

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

(I) CWP-6130-1992 (O&M)
Reserved on: 04.10.2023
Date of Decision : November 30, 2023

JYOTI PARSHAD (SINCE DECEASED) THROUGH LR_s AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

(II) CWP-8679-2004

**PT. JANARDHAN SHARMA ALIAS JANARDHAN KAUSHIK (SINCE
DECEASED) THROUR LR AND OTHERS**

...Petitioners

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

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

Present : Mr. M.L. Sarin, Sr. Advocate assisted by
Mr. Ritesh Aggarwal, Advocate
for petitioner No.2, 2(i) to (iv) in CWP-6130-1992.

Mr. Kartik Patial, Advocate for
Mr. V. Ramswaroop, Advocate
for petitioner No.3 in CWP-6130-1992.

Mr. Akshay Jindal, Advocate and
Mr. Vijayveer Singh, Advocate
for the petitioners No.1, 4, 5 to 7 in CWP-6130-1992 and
for the petitioners in CWP-8679-2004.

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

SURESHWAR THAKUR, J.

1. Since both the writ petitions arise from similar notifications,
therefore both the writ petitions are amenable for a common verdict becom-
ing made thereons.

2. The prayers made in both the instant petitions *inter-alia*, are that the notifications respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the “Act of 1894”), respectively on 22.03.1990, and, on 19.03.1991, being ordered to be quashed, and, set aside on the following grounds;

i) That the acquisition proceedings, as became launched by the Acquiring Authority are discriminatory inasmuch as, the lands of other estate holders have been released, whereas, the present petitioners’ lands have been yet not released from acquisition.

iii) That the copy of report regarding objections, as became filed under Section 5A of the Act of 1894, thus before the learned Collector concerned, was not made available.

(iii) The petitioners had constructed their houses on the acquired land after obtaining permission from the competent authority.

3. For the sake of brevity, contents are taken from CWP-6130-1992.

4. Through an order made on 22.05.1992, this Court was pleased to make an order of status quo being maintained in respect of the acquired lands. However, in the said writ petition the beneficiary department inasmuch as, the HSVP remained unimpleaded. The said writ petition was dismissed, on 18.01.2011, by this Court. On 11.05.2011 rapat possession of the disputed lands became assumed through rapat No.523 of 11.05.2011, as there was no stay against the launching of further acquisition proceedings under the Act of 1894.

5. Writ petitioners No.4, 5 and 6 in CWP-6130-1992 instituted SLP(C) No.1591 of 2012, (converted to CA-5128-2015), whereas, the LRs of petitioner No.2 instituted separate SLP(C) No.3363 of 2012 (converted to CA-5147-2015), before the Hon'ble Apex Court. In the SLP(s) (supra), the Hon'ble Apex Court passed an order of status quo vis-a-vis possession. On 09.07.2015, the lis was remanded to this Court. Thereafter, the petitioners filed contempt petition bearing No.776 of 2018 before the Hon'ble Apex Court, alleging therein, the ill happening(s) of violation of order of status quo, as became passed, on 09.01.2012, thus on the ground, which became also pleaded in the contempt petition bearing No.COCP-571-2022, thus subjudice before this Court.

6. For ready reference the relevant portion of the observations recorded therein are required to be extracted hereinafter, and, are thus extracted hereinafter.

“In that context, it has been observed that insofar as the petitioner before us is concerned, the compensation assessable as for the highest amount would be Rs.4,78,228/-. We may note that the Court did observe subsequently whether a better compensation could be paid but instructions of the respondent is that whatever is best is being done and the rest, if this Court was to give some higher compensation, they leave it to the Court.

The crux of the controversy is that the petitioner claims that there is violation of the High Court's order of stay in taking possession and thus, no legal possession was taken and he is entitled to compensation under the new Act of 2013. Thus, it is not possible to find a median solution other than to note that if the petitioner is desirous of accepting the compensation as offered by the respondent State at the highest value of Rs.4,78,228/-, the petitioner may communicate that offer to the respondent

authorities within a period of 15 days from today and on such communication, the amount may be remitted to him within a period of three weeks thereafter.

If the petitioner seeks to contend that the provisions of the new Act must apply, on account of there being some violation of the orders granted by the High Court, then it is for the petitioner to work out his remedies in the petition pending before the High Court in that behalf. These aspects cannot anymore be determined in these contempt proceedings which by very nature are confined to an aspect of willful disobedience of the order of this Court.

We accordingly, dispose of the Contempt Petition.”

7. Though the State of Haryana had espoused before the Hon’ble Apex Court, that the compensation amount assessable vis-a-vis, the acquired lands would be, in a sum of Rs.4,78,228/-. Further though it, is also observed that yet though the Hon’ble Apex Court, did make observations whether a better compensation could be paid, but since the learned counsel representing the State of Haryana before the Hon’ble Apex Court, made an intimation therebefore, that the amount (supra), is the best payable to the writ petitioner, but yet his reserving discretion in the Hon’ble Apex Court, to assign some higher compensation, than the above assessed sum of compensation. However, yet the Hon’ble Apex Court accepted the said sum of money to be the best payable to him.

8. Moreover, it was also detailed therein, that in case there is any violation of any order staying the dispossession of the petitioners vis-a-vis the disputed lands, thereupon if no valid possession thereons became assumed, at the instance of HUDA, but if the petitioner is entitled to compensation under the Right to Fair Compensation and Transparency in Land

to as the "Act of 2013"), thereupon liberty in respect of the above also became reserved to the petitioner. Resultantly, the Hon'ble Apex Court closed the controversy with respect to the petitioner becoming entitled to compensation under the Act of 1894.

9. Be that as it may, reiteratedly irrespective of the above, the Hon'ble Apex Court did not yet interfere with the submission made before it by the learned State counsel, that compensation comprised in a sum Rs.4,78,228/- rather being the best assessable compensation, but under the Act of 1894.

10. The petitioners in the writ petition (supra), are the owner to the extent of 729.89 sq. yards of land. However, the other co-sharers in the khata concerned, wherein, the petitioners were entitled to compensation in proportion to their share(s) therein, did not access this Court.

11. Be that as it may, the said writ petition as stated (supra), became dismissed on 18.01.2011. Nonetheless, the aggrieved therefrom petitioners No.4, 5 and 6 in CWP-6130-1992 instituted SLP(C) No.1591 of 2012, (converted to CA-5128-2015), and LR's of petitioner No.2 instituted separate SLP(C) No.3363 of 2012 (converted to CA-5147-2015), thus before the Hon'ble Apex Court. The Hon'ble Apex Court proceeded to, through an order made thereon, on 09.07.2015 remand the lis to this Court. The operative part of the order of Hon'ble Apex Court is extracted hereinafter.

“In the result, we allow these appeals, set aside the orders passed by the High Court and remit the matter back to the High Court with a request that the writ petitions filed by the appellants be heard and disposed of afresh in accordance with law. Needless to say that all contentions available to the parties on facts as also on law are left open to be determined by the High Court. No costs.”

12. Since the Hon'ble Apex Court also reserved an implied liberty to the petitioner to contend before this Court, to assess compensation under the Act of 2013. Consequently, it appears that thereby a tacit liberty was also reserved to the petitioner to claim a declaration of lapsing, qua the acquisition proceedings launched under the Act, of 1894.

13. In determining the aforesaid facet, this Court is to refer to the judgment rendered by the Hon'ble Apex Court in case of **"Indore Development Authority v/s Manoharlal and Ors."**, reported in (2020)8 SCC 129, wherein, it becomes expostulated, the necessity of discharging evidence becoming adduced by the Acquiring Authority concerned, qua a duo of conditions inasmuch as, a) rapat possession becoming assumed of the petition lands; b) compensation becoming deposited in terms of Section 31 of the Act of 1894 before the learned Collector concerned, for thereafter the same becoming amenable for being disbursed to the land losers concerned.

14. In the above regard, since evidently rapat possession became assumed through rapat bearing No.523 of 11.05.2011, besides when as revealed in the signed synopsis submitted by the learned State counsel, that the said compensation amount becomes deposited in terms of Section 31 of the Act of 1894, before the learned Collector concerned, for thereby its becoming released to the land losers concerned. Resultantly, the claim for declaring the launching of acquisition proceedings under the Act of 1894, rather being illegal, thus is not sustainable.

15. Now alluding to the ground (supra), as relates to the report regarding objections, raised under Section 5A of the Act of 1894, thus not being made available, it appears that the said ground is laid on a shaky foundation. The reason becomes erected on the evident fact, as revealed from the signed synopsis filed on behalf of the State, that the subject

land in respect whereof the objection was raised rather being vacant at the stage of issuance of a notification under Section 4 of the Act of 1894. If so, the learned counsel for the petitioners cannot make any argument before this Court, that thereby the objections filed under Section 5-A of the Act of 1894 by the petitioners, and, the report in this regard was untenably withheld from the petitioner, especially when they hold no legal consequentiality, rather relating to the release(s) of constructions as became purportedly raised post the issuance of a notification under Section 4 of the Act of 1894, nor can he argue that the petitioners became condemned unheard. Predominantly when they were beneficiaries of the release(s) of constructions, as became made on subject lands, thus prior to the issuance of a notification under Section 4 of the Act of 1894, especially when such releases were made in terms of the relevant policy, whereas, the constructions raised on vacant lands but post the issuance of a notification under Section 4 of the Act of 1894, rather obviously were not amenable for being released. Contrarily, they may be amenable only for determination of compensation. The reason being that on issuance of a notification issued under Section 4 of the Act of 1894, complete right, title and interest over the acquired lands rather vests in the Acquiring Authority concerned.

16. The further ground, as raised in the instant petition relating to the respondents concerned, practicing discrimination against the present petitioners arising from theirs not releasing the petitioner's lands, despite the respondents viz-a-viz similarly situated lands, rather ordering for their release, also appears to be an argument which requires its becoming rejected by this Court. The above inference becomes founded upon the factum, that when alike other purported similarly situated estate holders concerned, the present petitioners were also the beneficiary of the apposite constructions

becoming released from acquisition. Therefore, unless in the objections filed under Section 5A of the Act of 1894, before the learned Collector concerned, the unreleased portions of the disputed vacant lands, hence became well canvassed, to become amenable for being also released, thus on the ground, that thereons also existed constructions, which became so raised, thus prior to the issuance of apposite notification(s), thereupon, alone the said objection could be said to be ably canvassed. However, since no tangible material to exemplify, that at the stage prior to the issuance of a notification under Section 4 of the Act of 1894, thus the subject constructions were raised thereon. Therefore, the above ground of discrimination falls apart, and, the same is accordingly rejected.

17. In consequence, if in the garb of any stay against the dispossession of the petitioners over the said disputed parcel of land, thus becoming granted by this Court, and/or, by the Hon'ble Apex Court, thereupon yet if in terms of the mandate recorded by the Hon'ble Apex Court, in 'Indore Development Authority's case (supra), wherein in paragraph 363 thereof, which becomes extracted hereinafter, in paragraph whereof, it becomes expounded, that on launching of lawful acquisition(s) proceedings, there is complete investment of right, title and interest over the acquired lands in the Authority concerned.

363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided

under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under [Section 34](#) of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under [Section 4](#) of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher

compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under [Section 24\(2\)](#) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of [Section 24\(2\)](#) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

18. In consequence, in view of the findings recorded in paras (supra), of this verdict, this Court does not deem it fit, and, appropriate to

conclude that there was no valid assumption of possession over the acquired lands by the Acquiring Authority.

19. The above is also supported by a judgment made by the Hon'ble Supreme Court in case titled as '**Faizabad-Ayodhya Development Authority, Faizabad Versus Dr. Rajesh Kumar Pandey and Others; 2022 Live Law (SC) 504**', wherein, the relevant expostulations of law have been made in paragraphs No. 10.12 and 10.13, 17 (i) thereof, paras whereof are extracted hereinafter. In the said verdict it has been expostulated that the period for making the relevant computations, is not required to be include therein, the phase when any stay order is passed by Courts of law.

10.12 Thus, it is necessary to dwell into the reasons as to why no award has been made. As discussed aforesaid, if there is an order of restraint on the Collector or on the acquiring authority and as a result of which, the Collector or the Land Acquisition Officer is not in a position to make an award for reasons beyond his control and in compliance of the interim order granted by a court of law at the instance of the land owner or any other person who may have questioned the acquisition, the period during which the interim order has operated has to be reckoned and if on the date of enforcement of Act, 2013 i.e., 01.01.2014, no award has been made owing to the operation of such an interim order granted by a Court in favour of the land owner, then the provisions of the 2013, Act cannot straightaway be made applicable in the determination of the compensation. This is because, but for the operation of the interim order, the award could have been made under the provisions of the Act, 1894 until 31.12.2013 and then provisions of Act, 1894 would have applied as per clause (b) of sub-section 1 of Section 24. But on the other hand, owing to the operation of the interim order granted by a Court in favour of land owner, the award would not have been made as on 01.01.2014 when the Act, 2013 was enforced.

10.13 In our view in such a situation the acquiring authority cannot be burdened with the determination of compensation under the provisions of the Act, 2013. In other words, the land owner cannot, on the one hand, assail the acquisition and seek interim orders restraining the authorities from proceeding further in the acquisition, and on the other hand, contend that since no award has been made under Section 11 of Act, 1894 on 01.01.2014, the provisions of the Act, 2013 should be made applicable in determining the compensation.

17. In view of the above and for the reasons stated above, it is observed as under:-

(i) It is concluded and held that in a case where on the date of commencement of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, no award has been declared under Section 11 of the Act, 1894, due to the pendency of any proceedings and/or the interim stay granted by the Court, such landowners shall not be entitled to the compensation under Section 24(1) of the Act, 2013 and they shall be entitled to the compensation only under the Act, 1894.

20. Furthermore, it has also been clarified in the signed synopsis submitted by the learned State counsel, that the acquired lands have been acquired for development and utilization of land for residential, commercial, institutional and maintenance of open spaces at Gurgaon, as shown in Urban Development Authority in the area of Salokhra, Islampur and Jhardsa Tehsil and District Guragon. As such, when the acquired lands are tailored to suit the public purpose, besides are essential for furthering the requisite public purpose. Resultantly, no claim for theirs being released from acquisition can be well laid before this Court.

21. Conspicuously when upon, vesting of ownership over the acquired lands, in the respondent concerned, thus happening, on issuance(s) of notification(s) (supra), thereby when the State becomes absolute owner of the acquired lands. Resultantly on investment of complete or absolute ownership over the acquired lands, in the respondent-State, thus makes it well empowered to within the ambit of the verdict rendered by Hon'ble Apex Court in the case of ***“State of Kerala Vs. M.Bhaskaran Pillai”, AIR 1997 SC 2703***, to even make sales of the acquired lands through public auction. Thus, in the event of it being not utilized, the exercisings of the above power by an absolute owner, rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs sub-serving some other public purpose(s). Therefore, except in a very rare or exceptional circumstances, inasmuch as, upon occurrence of *vis major* or

upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameters of un-essentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of this case.

22. Further, this Court in a verdict made on 29.07.2022, upon, **CWP-2734-2007**, titled as ***Laxmi Educational Society, Manesar and Others Vs. State of Haryana and others***, considered the proposition as to whether the according of permission(s), thus for change of land use/license/NOC, rather would grant immunity to the land-losers, and/or whether thereby the land-losers, rather can claim an indefeasible right against the launching of acquisition proceedings in respect of the said lands, even if it is required for facilitating the public purpose.

23. This Court after dismissing the said petition, thus had in the relevant paragraph thereof, rather held that **any permission for change of land use/license/NOC/any other permission granted once, would not grant any immunity to the said land for all times to come, from its acquisition by the State, if it is required for the “Public Purpose” as the private interest will have to make way for the public interest, on to the touch stone of regard for the public interest is the higher law.** Therefore, also on the above ground, rather the petitioner(s) are not entitled for release(s) of the acquired lands.

24. Even otherwise, the relevant acquisition was made in the year 1990, and, though the above provisions became inserted in the Act of 2013, through Haryana Act No.21, made in the year 2018, and, though was made retrospectively applicable from the year 1990, but the benefit of the statutory

provision (supra), cannot be availed at this belated stage. More so, when it has been declared in a verdict made by this Court in CWP-15175-2023, titled '*The Press Employees and Friends Co-operative Group Housing Society Ltd. V. State of Haryana and others*' that the import of the above statutory parameters are extremely limited, and, confined to extreme emergent circumstances (supra). Moreover, when it is also been spelt therein, that in case the acquired estate is an integral component of the developmental plan, and, is also an insegregable part of the public purpose, for which the acquired lands are subjected to acquisition, thereby the above statutory parameters of unessentiality, and, unviability of retention of the petition lands, thus are unavailable to become ably canvassed by the writ petitioners.

25. In consequence, both the writ petitions are dismissed.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

November 30, 2023
Ithlesh

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