

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

(107)

CWP-3175-2023

Decided on: 16.02.2023

Muni Lal and others

....Petitioner(s)

Versus

State of Haryana and others

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

Present: Mr. Rahul Sharma, Advocate and
Mr. Arpandee Narula, Advocate for the petitioner(s).

Mr. Ankur Mittal, Addl. AG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

G.S. Sandhawalia, J.

The present writ petition filed under Article 226 of the Constitution of India can aptly be called the 5th writ petition, wherein the dispute is regarding the acquisition of land measuring 5 kanals 13 marlas, which were acquired way back vide notification dated 20.04.1990 (Annexure P-1) and 18.04.1991 (Annexure P-2) issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (for short '1894 Act'), respectively. The same was followed up by the Award dated 23.03.1993.

2. Counsel for the petitioner has, accordingly, tried to convince that the prayer now sought is in terms of Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act') and the Policy dated 14.09.2018 (Annexure P-3). It is, resultantly, pleaded that the petitioners being in possession and not having taken the compensation are entitled for

release of the said land on the issue of viability and the fact that there is

construction on the said land measuring 5 kanals 13 marlas falling in Khasra No.32//20, situated in village Kanhai, District Gurugram. Resultantly, directions are sought that an order should be passed on the representation dated 28.02.2021 (Annexure P-5).

3. Initially, challenge to the notification on merit was rejected when the father of the petitioners had approached this Court in **CWP No.4499 of 1992 ‘Krishan Chand Vs. State of Haryana**, which had been dismissed on 15.12.1992 (Annexure P-8) on the ground that matters had already been disposed of in **CWP No.4647 of 1992 ‘Soraj Yadav Vs. State of Haryana’** decided on 03.11.1990. Apparently, it has come on record that a reference was also filed by the petitioners under Section 18 of 1894 Act and the amount had been enhanced which was deposited with the Reference Court on 23.03.1990.

4. Apparently, **CWP No.6086 of 2015** was then filed, wherein directions were issued by this Court to decide the representations of the petitioners, since they were claiming to be in physical possession of the land and were ready to refund the compensation amount alongwith interest amount. Resultantly, a speaking order dated 28.07.2016 was passed by the authorities by noting that provisions of Section 24 (2) of the 2013 Act were not attracted and physical possession of the land in question had already been taken and handed over to HUDA and there was only an encroachment upon the land in question to take the benefit of the 2013 Act.

5. Resultantly, the said speaking order was challenged in third round of litigation by filing writ petition bearing **CWP No.21401 of 2016 ‘Muni Lal and others Vs. State of Haryana and others’**, which was

dismissed on 17.11.2020 (Annexure P-9) by noting that not only the possession had been taken on 23.03.1993, but even Mutation No.1218 dated 04.08.2004 was entered in favour of the HUDA. The amount of compensation for the said village which was stated to have been received by the petitioners, as per the reply then filed was ₹4,11,199.30 which was for the land and structure on 14.09.1994 and 11.06.2002. On account of the further affidavit filed by the State dated 15.01.2018, it was, accordingly, noticed that the petitioners had sought a reference under Section 18 of the 1894 Act and enhanced compensation had been deposited with the Reference Court on 23.03.1999 as per their share. Therefore, the writ petition was dismissed on 17.11.2020 and the interim order stood vacated.

6. Immediately, thereafter **CWP No.21481 of 2020** was filed, which was dismissed by the Coordinate Bench headed by Hon'ble the Chief Justice on 13.12.2022 (Annexure P-10) by noting that the validity of the acquisition had already been upheld. The said order reads as under:-

“It is informed that the validity of the acquisition proceedings, questioned in the present petition, has been upheld by this Court vide its judgments dated 31.08.2022 & 27.11.2020, in CWP-14184-2016 (**Sanjay and others v. State of Haryana and others**) & CWP-20284-2020 (**Virender Singh and another v. State of Haryana and others**), respectively. Further, the Special Leave Petitions(C) No.21440 & 8342 of 2022, filed against the said judgments, have since been dismissed by the Supreme Court, vide orders dated 02.12.2022 & 07.11.2022, respectively.

Learned counsel appearing for the parties are *ad idem* that the issue involved in the present case is squarely covered by the decisions referred to above.

Accordingly, learned counsel for the petitioner(s) submits that in such circumstances, he may be permitted to withdraw the petition.

Ordered, accordingly.

Pending application(s), if any, also stands disposed of.”

7. It is pertinent to notice that the judgment passed in **Sanjay (supra)** has been upheld by the Apex Court in **SLP (C) No.21440 of 2022 ‘Sanjay and others Vs. State of Haryana and others’** on 02.12.2022 and SLP was dismissed unconditionally. The order reads as under:-

“After making elaborate submissions, when the Court was not inclined to entertain the present Special Leave Petition, learned counsel for the petitioners seeks permission to withdraw the present Special Leave Petition unconditionally.

The Special Leave Petition stands dismissed as withdrawn unconditionally.”

8. Counsel for the petitioners has mainly tried to convince us that the non-viability factor should be considered, as on an earlier occasion this issue had never been raised before the Coordinate Bench and challenge was only on the ground of release of land on parity. Resultantly, it is submitted that writ petition should be decided keeping in view the right under Section 101-A of the 2013 Act.

9. We are firstly of the considered opinion that such an argument that the issue was not raised on an earlier occasion would fall foul in view of the principle of constructive res-judicata. Apparently, it was open to the petitioners to have raised the said issue when they had filed CWP No.21481 of 2020, since the Policy dated 14.09.2018 was already in force at that point of time, on the basis of which they are seeking concession. Now , it would not lie in their mouth to say that said point could not be argued and discovery of another argument would give

them a right to file a fresh petition. The Apex Court in **Ambika Prasad Mishra Vs. State of U.P. and others, (1980) 3 SCC 719** held as under:-

“5.....That decision binds, on the simple score of stare decisions and the constitutional ground of [Article 141](#). Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high pressure advocacy, cannot persuade us to reopen what was laid down for the guidance of the nation as a solemn proposition by the epic Fundamental Rights case, (1973)4 SCC 225.”

10. Similarly, in **Director of Settlements, A.P. and others v. Mr. Apparao and another, (2002)4 SCC 638**, a three Judge Bench of the Apex held as under:-

“7. So far as the first question is concerned, [Article 141](#) of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding

precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under [Article 141](#) would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court.”

11. Thus, once the matter has been settled upto the Apex Court and covered by order dated 02.12.2022, we do not see any reason why the 5th round of litigation should be permitted. Even otherwise, it is apparent that the land was required for the public purpose and non-viability aspect does not arise, as it has come in the representation of the petitioners themselves that part of their land falls in the alignment of the road and they have undertaken to give the same to Government free of cost. Thus, apparently the viability of the usage of the land for development of Sector 44, Gurugram would be adversely affected and the argument, thus, raised is not liable to be accepted.

12. In similar circumstances in **CWP No.29778 of 2022 ‘Vidya Devi and others Vs. State of Haryana and others’** decided on 09.02.2023 also for the land falling in village Kanhai, this Court has rejected the said prayer while noticing that the matter stands upheld upto the Apex Court. It is further to be observed that in **SLP (C) No.16421 of 2021** titled as **Ram Swaroop (D) through L.Rs. and another Vs. State of Haryana and others** decided on 15.11.2021, the Apex Court went on to hold that the claim as such under Section 101-A of the 2013 Act to

denotify the land on account of the viability or non-essentiality is a power, which lies with the State Government and no landowner has any vested right to assert that the land has become non-viable or non-essential.

Relevant observations read 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 nonessential. 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.

xxxx xxxx xxxx xxxx xxxx

11. The claim of the appellants for release of land on account of Section 24(2) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghbir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners.

12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

13. The said judgment also kept in mind the observations made by the Apex Court in **Raghubir Singh and another Vs. State of Haryana and others, 2021 (3) RCR (Civil) 533** earlier.

14. Resultantly, keeping in view the above, we do not see any reason to come to the conclusion that there is any change in circumstances from what was the position on 14.12.2022 when the earlier writ petition was dismissed. The landowners cannot be allowed to defeat the purpose of acquisition by filing repeated litigations and on burdening this Court in an attempt to continue in possession, as observed by the Apex Court and the parties cannot be allowed to raise arguments in piecemeal according to their whims and fancies.

15. Accordingly, there is no merit in the present writ petition and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
JUDGE

16.02.2023
Naveen

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