when the judgment of the Supreme Court in Indore Development Authority's case (supra) had not come. The Hon'ble Supreme Court had, vide order dated 05.09.2014, remitted the matters back to the High Court to examine the two limited issues, which read as follows:-

“(1) Whether the lands being acquired from the ownership of the appellants qualify for exemption in terms of the relevant scheme and Policy according to which such of the lands as are already used for construction purpose before the issue of the Notification under Section 4 of the Land Acquisition Act, 1894, can be exempted.

(2) Whether the acquisition proceedings initiated in terms of the Notification dated 27th January, 2003 and declaration dated 23rd January, 2014 have lapsed in terms of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

We make it clear that the challenge to the acquisition proceedings on all other grounds shall be taken as concluded and shall not be open for any further debate before the High Court.”

A perusal of the above would show that only two limited issues were to be considered by this Court, which in the considered view of this Court, would not survive now in the light of the judgment of the Supreme Court in Indore Development Authority's case (supra).

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

**(AUGUSTINE GEORGE MASIH)
JUDGE**

December 1st, 2020
Puneet

**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No