225-14

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4558-2022 (O&M)
Date of decision:21.09.2023

SURESH KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivam Garg, Advocate for HSVP.

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SURESHWAR THAKUR, J. (ORAL)

1. A notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act of 1894’) became issued on 05.05.1997. The same became succeeded by the declaration made under Section 6 of the Act of 1894, on 04.05.1998. An award in terms of Section 11 of the Act of 1894 became rendered, on 03.05.2000.

2. The writ relief are confined to the respondents being directed to in terms of 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

through Haryana Act No.21 of 2018, thus release the landloser's estate from acquisition.

3. The prime reason for declining the above relief to the petitioner becomes sparked from the evident factum, that the present petitioner has not only received the compensation amount, but also from factum qua the landloser's estate being an integral component of the developmental activities being made thereon. Resultantly, thereby the writ reliefs cannot be claimed rather the petitioner is completely estopped from the above evident material existing on record, thus from staking a claim vis-a-vis their estates rather becoming exempted or becoming released from acquisition.

4. The above raised argument also becomes meritless, as a perusal of the reply on affidavit furnished to the writ petition declares, that the retention of the disputed lands, is essential as well as viable, as thereby the relevant public purpose would be furthered, and/or, may be completely facilitated. Since predominance is to be assigned to public purpose, than to individualistic selfish interests of a landloser concerned.

5. In so far as the claim raised in the instant petition for quashing of the acquisition proceedings is concerned, the said claim is strived to be re-raised before this Court, given the said claim becoming earlier raised in CWP-3186-2017, and, becoming declined through an order made thereon, on 03.02.2022.

6. Conspicuously 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 an 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.

7. Even otherwise, the acquisition in the instant case was lawfully terminated in the year 2000, and, though the above provisions became inserted in the Act of 2013, through Haryana Act No.21 made in the year 2018, and, though they became was made retrospectively applicable from the year 2014, but yet 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. 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 retention of the

petition lands thus are unavailable to become ably canvassed to the writ petitioners.

8. Moreover, the said relief as is planked, upon the policy (supra), the said relief cannot be granted to the petitioner, as the learned State counsel, has in CWP-14077-2022, placed on record a communication addressed to the office of Advocate General, Haryana by the Financial Commissioner, Revenue and Addl. Chief Secretary to the Government of Haryana, Revenue and Disaster Management, wherein, there occurs a speaking that the said policy is under active consideration thus for its withdrawal being made.

9. Further, this Court earlier in ***The Press Employees's case (supra)*** had in length dealt with similar issues as in the instant writ petition. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

> *"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?***
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> ***(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?***
>
> ***(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 ?***
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> *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, 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."

10. Consequently, this Court finds no merit in the instant petition, and, the same is hereby dismissed with costs of Rs.50,000/- to be forthwith

deposited by the petitioners with the '***Punjab and Haryana High Court Employees' Welfare Association***'.

11. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

21.09.2023 **(KULDEEP TIWARI)**
Ithlesh **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No