

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

CWP No. 29728 of 2019
Date of decision:-28.07.2022

Om Parkash and anr. ...Petitioners
vs.

State of Haryana and ors. ...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Inderpreet Singh, Advocate, for
Mr. Rao Ajender Singh, Advocate, for the petitioners.

Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana

Ritu Bahri, J.

This petition has been filed under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari seeking quashing of award No. 278 dated 26.03.1979 (P-2) passed by LAC, Irrigation Department, Rohtak whereby land measuring 6 kanals 15 marlas belonging to the petitioners, was acquired for Masani Barrage, Rewari

Brief facts of the case are that the great grandfather of the petitioners namely Baldev was allotted land vide rapat roznamcha No. 278 dated 28.03.1974 (P-1) comprised in Mustil No. 114, Killa No. 4 (4-0), 5 (8-0), 6 (8-0), 7 (8-0), 8 (8-0), 13 (8-0), 14 (8-0), 15 (8-0), 17 (5-0), 18 (8-0) total area measuring 72 kanals 01 marlas by the then State Government and Welfare Department to settle down Harijan families. The land measuring 06 kanals 15 marlas came in possession of grandfather of the petitioners in the above said Mustil and his name was also incorporated in the revenue record as Gair Marusi Tenant. The Government of Haryana in the year 1979 vide notification dated 31.01.1979 issued under Sections 4 and 6 of the Land

Acquisition Act for acquiring the land for Masani Barrage. The Land Acquisition Collector, passed award (P-2) for acquiring land and the petitioners were not given compensation.

The land measuring 06 kanals 15 marlas belonging to grandfather of the petitioners was also acquired vide above said award. As per revenue record, the State Government is reflected as owner of the land. A copy of jamabandi for the year 2013-2014 is Annexure P-3.

The petitioners are now seeking release of their land under Section 101-A of the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Re-settlement Act 30 of 2013 (for short 'Act of 2013'), as their land has not been utilized till date. A legal notice in this regard was also given on 25.03.2016 (P-4). No compensation has been paid to the petitioners till date.

On notice of the petition, a written statement was filed by respondent Nos. 1 to 6 stating therein that petitioners are not entitled for release of acquired land in their favour as the petitioners' grandfather Sh. Ballu s/o Baldev had three sons namely Nihal Singh, Bhoop Singh and Sarjeet who all died leaving behind their legal heirs who have not been been impleaded as party in the present writ petition. Further, at the time of land acquisition, the Gurgaon Scheduled Caste Malkiat Jati Co-op Agriculture Thrift and Credit District Society Gurgaon was the owner of the said acquired land but this society was also not impleaded as party in the present writ petition. The names of petitioners were not recorded as owners of the acquired land in the revenue record. Further the possession of the acquired land was taken and handed over to the acquiring agency i.e respondents on 26.03.1979 The acquired land has already been vested absolutely with the

respondents-State free from all encumbrances under the provisions of Section 17 of the Land Acquisition Act, 1894. So, once the possession of the acquired land has already been taken, the respondent-State is left with no power to release the acquired land or that to withdraw the acquisition proceeding of the award dated 28.03.1979.

The provisions of Section 101 of the Act of 2013 cannot be invoked in the present case of the petitioners and this provision of Section 101 of Act of 2013 is wrongly pressed into service. Further, 06 kanal 15 marlas of acquired land was acquired for the construction of Right Embankment of Masani Barrage and the said Masani Barrage bundh was constructed by utilizing the land for keeping the river water back to control the flood of Sabi River. The amount of compensation of Rs.5,281.88 is also lying deposited in the Government Treasury, Rewari, vide RD No. 1239 dated 31.03.1979 but nobody came forward to collect the amount.

Since the purpose for which the land was acquired, at this stage no ground is made out for release of land under Section 101-A of Act of 2013. The acquisition proceedings had attained finality way back in the year 1979.

Reference at this stage can be made to a judgment of ***Ram Swaroop (dead) through LRs and another vs. State of Haryana and others***, arising out of SLP (Civil) No. 16421-2021, decided on 15.11.2021 whereby petitioners had challenged the order of this Court dismissing their writ petition claiming writ of mandamus to not to interfere with the continued, peaceful and complete possession of the appellants as the land in question has admittedly remained unutilized for a period of 05 years. The appellants relied upon Section 101 of Act of 2013. Hon'ble the Supreme

Court dismissed the appeal by referring to judgment of ***Raghubir Singh and another vs. State of Haryana and others***, (Civil Appeal No. 2714-2715 of 2021, decided on 15.07.2021) whereby this Court examined the provisions of Section 101 A of Act of 2013 and held that the power is discretionary and does not confer any corresponding legal right upon the individual land owner. Grant of such a liberty would mean commanding the Government to consider the case under Section 101 A of Act of 2013, which is though only an enabling provision, that too de-notifying 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. Such grant of liberty is against the spirit of the decision given in ***Indore Development's case (supra)***.

In view of the above, the land in the present case had already been acquired and thus no case is made out to consider the case of the petitioners under Section 101-A of the Act of 2013

The writ petition is dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

28.07.2022
G Arora

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