

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-234-2023
Decided on: 09.01.2023

Mayur Gupta & another

.....Petitioners

Versus

State of Haryana & others

.....Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH

Present:- Mr.Shailendra Jain, Sr.Advocate
with Mr.Jagtar Singh, Advocate, for the petitioners.

G.S. Sandhawalia, J. :-

Petitioners seeks a declaration that the notification dated 15.11.2002 (Annexure P-3) issued under Section 4 of the Land Acquisition Act, 1894 (for short, the 'Act') followed by the Section 6 notification dated 12.11.2003 (Annexure P-4) along with the award No.2 dated 18.11.2005 passed under Section 11, has become unviable and non-essential. Resultantly, the claim is for de-notification of the land in question in terms of the provisions of Section 101A of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement (Haryana Amendment) Act, 2013 (for short the '2013 Act') and the policy framed dated 14.09.2018.

Senior Counsel has placed reliance upon the judgment of the Apex Court in ***Raghubir Singh & another Vs. State of Haryana & others, 2021 (3) RCR (Civil) 533*** to submit that landowner has a right to approach the State Government for exercising its powers under Section 101A of the 2013 Act and pray it to de-notify the acquired land on such

terms and conditions as may be expedient in public interest. It is

therefore submitted that a writ of mandamus should be issued directing the State to do the needful.

We have heard Senior Counsel and are of the considered opinion that in the peculiar facts and circumstances and on account of the repeated litigation which has not been decided in favour of the petitioners, the relief as claimed cannot be granted.

A perusal of the paperbook would go on to show that petitioner No.1 who claims to be the owner of 12 marlas of land situated in Village Begampur Khatola is represented through a General Power of Attorney, petitioner No.2. The allegations are that mutation was done in favour of petitioner No.1 on 04.01.1995 as per Jamabandi 2003-04. Further averment is that petitioner No.1 had constructed upon the said land an industrial shed of 2400 sq.feet and thereafter on 22.03.2004, entered into a rent agreement with petitioner No.2 who is a tenant and is stated to be in occupation of the said premises and running the concern namely M/s Arya Industrial Corporation. Apparently, the said rent agreement has been entered into after the Section 4 notification which has finally culminated into an award dated 18.11.2005 (Annexure P-5) and compensation was also assessed accordingly.

Nothing has been averred that at any point of time petitioner No.1 had raised any objection regarding the construction raised on the said land and neither any material has been placed on record showing passing of any building plans or any proof apart from the photographs (Annexure P-2) which cannot conclusively establish as to when the construction was raised. Rather the interest of petitioner No.2 has only been created after the Section 4 notification and thus, he can seek no

right. Apparently, petitioner No.1 is settled in USA and the tenant is having the General Power of Attorney for pursuing the litigation for the land which already stood notified for acquisition. The General Power of Attorney which has been appended also does not show any reference to such agreement of tenancy and rather gives the authorization to the attorney to manage and control the said property and to make correspondence with DHBVNL, civil supplies, water supplies, electricity etc. for transfer/sale of the property and the averment is that petitioner No.1 is the owner in possession which is contradictory to the averments made in the writ petition itself. The said attorney has only been executed on 26.12.2014.

Apart from the above contradictory stand and the lack of locus standi of petitioner No.2, it is to be noticed that the said acquisition was subject matter of challenge in a bunch of 46 cases in CWP-19595-2005 titled *Anil Kakkar & another Vs. State of Haryana & others*, decided on 28.01.2011 (Annexure P-6) wherein challenge had been raised to acquisition proceedings and also the report of the High Powered Committee dated 10.11.2005. The petitioners were never party to the said round of litigation which was also on the strength of the fact that the acquisition being for the industrial, institutional, commercial, recreational and other public utilities for the 3 villages of Begampur Khatola, Narsingpur and Khandsa and the ground that industrial units were already situated on the acquired land, the same should not be carried out. Resultantly, directions had been issued that the haphazard growth of the industries would not be conducive for the proper economic development and the planned development of the industrial estate could not be

sacrificed. Directions were accordingly issued for the release of the land wherein recommendations had been made since the State had exercised its powers under Section 48 of the Act for the land release. The relevant portion of the judgment reads as under:

“It cannot be lost sight of the fact that haphazard growth of industries would not be conducive for the proper economic development through industrialization. The land should be put to optimum utilization for the systematic growth of industry, which requires planning and providing the basic infrastructural facilities.

We have seen the site plan and are convinced that the land of the petitioners cannot be directed to be released as a whole. The planned development of the industrial estate cannot be sacrificed merely because some discrimination has been meted out to the petitioners. The integrated planning of the Industrial Sectors 34 and 35 has to be kept in view.

Accordingly, in the light of the undertaking given by the counsel for the petitioners and affidavits filed in support thereof by the petitioners, we direct that the portion of the lands, which in the lay-out plan form part of the roads/green belts or common sites or public utility services/area, shall not be considered for release. The remaining land of the petitioners be released to them in such a manner that it conforms to the already finalized layout plan of the Industrial Sectors 34 and 35, Gurgaon by acquiring the excessive land or by allotting the deficient land as the case may be to bring it within the integrated planning. In case a petitioner(s) forgoes his claim or is unable to accept the allotted land, the land shall be deemed to have been acquired. The petitioners shall be entitled to the benefit of the Rehabilitation and Resettlement of land owners/oustees Policy, if eligible. However, that shall be subject to obtaining Change of Land Use (CLU) by the petitioners and payment of applicable external and internal development charges and will be governed by the same terms and conditions as of the allottees of the plots/land except for the clause of enhancement of price of the land which is released to the petitioners. They shall not sell the land/plot for a period of

seven years from the date of grant of CLU as per their undertaking given in the Court.

The writ petitions are disposed of in the above terms.”

The petitioners had, thereafter, filed CWP-26242-2015 on the ground that compensation had not been disbursed to the petitioners or deposited before the Reference Court and therefore, possession could not be taken from them and lapse had taken place under Section 24(2) of the 2013 Act. Resultantly, status quo had been ordered on 17.12.2015 by noting the said contention, which eventually came to be dismissed on 12.10.2020 by noting as under:

“The issues raised in this petition stand completely answered against the petitioner by the judgment of the Supreme Court in *Indore Development Authority v. Manoharlal and others AIR 2020 SC 1496*.

The petition stands dismissed.

Learned counsel for the petitioners seeks liberty to approach the Government for release of the land by invoking Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as applicable to the State of Haryana.

This Court in *CM No.9051-CWP of 2020 in CWP No.22241 of 2016* titled as *Raghubir Singh and another Vs. State of Haryana and others* has dismissed this request in consonance with the settled law and judgment of Indore Development Authority (supra).”

Thus, apparently, from the above order, it would be clear that the dismissal was on account of both the lapsing issue which had been taken care in Indore Development Authority (supra) and also the argument which is now being raised while referring to Raghubir Singh (supra) which had been decided by this Court at that point of time and has

accordingly been modified by the Apex Court subsequently.

Thereafter, CWP-7233-2022 came to the filed again wherein the writ petition was withdrawn on 20.04.2022, with liberty to make appropriate representation and thereafter, file a fresh petition, if so advised. Said order reads as under:

“Learned State counsel states that pursuant to the notifications dated 15.11.2002 and 12.11.2003 (Annexures P-3 & P-4) and Award dated 18.11.2005 (Annexure P-5), land of the petitioners was to be acquired for setting up of Industrial Area in District Gurugram. He further states that industrial unit of the petitioners is still existing and working on the land in question.

Learned counsel for the petitioners, at this stage, seeks to withdraw this petition enabling the petitioners to make appropriate representation for release of land under Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and thereafter, file a fresh petition, if so advised.

Dismissed as withdrawn with liberty aforesaid.”

Thus, now request has been made that representation dated 15.07.2022 (Annexure P-11) be decided and the land be de-notified as it has become unviable and non-essential.

The said claim or right in the facts and circumstances to continue in possession on the land on one pretext or the other has been deprecated by the Apex Court in its subsequent judgment in SLP(C) Nos.16421-2021 titled *Ram Swaroop (deceased) through LRs & another Vs. State of Haryana & others*, while noting the earlier view in Raghubir Singh (supra). Relevant observations read as under:

“8. [Section 101-A](#) of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if

any, sustained by the landowner due to such acquisition. [Section 101-A](#) is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was acquired under the [Land Acquisition Act](#), 1894 becomes unviable or nonessential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court. xxxx xxxx xxxx xxxx xxxx

11. The claim of the appellants for release of land on account of [Section 24\(2\)](#) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghbir Singh has held that [Section 101-A](#) does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners.

12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

Resultantly, keeping in view the above and the background that (i) the interest of petitioner No.2 was created subsequent to Section 4 notification, (ii) the Power of Attorney executed by petitioner No.1 in his favour suffers from contradictions as per averments and does not give any reference to the relationship of landlord-tenant and petitioner No.1 alleges to be in possession though residing in USA, (iii) lack of objections filed

under Section 5A of the Act to show that any construction was in place at the time of Section 4 notification and any proof in the form of any building plans etc., (iv) lack of challenge to the order dated 12.10.2020 as reproduced above on an earlier occasion and thereafter, fresh dismissal on 20.04.2022 as withdrawn, are sufficient reasons for this Court to decline the relief for a writ of mandamus, keeping in view the observations made in Ram Swaroop (supra).

Resultantly, in view of the above discussion, the present writ petition is dismissed in limine.

(G.S. SANDHAWALIA)
JUDGE

09.01.2023
sailesh

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No