

2023:PHHC:135361-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(I) CWP-2124-1993 (O&M)
Reserved on: 12.10.2023
Date of Decision: 18.10.2023

S. DARSHAN SINGH AND ANOTHER
...Petitioners

V/S

THE STATE OF PUNJAB AND OTHERS
...Respondents

(II) CWP-2218-1993 (O&M)

BALBIR SINGH
...Petitioner

V/S

THE STATE OF PUNJAB AND OTHERS
...Respondents

(III) CWP-3191-1993 (O&M)

SMT. HARJINDER KAUR AND ANOTHER
...Petitioners

V/S

THE STATE OF PUNJAB AND OTHERS
...Respondents

(IV) CWP-14298-2004 (O&M)

DARSHAN SINGH AND ANOTHER
...Petitioners

V/S

STATE OF PUNJAB AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Hemant Sarin, Advocate
for the petitioners in CWP-2124-1993 and
CWP-14298-2004.

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Mr. Amit Jaiswal, Advocate
for the petitioners in CWP-2218 & 3191 of 1993.

Mr. Maninder Singh, DAG, Punjab.

Mr. Mayur Kanwar, Advocate for
Mr. A.R. Takkar, Advocate
for respondents No.2 and 4.

SURESHWAR THAKUR, J.

1. Since all the writ petitions arise from the same notification, therefore all the writ petitions are amenable for a common verdict becoming made thereons. For the sake of brevity the facts are taken from CWP-2124-1993.

2. Through filing the instant writ petition, the petitioners challenge the notification dated 29.09.1978 (Annexure P-6), notice dated 16.02.1993 (Annexure P-9), whereby acquisition proceedings became launched, for the purpose of scheme, for improvement and widening of the Chowk Dasaunda Singh on Jail Road Race Course Road Amritsar.

3. Through a resolution No.153 passed on 07.07.1975, a scheme became formulated, for the development of Chowk of Dasaunda Singh Road, Jail Road and Race Course Road over an area measuring 3.33 acres. The above resolution became succeeded by the issuance of notices on 08.10.1975 (Annexure P-3) under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the “Act of 1922”). The above notices became followed by a notification becoming issued under Section 42 of the Act of 1922, thus on 29.09.1978. On 22.09.1986 the Land Acquisition Collector concerned, determined compensation in respect of the acquired lands.

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4. However, on 11.04.1988 the Director, Land Acquisition Collector, Punjab wrote to the Land Acquisition Collector, that announcement of award of 22.09.1986 is without determining just and fair compensation, thereby flouting the mandate(s) of Section 31 of Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”). On 07.09.1989 the Chairman of respondent No.2 informed the Director, Local Self Government, that it was not advisable, to implement the scheme relating to improvement and widening of Chowk Dasaunda Singh. It was also mentioned therein, that it is not advisable to spend Rs.21.35 lacs, on acquisition of land and another Rs. 5 lacs on its development, as there was not much traffic congestion at the relevant site.

5. On 16.02.1993 when a notice was issued by the Land Acquisition Collector concerned, to the petitioners, thus asking them to attend his office on 22.02.1993 to receive compensation failing which no interest would be paid to them. Said notice was received by the petitioners on 17.02.1993, and, it was on 22.02.1993 that the present writ petition became filed.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS

6. The learned counsel for the petitioners have *inter-alia* contended that:

i) Since the acquisition purpose has been achieved, thereby the intended commercial usage of the disputed lands, thus is mala fide. Consequently, they argue that resultantly the acquired lands be exempted or released from acquisition, theirs being both unessential and unviable for furthering the requisite public purpose.

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ii) the present petitioners have been put to discrimination inasmuch as, properties located across the road to the residential houses of the petitioners, became exempted or released, from the acquisition, by the respondents, thereby the widening or the increasing of the width of the road only towards the side of the petitioners' houses, but is with a mala fide intention.

iii) there is no material on record justifying, that after the relevant site becoming widened, thereby further expansion thereof, is but a dire necessity, especially when no material has been placed on record suggestive, that there is an increased flow of traffic on the relevant site, but requiring the widening or the increasing(s), of the width of the site, through acquisitions being made of the petitioners' houses.

iv) the Acquiring Authority had earlier recommended the exemptions of the properties from acquisition, through resolution No.190 of 24.07.1995, and, which became succeeded by another resolution No.190 of 29.06.2001. Since the Government of Punjab, in principal, vide letter dated 20.12.2001, accorded approval to the said resolutions, besides when before the Lok Adalat of this Court, the respondent No.2 also reiterated its stand for grant of exemption of the petitioners' lands from acquisition. However, yet the State of Punjab rejecting the said request. Consequently, it is argued that the Acquiring Authority is unnecessarily pressing for the acquisitions of the petitioners' property, despite the same for reasons (supra), being both unessential and unviable for furthering the requisite public purpose.

REASONS FOR REJECTING THE ABOVE SAID CONTENTIONS

7. The principal ground which has been raised in the preliminary objections filed to the instant petition for rejecting the writ claims is grooved in the factum, that the instant writ petitions are barred by the stench of delay and laches.

8. The above ground appears to be tangible as despite Annexure P-3 becoming issued on 08.10.1975 yet the instant writ petition becoming instituted after about 18 years elapsing since its making. Therefore, when in a judgment titled *M/S. Star Wire (India) Ltd vs The State Of Haryana & Ors on 25 September, 1996*, rendered by Hon'ble Apex Court, it has been expostulated that belatedly instituted claims are imbued with a vice of delay and laches, as thereby the petitioners abandon and waive their rights over the disputed lands. Since thereby also the concomitant estopping principle, does stem. Consequently, on the above premise the writ petitions deserve rejection.

9. In so far as, the contention raised in the writ petitions, that the present petitioners became discriminated, inasmuch as, the respondents concerned, exempting or releasing the lands of those landlosers concerned, which were located opposite to the residential houses of the petitioners. The said raised contention becomes completely belied on the ground, that it is contended in the reply on affidavit furnished to the writ petition, that the layout plan, earmarks the petitioners' properties, thus for the widening(s) of the road or for the construction of new roads or for development of the scheme, whereas, the lands of the landlosers concerned, became exempted as only a fraction thereof, was required for facilitating the public purpose

concerned.

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10. Since thereby the petitioners' lands are an integral component, of the layout plan, therefore when in the preparation of the layout plan, the Acquiring Authority has the exclusive domain to include or exclude lands therein rather for acquisition. Moreover, when in the preparation of the layout plans, which in the instant case suggests, that it is required for facilitating the public purpose, thus the writ Court has no jurisdiction to make any interference therewith, inasmuch as, its modifying or recalling the same. Therefore, it is not amenable for the learned counsel for the petitioners to argue, that the petitioners' properties be released or exempted from acquisition, as they are no longer required for expansion of the relevant site, given the relevant site becomes already expanded or widened.

11. Moreover, even if the learned counsel for the petitioners has argued before this Court, that there are no traffic studies, thus suggesting that there are traffic snarls existing on the relevant site. However, this Court cannot accept the said argument, as there is every possibility, that with the increase in population, that thereby would be a concomitant increase of vehicles plying on the relevant section. Consequently, when thereby there would occur traffic snarls, thus at the relevant site. Therefore, for obviating the said traffic snarls, the inclusion in the layout plan vis-a-vis the petitioners' properties rather for making expansion(s) of the relevant site, thus for easing the traffic snarls which may arise thereons, but is a dire necessity, irrespective of the factum, that the relevant site becomes already expanded or widened.

12. For all the above stated reasons, this Court cannot accept the arguments, as submitted by learned counsel for the petitioners, that there is any purported discrimination thus perpetrated vis-a-vis the petitioners nor can the

learned counsel for the petitioners argue, that since the public purpose, has

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been achieved thereby there is no justification that yet the petition properties subserving the public purposes.

13. Even otherwise, the ground of unviability or unessentiality vis-a-vis retention of the petition lands, for furthering the public purpose, is squarely within the domain of the Acquiring Authority, and, in the said realm, as declared by this Court in **CWP-15174-2023**, titled ***“The Press Employees and Friends Co-operative Group Housing Society Ltd. V/s State of Haryana and others”***, relevant paragraph whereof becomes extracted hereinafter, thus neither the landlosers concerned, has any justifiable domain, to insist that the acquired lands are unsuitable or unessential besides are unviable for facilitating the public purpose. Contrarily, the necessity of acquisitions or the necessity of retention of the acquired lands rather for advancing the public purpose, is squarely within the objective contemplation of the executive, unless mala fides evidently spur. Since there is no evidence of mala fides surging forth, thus manifestative, that the acquisition of petitioners’ properties, is with an oblique motive. Consequently, the public project cannot be declared to be unessential or unviable.

“17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-

(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the “unutilized” acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become “unviable” and “non-essential” for the State Government, as acquired under the Act of 1894?

(ii) Whether the insertion of Section 101-A in the Act of 2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?

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(iii) Whether the landowner concerned has a vested right to assert that the acquired land has become “unviable” and “nonessential”, on the ground, that the land has not been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notification of the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become “unviable” or “non-essential”. However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become “unviable” and “nonessential” for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to denotify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest.

34. Furthermore, the provisions of Section 101-A does not vest any discretionary power in the State Government for de-notification of the lands, which remained unutilized for a long span, rather the only permissible ground for de-notification is “unviability” or “non-essentiality” of the acquired lands for being put to **any efficacious public purpose. (emphasis supplied)**

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon’ble Supreme Court, it can be safely concluded that the intent of the legislature,

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behind the insertion of Section 101-A in the Act of 2013, is not the release of unutilized acquired lands, rather its aim and object is to empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become “unviable” and “non-essential” for it, based upon tangible evidence, for executing any “public purpose”.

44. Therefore, in the light of the legal propositions (*supra*), it is abundantly clear that though the landowners can approach the State Government seeking de-notification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for de-notification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

“QUA ISSUE NO.(I):

The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the “unutilized” acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become “unviable” and “non-essential” for facilitating any public purpose.

QUA ISSUE NO.(II):

The answer to the issue No.(ii) is also in negative. The insertion of Section 101-A does not give rise to any new cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.

QUA ISSUE NO.(III):

The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become “unviable” and “non-essential”, on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award.”

14. Furthermore, the only ground, on which the said exemptions,

can be claimed are *vis major* or exorbitant sums of money becoming

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determined by the learned Collector concerned, thus making the public project financially unviable. Since the above exception to the principles (supra), relating to the releases or exemptions from acquired lands, thus on the premise of theirs being unessential or unviable, is not suggested by any cogent evidence existing, on record, to be made applicable to the landlosers concerned.

15. Consequently, this Court refrains from exempting the petition lands from acquisition.

16. This Court had also for determining whether the writ properties are essential for advancing the public purpose had passed the hereinafter directions on 25.08.2023.

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3. The learned counsel respectively representing the Improvement Trust concerned, and, the learned State counsel both are directed, to, disclose on the respectively sworn affidavits, the trite factum about the essentiality of the writ land(s) being retained, besides qua their retention being an imperative requirement for facilitating the requisite public purpose. Further-more, alongwith replies on affidavits to be furnished on or before the subsequent date of hearing, therewith shall stand appended the detailed lay out plan specifying the properties in dispute, and, the necessity of theirs being retained for justifying the public purpose.

17. In pursuance to the said made direction, a detailed reply on affidavit, has been filed. Along with the said reply Annexure R-2/3 has been appended. A reading of the said reply discloses, that the area adjoining the Dasaunda Chowk in Amritsar, is bustling with activities and also a hospital nomenclatured as “Nayyar Hospital”, becoming developed in the area, thus

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to cater to the medical needs of the people, who are residing in Amritsar, and, who throng to Amritsar to pay obeisance at Sri Harmandir Sahib.

18. That in paragraph No.6 of the reply on affidavit it has been stated that insofar as, the writ lands are concerned, there are extensive plans for developing the area in the acquired space, which would benefit the residents of Amritsar and also the pilgrims visiting Amritsar.

19. Though, the learned counsel for the petitioners to the said reply on affidavit, has made a submission, that since thereby there would be a deviation from public purpose. Moreover, he has also argued that thereby too the respondents acquiesce to the writ properties being not essential for facilitating the easings of the traffic jams.

20. However, the above made argument becomes again repelled, given it becoming contended in paragraph 7 of the reply on affidavit, that in terms of the government norms, for an area being developed for commercial purposes, thus to avoid traffic jams and roadblocks, only 40% of the area, can be sold, but 60% is to be designed to accommodate parking(s) of vehicle(s) and open spaces for public use. Therefore, it appears that if the acquired properties are yet utilized for commercial purpose, and, thereby there being a profiteering motive ingraining the minds of the Authority, yet thereby this Court cannot exempt or release the writ property from acquisition.

21. The reason for making the above conclusion, becomes bonafidely embodied in the factum, that the proposed commercial enterprise proposed to be raised on the writ properties, would be a multi tier constructions, therefore when on the basement of such a multi tier constructions, there would be much space to ensure therein the parking(s)

of vehicles, besides for providing open spaces for ensuring the easings, and,

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facile movements of vehicles which ply at the relevant site. Therefore, but obviously the creation of commercial establishments on the writ lands, thus with an intended profiteering motive, is but only for the easing of traffic snarl, and, traffic jams, at the relevant site, thereby the initially set forth public purpose, in the notification for acquisition, is thus thereby further facilitated, through acquisition of the writ properties, as has been done, through the notification (supra), and through the makings of an award.

FINAL ORDER

22. As a sequel to the above, this Court finds no merit in the instant writ petitions, and, is constrained to dismiss them. Since the instant writ petitions are a frivolously raised writ petitions, therefore, they are dismissed with costs of Rs.50,000/- upon each of the petitioners (in CWP-2124-1993 and CWP-3191-1993) to be forthwith deposited by the petitioners with the 'Punjab and Haryana High Court Employees' Welfare Association'. Each of petitioners (in CWP-2218-1993) shall forthwith deposit the said costs with the 'Punjab and Haryana High Court Bar Clerk's Association'. Each of petitioners (in CWP-14298-2004) shall forthwith deposit the said costs with the 'Himachal Pradesh Aapada Raahat Kosh – 2023'.

23. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

18.10.2023
Ithlesh

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No