

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-500-2023
Date of Decision: May 19, 2023

BALWAN SINGH AND OTHERS Petitioners

Versus

STATE OF HARYANA AND OTHERS Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Saurabh Dalal, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. AG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

LISA GILL, J.

1. Petitioners seek quashing of notification dated 12.05.1995 and 10.05.1996 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (for short – ‘the Act’) and consequent release of their land which was acquired.

2. Land belonging to the petitioner, as described in the writ petition, was admittedly acquired in proceedings under the Act with notification under Section 4 of the Act being issued on 12.05.1995. Notification under Section 6 of the Act was issued on 10.05.1996 and award in this respect was passed on 24.04.1998. Abovesaid land was acquired for development, utilization of land as residential, industrial and commercial

purposes for pockets of Sector 9 and 9A, Bahadurgarh. Possession of the land was duly taken as per RapatRoznamcha No. 313 dated 24.04.1998 and the same was handed over to Haryana ShehriVikasPradhikaran (HSVP). Mutation No. 8218 was sanctioned in favour of HSVP.

3. It is not denied that entire amount of compensation was disbursed to the petitioners/their predecessor-in-interest. Predecessor-in-interest of petitioners No. 1 to 8 received compensation on 13.05.1988. Reference under Section 18 of the Act was filed by them and thereafter further remedies availed and pursued by them right up to the Hon'ble Supreme Court for enhancement of compensation. Entire amount enhanced by this Court and thereafter by the Hon'ble Supreme Court was admittedly disbursed to the petitioners/their predecessor-in-interest by May, 2018.

4. Present writ petition has been filed by the petitioners while pleading that land in question is lying vacant and no development work thereon has been carried out by the respondents. It is on this premise that petitioners seek de-notification of their land while submitting that land should not be allowed to remain unutilized for such long years and that in terms of Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Haryana Amendment) Act, 2013 (for short – '2013 Act'), they are entitled to release of their land.

5. Prayer, as addressed, has been vehemently opposed by the respondents while stating that petitioners have not revealed in the writ petition that entire amount of compensation including the amount as enhanced right up to the Hon'ble Supreme Court has been released to them on the reference/appeal/petition filed by the petitioners/their predecessor-in-

interest. Details thereof, it is submitted, have not been given in the writ petition. Mere recital in the writ petition that they would undertake to return the amount of compensation awarded alongwith interest, it is submitted, is not sufficient dissemination of relevant information. Moreover, no right accrues to the petitioners to seek de-notification or release of land as the same has not become unviable or non-essential in any manner. Dismissal of the writ petition is sought.

6. We have heard learned counsel for the parties and have gone through the file with their assistance.

7. Finalization of acquisition proceedings qua land of the petitioners/their predecessor-in-interests with passing of award on 24.04.1998 is a matter of record. Acquisition, as above, was duly accepted by the petitioners/their predecessor-in-interest and never challenged. They had admittedly sought enhancement of compensation, which was allowed and entire enhanced amount, duly received by them by May, 2018. Possession of land in question was admittedly taken vide rapat roznamcha dated 24.04.1998, thus, land duly vested with the Department as is apparent from mutation No. 8218.

8. Petitioners claim to have submitted representation dated 09.10.2022 (Annexure P6) seeking release of their land in terms of Section 101 of 2013 Act and policy dated 14.09.2018 (Annexure P5) notified by the State of Haryana. Learned counsel for the petitioners submits that no action on this representation has been taken whereas petitioners are entitled to release of their land as the same has remained unutilised and undeveloped for such long years.

9. At this stage, it is fruitful to refer to Section 101 of 2013 Act, which reads as under:-

"101. Return of unutilized land.- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation. For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."

10. There is no merit in the argument raised on behalf of the petitioners that they are entitled to release of their land in terms of provisions of Section 101 of 2013 Act as the matter is squarely covered against them by the Hon'ble Supreme Court in Indore Development Authority v. Manoharlal 2020 AIR (Supreme Court) 1496, wherein it has been held as under:-

"360. It was submitted that Section 101 provides for return of unutilized land under the Act of 2013. Section 101 provides that in case land is not utilized for five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government. Section 101 reads as under:

"101. Return of unutilized land.- When any land, acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal

heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.

Explanation. For the purpose of this section, "Land Bank" means a governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use."

361. Section 24 deals with lapse of acquisition. Section 101 deals with the return of unutilized land. Section 101 cannot be said to be applicable to an acquisition made under the Act of 1894. The provision of lapse has to be considered on its own strength and not by virtue of Section 101 though the spirit is to give back the land to the original owner or owners or the legal heirs or to the Land Bank. Return of lands is with respect to all lands acquired under the Act of 2013 as the expression used in the opening part is "*When any land, acquired under this Act remains unutilized*". Lapse, on the other hand, occurs when the State does not take steps in terms of Section 24(2). The provisions Section 101 cannot be applied to the acquisitions made under the Act of 1894. Thus, no such sustenance can be drawn from the provisions contained in Section 101 of the Act of 2013. Five years' logic has been carried into effect for the purpose of lapse and not for the purpose of returning the land remaining unutilized under Section 24(2)."

11. Faced with above, learned counsel for the petitioners refers to Section 101A of 2013 Act and policy dated 14.09.2018 (Annexure P5) notified by the State of Haryana in respect to return of unutilised land. Section 101A of 2013 Act (as applicable to Haryana only) reads as under:-

"101A. Power to denotify land.- When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty 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 land owner due to such acquisition:

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government.”

12. It is submitted that petitioners had sought release of land in terms of Section 101 of 2013 Act as well as the said policy notified for implementation of provisions of Section 101A of the said Act. Reference is made to clause 7 of the policy, which reads as under:-

“7. The District Level Sub-Committee constituted under clause 5 or clause 6, as the case may be, shall while examining the 'opinion' of the acquiring department consider the following issues:

- (i) if the acquired land has become non-viable land or non-essential land.
- (ii) extent of payment of compensation, if any, to the land owner(s) on account of damages, if any, sustained by them due to acquisition of land.
- (iii) extent of compensation by providing alternate land along with payment of damages, if any, in case of part utilization of acquired land or in case of any encumbrances created on/against the acquired land or part thereof.

Explanation:-

- (1) Unviable land means the whole or part of the acquired land which has become unsuitable for utilization for the purpose for which it was acquired

due to act of Nature, or increase in acquisition cost as a result of any reason including any enormous enhancement in compensation amount payable on such a land due to court orders, or material or drastic change in policy of the Government wherein such extenuating circumstances have emerged where in the opinion of the Government to be recorded with reasons, it would not be in public interest to continue with acquisition, or change in socio-economic and geographical factors in respect of the acquired land or for any other reasonable cause.

- (2) Non-essential land means the whole or part of the acquired land which cannot be practically utilized for the purpose for which it was acquired to any of the reasons enumerated in explanation (1) or better alternatives have become available for the project and it is not possible to continue with any alternative public purpose in respect of acquired land.

13. Having heard learned counsel for the parties, we find no ground to interfere in this writ petition. Learned counsel for the petitioners is unable to deny that petitioners do not have a vested right to seek denotification of their land, acquisition proceedings qua which have attained finality with passing of award on 24.04.1998. Gainful reference, at this stage, can be made to the judgment of Hon'ble the Supreme Court in **SLP (Civil) No. 16421 of 2021** titled **Ram Swaroop (Dead) through LRs and another vs. State of Haryana and others**, decided on 15.11.2021, wherein while taking note of its earlier judgment in **Raghubir Singh and others versus State of Haryana 2021 (3) RCR (Civil) 533**, it has been held 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 non-essential. 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.

14. It is categorically averred in the short reply filed by way of affidavit of the Land Acquisition Collector, Urban Estate Department, Rohtak that the land in question is an essential part of development to be undertaken by the beneficiary department and that there is no question of denotification of the land in question which was acquired for utilization of land as residential, industrial and commercial purposes for pockets of Sectors 9 and 9A, Bahadurgarh. Learned counsel is unable to point out anything to the contrary.

15 In view of the facts and circumstances, including the categorical stand of the State, we find no ground or justification to issue a direction to the competent authority to consider and decide the representation, (Annexure P6) submitted by the petitioners as has been prayed for in the alternate. Once it is admitted that petitioners do not have a vested right, they

cannot seek such direction without making out a prima facie case in their favour. As discussed in the foregoing paras no such case is made out in their favour.

16. Learned counsel for the petitioners is unable to point out any ground whatsoever which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

17. No other argument has been addressed.

18. Present writ petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

May 19, 2023
Rts

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