

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-3342-1991

Reserved on: 31.08.2023

Pronounced on: 05.09.2023

SH. HUKAM CHAND (DECEASED) THROUGH HIS LRs AND
OTHERSPetitioners

Versus

THE STATE OF HARYANA AND ORS.Respondents

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

Argued by: Mr. Ashish Gupta, Advocate
for the petitioners.

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

Mr. Kamal Sharma, Advocate and
Mr. Raja Sharma, Advocate
for respondent-HUDA.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners challenge the validity of a notification, as became issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'). Moreover, the petitioners also makes a challenge to the validity of issuance of a notification under Section 6 of the 'Act of 1894', besides challenge the report (Annexure P-6), as made in compliance to the directions passed by a Division Bench of this Court.

2. The above notification(s) became respectively issued on 27.08.1987 (Annexure P-1) and on 25.08.1988 (Annexure P-3).

3. The writ petitioners earlier instituted CWP No. 3189/1989 before this Court, wherein, a challenge was made to the notification(s) (supra). The said writ petition was disposed of through an order made thereon on 28.09.1989. The order as made on the said writ petition becomes extracted hereinafter.

“Parties counsel are agreed with Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Government, Haryana shall be asked to go to the spot to examine as to whether the premises of the petitioners deserve, in the scheme of things, to be exempted from acquisition and that whatever be his decision with regard to each petitioners, it shall be treated as final.

In terms of the agreement so arrived at, we direct Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Government, Haryana, to go to village Jhasra, which is proximate to the spot, on October 26, 1989 reaching there at 10 o'clock and then roam about in the area to see what kind of building and plots have been exempted and as to whether there is any parity of those exempted plots and buildings with those of the petitioners, descerning exemption. Any of the petitioner, who may choose to be present on the spot on the aforesaid date and time, may be so and made him such suggestions as are relevant for the purpose. It is expected of Mr. Banerjee to pass a short speaking order in respect of each case. On this understanding, we dispose of this writ petition, as also the connected ones.”

4. The Financial Commissioner and Secretary to Govt. of Haryana, Revenue Department submitted his report (Annexure R-2), and, therein, he did not recommend the makings of apposite exemption(s) vis-a-vis the acquired lands. However, the aggrieved petitioners concerned, rather remained dis-satisfied with the report of

the Financial Commissioner concerned, and proceeded to challenge the acquisition notification(s), through their instituting the instant writ petition before this Court. Through a decision made on 04.12.2007, the writ petition (supra) was disposed of with certain direction(s). The relevant portion of the same is extracted hereinafter.

“xxxxx Since the petitioner has no objection to the acquisition of the land required for a public purpose, viz., construction of 320 meters long sewerage line alongside the Delhi-Jaipur NH-8, the application for vacation of stay, i.e., Civil Misc. No. 14009 of 2007, is allowed and stay in respect of the acquired land and marked yellow in the site map, Annexure R.1, is hereby vacated.

In view of the vacation of stay in respect of the land required for public purpose, the remaining land with constructed portion is not at all required for any public purpose because in respect of the part of the land, which was acquired for public purpose, stay order has been vacated today.

This petition is, accordingly, disposed of with a direction that land of the petitioner, shown in yellow colour in the site map, Annexure R.1, shall stand acquired, while the remaining part of the acquired land shall be released from acquisition altogether.

The petitioner may pursue his case for compensation for the acquired portion of his land before the appropriate forum.

5. Feeling aggrieved from the order (Supra), the HUDA preferred LPA No. 2253-2011 before this Court. Through an order drawn thereons on 19.01.2017, the learned Division Bench of this

ordered for restoration of the writ petition (supra) to its original number

thus for a decision on merits being made thereons. The relevant portion of the verdict (supra) is extracted hereinafter.

“xxxxx After hearing learned counsel for the parties, we are of the opinion that the learned Single Judge fell in grave error in concluding that the appellants had foregone their contest in the main writ petitions qua the entire acquisition questioned by the land owners. It was only with a limited prayer that they had approached this Court to permit them to continue with the development works and release some portion of the land from the impact of the stay order since these works were of paramount importance and of an urgent nature. The entire reading of the applications does not remotely suggest that they intended to settle the writ petitions in these terms.

Consequently, we accept the present appeals and modify the order of the learned Single Judge to say that it would be applicable to the land that stand utilized for public purposes but in so far as challenge to the remaining land is concerned the parties would be free to agitate the same on merits. Therefore, we restore the writ petitions bearing nos. 3340, 3342, 3344 of 1991 and 10628 and 10068 of 1998 to their original numbers and direct their listing as per roster so that they can be decided on merits qua the controversy and the benefits under Section 24(2) of the Act.

Since the affidavit of the Administrator was to be filed only in one connected LPA bearing no. 2256 of 2011, the costs imposed vide this Court's order dated 18.10.2016 in all the LPAs shall stand waived and will stand in said LPA only.”

6. The petitioners now challenge the issuance of notification(s) for acquisition (supra), thus through invoking the mandate of Section 24 (2) of The Right to Fair Compensation and

Act, 2013 (hereinafter for short refer to as the 'Act of 2013'), whereby, there is lapsing of the earlier launched acquisition proceedings under the 'Act of 1894'.

7. It is apt to mention here that some of the writ petitioners, being aggrieved from the notifications (supra), hence filed CWP No. 3404 of 1989 and other connected writ petitions, before this Court, but through an order passed thereons by this Court on 29.06.2010, the CWPs (supra) became dismissed. The aggrieved therefrom preferred SLPs, before the Hon'ble Apex Court, wherein, there occurs a reference to the earlier order made by this Court on 28.09.1989, order whereof, has already been extracted above, wherein, the counsels for the litigants concerned, evinced their ad idem to the appointment of Mr.A.Banerjee, Financial Commissioner (Revenue) and Secretary to Govt. Haryana, for the makings of spot inspection of the sites concerned, and to report whether there is any parity inter-se those exempted plots and buildings, thus with the petitioners hence for thereby the petitioners being also assigned the benefit of exemptions. Visibly therein, the relevant construction(s) rather became pronounced to be not amenable for becoming released from acquisition.

8. Since the above SLP became dismissed by the Hon'ble Apex Court, thereby also the above extracted orders, as became rendered by this Court in CWP No. 3189/1989 and in CWP-3404-1989, and, other connected writ petitions, thus acquire conclusivity. Furthermore, also the ad idem appointment of Mr. A. Banerjee, Financial Commissioner (Revenue) and Secretary to Govt. Haryana, to visit the relevant sites and to make recommendation(s) qua amenability

thereby also acquire binding and conclusive effect.

9. Pre-eminently when the apposite recommendation(s) as made by the Financial Commissioner concerned, became thus approved even by the Hon'ble Apex Court. Therefore, the recommendation(s) favourable to the estate holders as well as unfavourable to the estate holders are to be concluded to become affirmed by the Hon'ble Apex Court. The further apt corollary thereof, is that, the petitioners cannot make any challenge to the recommendation(s) adversarial to them as made by the said Financial Commissioner thus in his report.

10. Moreover, though the above made verdict(s) of dismissal, as made, on the previous writ petition(s), thus acquire conclusive and binding effect and thereby completely estop, the petitioners from re-casting, thus similar thereto causes of action, and, almost similar thereto(s) relief(s), rather in the instant petition before this Court.

11. Nonetheless, the petitioners claim(s), that since other similarly situated lands became released from acquisition, thus on principle of parity, thereupon, the petitioners are also entitled to seek a valid claim for the releases of the writ property(ies).

12. Even the above raised ground is merit-less, given the above relief as claimed in the earlier writ petition(s), thus becoming rejected on the plank, that, the apposite adversarial recommendation(s) as became made by the Financial Commissioner concerned, thus becoming validated by the Hon'ble Apex Court, thereby re-ventilation of the said relief in the instant petition, by the petitioners, who however earlier did not access the Hon'ble Apex Court, is also barred thus on the plank of vindication, rather becoming rendered by the Hon'ble Apex

estate holders by the Financial Commissioner concerned. Therefore, given the validation of the adversarial recommendation(s), as, made by the Financial Commissioner hence made against the writ petitioners rather in his report, thereby also the said adversarial recommendation(s) deserve becoming countenanced by this Court.

13. Consequently, this Court is bound to reverse the adversarial recommendation(s) made by the Financial Commissioner concerned in his report. Therefore, the writ petitioners cannot argue that they are entitled to raise a claim for theirs becoming exempted from acquisition.

14. The learned counsel for the petitioners submits, that subsequent to the issuance of notification(s) (*supra*), the petitioners instituted objections under Section 5A of the 'Act of 1894'. In the said objections the petitioners contended that on the acquired lands they had made A Class constructions (factory and a residential house) besides also contended that there is *samadh* of his father on the acquired lands. Consequently, it is contended that the order made by the respondent concerned, rejecting the said objections, whereafter, they had issued a declaration under Section 6 of the 'Act of 1894' (Annexure P-3), thus is tainted. Moreover, it is also contended that the respondents have proceeded to adopt the practices of invidious discrimination, inasmuch as, the respondents releasing the acquired lands vis-a-vis other estate holders, whereas, the respondents yet proceeding to subject the petition lands to acquisition, through making the impugned notification(s).

15. However, for the reasons to be assigned hereinafter, the above made ground is rudderless and is rejected. The primary reasons for rejecting the above ground is founded, upon, the respondents in their reply-affidavit, as well as in their arguments, firmly contending

that the writ land(s), was acquired for furthering the requisite public purpose, but only on account of rendition of interim orders against the petitioners becoming dis-posessed from the said lands, that the execution of the public work, thus, became forestalled. Since predominance is to be assigned to the public purpose than to individual interests of the estate holders concerned. Therefore, in doing so, this Court refrains to allow the petitioners claim for the acquired lands becoming released from acquisition.

16. Furthermore, the said claim could have been well founded only in terms of Section 48 of the 'Act of 1894' provisions whereof are extracted hereinafter.

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. - (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) xxxxx

17. However, since the stage for releases of the acquired lands becoming caused in terms of the statutory provisions (supra), thus could be done only before the assumption of possession thereof and/or before the pronouncement of award, and, not subsequent thereto(s). Therefore,

when the order, if any, thus dismissing the objections rather was required to be assailed promptly, thus on its becoming made, whereas, it remaining omitted to be challenged, thereby the petitioners are estopped on account of apposite waivers and abandonments, to make a challenge to the dismissal orders, if any, as became made on their objections, as, cast under Section 5A of the 'Act of 1894'.

18. The further consequence thereof, is also, that since the discretion to be exercised within the ambit of Section 48 (supra) as occurs in the 'Act of 1894', is to be exercised prior to the assumption of possession or prior to the making of the award of the acquired lands, whereas, the award in the instant case becoming pronounced on 16.03.1989, nor when a prompt petition became filed before this Court, challenging the order, if any, rejecting the objections as raised under Section 5A of the 'Act of 1894'. Consequently, the claim for releasing the writ lands from acquisition, especially when the same becomes acquired for sub-serving the requisite public purpose, is both mis-founded and a mis-espoused relief, and, is liable to be rejected.

19. Now, assumingly there was prompt raising of challenge(s) by the petitioners in the dismissal order made on their objections, yet when apart from this Court ordering for staying the dis-possession of the petitioners from the disputed lands, thus not making any order restraining the respondents from making an award. Resultantly the effect of the non passing of the order (Supra), is that, the dismissal order, if any, as became made on the relevant objection(s), merges into the award as made qua the acquired lands, thereby the challenge to the order, if any, rejecting the objections filed under Section 5A of the 'Act of 1894', thus becomes infructuous.

20. Consequently, the above ground of discrimination but raised on parity being denied to the writ petitioners qua similarly situated lands of estate holders concerned, is thus, a completely rudderless argument and is rejected.

21. The further reason for rejecting the above submission becomes founded upon the factum that the instant petition, rather being hit by a gross pervasive vice of delays and laches. The reason for making the above conclusion becomes sparked from the factum, that the challenge to the afore, has been made after almost thirty five years elapsing, since the launching of acquisition proceedings under the 'Act of 1894'. Resultantly, the extant petition being hit by the above vice as such, the petition deserves becoming rejected.

22. Even the Hon'ble Apex Court in a judgment rendered in case titled ***“M/s Star Wire (India) Ltd. V/s State of Haryana and others”, reported in (1996) 11 SCC 698***, has in the relevant paragraph of its verdict, paragraph whereof becomes extracted hereinafter, thus declared that any belated challenge, as made to the relevant lawful fully terminated acquisition proceedings, thus is hit by the vices of delay and laches, and thereby too, the said belated motion as existing in the instant petition, is but required to be declared as misconstituted.

“Shri P.P. Rao, learned senior counsel for the petitioner, contends that the petitioner had no knowledge of the acquisition proceedings; as soon as it came to know of the acquisition, it had challenged the validity of the acquisition proceedings and, therefore, it furnishes cause of action to the petitioner. He further contends that the writ petition could not be dismissed on the ground of laches but was required to be considered on merits. We find no force in the contention. Any encumbrance created by the erstwhile owner of the land after publication of the notification under Section 4(1) does not bind the State if the possession of land is already taken over after the award came to be passed. The land stood vested in the State free from all encumbrances under Section 16. In Gurmukh Singh & Ors. vs. The State of Haryana [J] 1995 (8) SC 208], this Court had held that a subsequent purchaser is not entitled to challenge the legality

of the acquisition proceedings on the ground of lack of publication of the notification. In Y.N. Garg vs State of Rajasthan [1996 (1) SCC 284] and Sneh Prabha vs. State of U.P. [1996 (7) 325], this Court had held the alienation made by the erstwhile owner of the land after publication of the notification under Section 4(1), do not bind either the State Government or the beneficiary for whose benefit the land was acquired. The purchaser does not acquire any valid title. Even the colour of title claimed by the purchaser was void. The beneficiary is entitled to have absolute possession free from encumbrances. In U.P. Jal Nigam, Lucknow through its Chairman & Anr. vs. M/s Kalra Properties (P) Ltd., Lucknow & Ors. [(1996) 1 SCC 124], this Court had further held that the purchaser of the property, after the notification under Section 4(1) was published, is devoid of right to challenge the validity of the notification or irregularity in taking possession of the land before publication of the declaration under Section 6. As regards laches in approaching the Court, this Court has been consistently taking the view starting from State of Madhya Pradesh & Anr. vs. Bhailal Bhai & Ors. [AIR 1964 SC 1006] wherein a Constitution Bench had held that it is not either desirable or expedient to lay down a rule of universal application but the unreasonable delay denies to the petitioner, the discretionary extraordinary remedy of mandamus, certiorari or any other relief. The same was view reiterated in catena of decisions, viz., Rabindranath Bose & Ors. vs. The Union of India & Ors. [(1970 (1) SCC 84]; State of Mysore & Ors. vs. Narsimha Ram Naik [AIR 1975 SC 2190]; Aflatoon & Anr. vs. Lt. Governor of Delhi [(1975) 4 SCC 285]; M/s. Tilokchand Motichand & Ors. vs. H.B. Munshi, Commissioner of Sales Tax, Bombay & Anr. [AIR 1970 SC 898]; State of Tamil Nadu & Ors. etc. V. L. Krishnan & Ors. etc. [JT 1995 (8) SC 1]; Improvement Trust, Faridkot & Ors. vs. Jagjit Singh & Ors. [1987 Supp. SCC 608]; State of Punjab & Ors. vs. Hari Om Co-operative House Building Society Ltd., Amritsar [1987 Supp. SCC 687]; Market Committee, Hodal vs. Krishan Murari & Ors. [JT 1995 (8) SC 494] and State of Haryana vs. Dewan Singh [(1996 (7) SCC 394] wherein this Court had held that the High Court was not justified in interfering with the acquisition proceedings. This Court in the latest judgement in Municipal Corporation of Great Bombay vs. The Industrial Development & Investment Co. Pvt. Ltd. & Ors. [JT 1996 (8) SC 16], reviewed the entire case law and held that the person who approaches the Court belatedly will be told that laches close the gates of the Court for him to question the legality of the notification under Section 4(1), declaration under Section 6 and the award of the Collector under Section 11. ”

Final order of this Court.

23. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs 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.

24. The impugned notification(s) and the consequent thereto
award are maintained and affirmed.
25. Since the main case itself has been decided, thus, all the
pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

05.09.2023

kavneet singh

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No

(KULDEEP TIWARI)
JUDGE