

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

CWP-2994-2022 (O&M)

Reserved on: 29.08.2023

Date of Decision : September 05, 2023

KAPIL KUMAR AND ANOTHER

-PETITIONERS

V/S

STATE OF HARYANA AND OTHERS

-RESPONDENTS

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

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

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

SURESHWAR THAKUR, J.

1. The petitioners seek relief for the quashing of Annexures P-1 and P-4, wherein becomes enclosed, the notifications issued respectively under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). The petitioners have also asked for the quashing of the award (Annexure P-5), and, of the supplementary award (Annexure P-9), besides have sought the quashing of the entire acquisition proceedings, inasmuch as, they relate to the petition lands.

2. The last relief, as asked for in the instant petition, is for making a mandamus upon the respondent(s) concerned, to consider, and, to take a decision on Annexure P-8, annexure whereof comprises a representation seeking for release of the petitions lands from acquisition, thus in terms of a policy (Annexure P-7).

3. The predecessor-in-interest of the petitioners had earlier chal-

lenged the launching of the acquisition proceedings, in respect of the petition lands, at the instance of the respondent(s) concerned. The said challenge was embodied in CWP-8439-2013. However, through a verdict made thereon, on 11.12.2015, and, which becomes enclosed in Annexure P-6, the said challenge became negated. Though the aggrieved therefrom filed there-against SLP(C) No.29371-72 of 2016, however, the Hon'ble Apex Court dismissed the said SLP on 31.01.2020. In consequence, the supplementary award (Annexure P-9) was announced.

4. In sequel, the present petitioners, who are the successors-in-interest of their father, who received thus adversarial judgments, upon, lis (supra), are bound by the earlier decision, as became made against their predecessor-in-interest. Resultantly, the lis relating to the legality of the launching of the acquisition proceedings, at the instance of the respondent(s) concerned, when becomes earlier completely rested, through binding and conclusive decision(s) being made thereon(s). Therefore, on the principle of estoppel engrafted in the statutory norm of *constructive res judicata*, thereby the earlier clinching decision(s) appertaining to the legality of the launching of the acquisition proceedings, under the Act of 1894, cannot but be re-opened.

5. The decision, as was made by the Hon'ble Apex Court, on the SLP (supra), was made on 31.01.2020. Consequently, when at the stage of the SLP (supra) being subjudice before the Hon'ble Apex Court, thus the provisions engrafted in Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), as became inserted therein through Haryana Act No.21 of 2018, and, brought into force w.e.f.

01.01.2014, provisions whereof stand extracted hereinafter, rather were in

existence. However, no liberty was asked for, nor became granted by the Hon'ble Apex Court to the predecessor-in-interest of the petitioners to, on the anvil of the above statutory provisions, thus make a motion before this Court.

“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 nonessential, 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.”

6. Therefore, in the wake of the said motion not being addressed before the Hon'ble Apex Court, despite the statutory provisions (supra) being well then in existence, thus results in a conclusion that the availment of the said statutory provision, rather thereby becoming waived or abandoned, whereupon the petitioners are estopped from raising the said argument before this Court. Even otherwise, the omission of pleading of the above fact, in the earlier motion, which continued uptill the Hon'ble Apex Court, though was enjoined to be, in terms of Order II Rule 2 CPC, provisions whereof become extracted hereinafter, thus raised therein, whereas, no pleading qua the availment or applicability of the provisions (supra) rather becoming raised therein. Resultantly, thereby begets attraction to the espousal (supra), as, made in respect of the availability of above statutory provisions, thus the estopping principle, as engrafted in Order II Rule 2 CPC.

“2. Suit to include the whole claim.—

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”

7. Be that as it may, even on merits, the plea raised by the petitioners but banked upon the statutory provisions (supra) relating to the acquired lands being both “non-essential” or “unviable” for furthering the requisite public purpose, is also a misfounded plea. The reason becomes embedded in the factum, that in the relevant drawn layout plan, a Bus Stand has to be constructed on the acquired lands. The above is a dire public purpose and cannot be frustrated, merely on account of the present petitioners mis-raising or mis-espousing a ground, thus upon the statutory provisions (supra). The statutory provisions (supra) are not meant to be purveying, or, assigning any latitude to the land looser(s) concerned to, at any time, proceed to frustrate the relevant public purpose, and, that too on any purported ground of invidious discrimination, as this Court in a verdict rendered upon **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, has restricted and trammelled the operation of the exercise of executive discretion, as engrafted in the statutory provisions (supra). Therefore, when the instant case is also not an exceptional case, whereby, in the Executive exercising its statutory discretion, thus would not make breaches of the above expostulations of law, as made by this Court, in CWP (supra). Predominantly also when on the said purported ground, thus the exercising of discretion, is thus trammelled by the necessity of the acquired lands being imminently required for subserving a salutary public purpose.

*“The mandate recorded by the Hon'ble Apex Court in **M. Bhaskaran Pillai's** case (supra) that mere non utilization of the acquired land(s) yet does not withhold the authority of the State to, in the larger public interest, thus make utilization thereof for any other public purpose or through sale by way of public auction, but obviously is required to be read into the un-essentiality or unviability of the retention of the acquired land. Therefore, the Executive in the exercise of its executive contemplation, in terms of the above statutory discretion, has to also bear in mind the above expostulation of law. The fate thereof would be that the Executive while making an objective contemplation about non-availability of the benefit of the statutory coinages vis-a-vis the land loser concerned, thus has to enlighten itself to the fact that the above exercise, as made in **M. Bhaskaran Pillai's** case (supra). Therefore, any exercising of jurisdiction by Executive in favour of the land loser concerned, has to be an extremely cautious exercise thus requiring its being made with a well informed objective, besides judicious application of mind, so as to save the acquired land, from becoming hit by the expostulation occurring in **M. Bhaskaran Pillai's** case (supra). Necessarily hence the availability of the parameter (supra), as enshrined in the statutory provisions (supra), thus to my considered mind, has to be exercised by the Executive, if it is deemed fit to be exercised by the Executive in favour of the land loser concerned, thereby such exercisings of discretion in favour of the land loser concerned is to be done in extremely urgent and exceptional cases. In nut shell, the statutory discretion is an extremely trammled or is a restricted discretion vested in the Executive, thus by the verdict (supra).”*

8. Consequently, the above espousal relating to release of the acquired lands to the land loser(s) concerned, is but a feeble and a frail attempt, to make dependence thereons. Contrarily, when evident public purpose would be facilitated, on the acquired lands being put to use, for con-

struction thereon, of a Bus Stand. Therefore, this Court does not deem it fit to forestall the carrying ahead of the said public purpose.

FINAL ORDER

9. As a sequel to the above, this Court finds no merit in the instant writ petition, and, is constrained to dismiss it. Since the instant writ petition is a frivolously raised writ petition, therefore, it is dismissed with cost of Rs.50,000/- to be forthwith deposited by the petitioners with the 'Himachal Pradesh Aapada Raahat Kosh – 2023' for mitigating the natural disaster in the State concerned.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 05, 2023
devinder

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