

CWP-5808-2019

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

**CWP-5808-2019 (O&M)
Date of Decision : 14.12.2023.**

Jagdish Parshad

....Petitioner

VERSUS

State of Haryana & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. Saurabh Mago, DAG Haryana for respondent Nos. 1 & 3.

Mr. Ankur Mittal, Advocate and
Mr. Kushaldeep K. Manchanda and Shivam Garg, Advocates
For respondent No.2 – 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 31.12.2013. The said notification became succeeded by a declaration (Annexure P-3) becoming issued on 10.08.2018 under Section 6 of the Act of 1894.

2. Learned counsel appearing for the petitioner has argued that since the declaration issued under Section 6 of the Act of 1894, thus, became issued on 10.08.2018, therefore, it is contended before this Court, that since on the said date, the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “Act of 2013”), thus came into force. In consequence, it is contended

before this Court that thereby after quashing of Annexure P-3, this Court may proceed to annul the acquisition proceedings as became drawn under the Act of 1894.

3. The above made argument is rejected. The reason for rejecting the argument (supra) becomes rested on the fact that the same is made in complete unmindfulness of the verdict drawn by the Hon'ble Apex Court, in case titled as "Haryana State Industrial and Infrastructure Development Corporation Ltd. And others V Deepak Aggarwal and others" to which Civil Appeal No.005947-005948 arising out of SLP(C) Nos.16631-16632 of 2018 became assigned. The Hon'ble Apex Court in paragraph No.37 of the verdict (supra), paragraph whereof becomes extracted hereinafter, had thereby formulated the question of law, thus for an answer being rendered thereon.

"37. Now, we will consider the other common questions involved in the captioned appeals. They pertain to the questions as to whether Section 4 notification issued under the L.A. Act prior to 01.01.2014 (date of commencement of 2013 Act) could continue or survive after 01.01.2014 and, as to whether Section 6 notification under the L.A. Act could be issued after 01.01.2014."

4. A reading of the hereinabove extracted formulated question of law, reveals that the issue which engaged the Hon'ble Apex Court appertained to whether the initiation of proceedings under the Act of 1894, commenced on the date of the making of a notification under Section 4 of the said Act, or, whether the initiation of acquisition proceedings under the Act of 1894, commenced on the date of making of a declaration under Section 6 of the Act of 1894. It appears that the reason for the drawing of questions of law (supra), arose from the

provisions occurring in Section 24(1) of the Act of 2013, provisions whereof stands extracted hereinafter.

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.”

5. The Hon’ble Apex was engaged in making an interpretation of the phraseology “proceedings initiated under the Act of 1894”, as occurs in Section 24(1) of the Act of 2013. In rendering an answer to the above question of law, the Hon’ble Apex Court in paragraph No.38 thereof, paragraph whereof becomes extracted hereinafter, had expostulated, that the initiation of acquisition proceedings under the Act of 1894, thus occurs on the date of making of a notification under Section 4 of the said Act, and, that the initiation of acquisition proceedings under the Act of 1894, does not occur, on the date of issuance of a declaration under Section 6 of the Act of 1894.

“We think that while considering those questions we will have to bear in mind the purposes and the legislative history of the 2013

Act and also the intention of the legislature in drafting the same in the manner in which it now exists. We have already dealt with those aspects. One crucial aspect discernible from Section 24(1)(a) has also to be taken note of in this context. The combined effect of Section 24(1) and clause (a) thereof is that if land acquisition proceeding under the L.A. Act was initiated prior to 01.01.2014, the date of coming into force of the 2013 Act, and if it was not culminated in an award under Section 11 of the L.A. Act, then all the provisions of the 2013 Act relating to the determination of compensation should apply to such acquisition proceedings. Thus, it is obvious that in case of non-passing of an award in terms of Section 11 of the L.A. Act where the acquisition proceedings have been initiated prior to 01.01.2014, all provisions under the 2013 Act relating to the determination of compensation alone would apply to such acquisition proceedings. In other words, it would mean that in such circumstances the land acquisition proceedings should continue, but all the provisions relating to the determination of compensation under the 2013 Act alone will be applicable to such proceedings, meaning thereby, the 2013 Act would come into play only at that stage. There can be no doubt with respect to the position that between the initiation of land acquisition proceedings by issuance and publication of notice under Section 4(1) of the L.A. Act and the stage at which compensation for the acquisition calls for determination, there are various procedures to be followed to make the acquisition in accordance with the law. The question is

*when Section 24(1) of the 2013 Act makes it clear with necessary implication that all provisions of the 2013 Act relating to the determination of compensation alone would be applicable to such proceedings initiated under the L.A. Act but, not culminated in an award, how the procedures are to be regulated during the intervening period till the proceedings reach the stage of determination of compensation. There cannot be any uncertainty on that aspect. The procedures to be undertaken and the manner in which they are to be regulated cannot remain uncertain. They are conducted either in the manner provided under the L.A. Act or in the manner provided under the 2013 Act. But then, in view of Section 24(1)(a), the provisions relating to the determination of compensation alone can be applied to such proceedings or in other words, there is only a restricted application of the provisions of the 2013 Act in relation to such proceedings. The inevitable conclusion can only be that what is applicable to the various procedures to be undertaken during the period up to the stage of determination of compensation are those prescribed under the L.A. Act. We have no doubt that without such a construction, the provisions under Section 24(1)(a) would not work out, in view of the restrictive application of the 2013 Act. It is in this context that the decision in *Ambica Quarry Works' case (supra)* assumes relevance. Any construction of the said provision without taking into the legislative intention, referred hereinbefore would defeat the legislative intention as also the very objects of the 2013 Act. Certainly, it would not be in public interest*

to allow such proceedings to lapse or allow the authorities to follow the procedures during such period according to their sweet will. A uniform procedure has to be followed in respect of such proceedings. The acquisitions initiated for public purposes should go on in a fair and transparent manner with a view to achieve the intent and purport of the 2013 Act and at the same time, the persons affected shall have definite idea about the manner in which procedures would be conducted. The Party 'B' would not be justified in describing such situations of necessity and the consequential application of provisions which are actually saved on account of the construction of Section 24 as an attempt to bring the words expressly employed in Section 24(1)(b) and absent in Section 24(1)(a), by indirect method to Section 24(1)(a) of the 2013 Act. The aforesaid conclusions and findings would make the contentions of Party 'B' that Section 4(1) notification issued prior to 01.01.2014 could not survive after 01.01.2014 and also that Section 6 notification under the L.A. Act could not be issued after 01.01.2014, unsustainable. In fact, all such procedures and formalities shall be continued till the determination of compensation by applying all the provisions for determination of compensation, under the 2013 Act. A contra-construction, in view of the restrictive application of the provisions to such proceedings during its continuance, would make the provisions under Section 24(1)(a) of the 2013 Act unworkable."

6. Moreover, while making the above interpretation to the above statutory phraseology, which occurs in the Act of 1894, the Hon'ble Apex Court in paragraph 38 carried in verdict (supra), thus proceeded to declare, that if the notification under Section 4 of the Act of 1894, is issued prior to the coming into force of the Act of 2013, thereby if the award, which was otherwise to be drawn in terms of Section 11, of the Act of 1894, thus is not drawn prior to the coming into force of the Act of 2013, or is drawn on coming into force of the Act of 1894 yet the Acquiring Authority concerned, rather in terms of the provisions extracted (supra), becoming endowed with or being reserved with a liberty, to yet proceed to make an award under the Act of 1894, besides the making of an award under the Act of 1894, but determining compensation under the Act of 2103, thus post the coming into force of the Act of 2013, rather assuming force.

7. In consequence, it has to be now determined, whether the Acquiring Authority concerned, issued the notification under Section 4 of the Act of 1894, thus prior to the coming into force of the Act of 2013, inasmuch as, whether the said notification became issued prior to 31.12.2013, thus whereons the Act of 2013 assumed force and/or came into operation.

8. In the above regard, it is not disputed, that the notification as issued under Section 4 of the Act of 1894, was issued on 13.12.2013, and, when the date of issuance of the said notification, is prior to the coming into force of the Act of 2013, therefore in terms of the verdict (supra), the acquisition proceedings became initiated as such under the Act of 1894. Consequently, the subsequently issued declaration under Section 6 of the Act of 1894, even if the date of making of the said declaration was subsequent to the coming into force of the Act of 2013. Nonetheless, the trite factum of issuance of a notification under Section 4

of the Act of 1894 rather on a date, but prior to the coming into force of the Act of 2013, has the conspicuous relevance and import, thus for thereby validating the subsequently issued declaration under Section 6 of the Act of 1894, and, for also validating the award passed under the Act of 1894, as compensation thereunders, has been made under the Act of 2013.

9. In consequence, this Court finds no merit in the instant case, hence, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

December 14, 2023
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No