

225-21

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

CWP-6573-2022

Date of decision:21.09.2023

RAM KISHAN

...Petitioner

Versus

THE STATE OF HARYANA AND ANOTHER

...Respondents

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

Present: Mr. Ajay Jain, 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.

SURESHWAR THAKUR, J. (ORAL)

1. The writ petitioner seeks the making of a mandamus, upon, the respondent concerned, to in terms of the provisions of Section 101-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013, as became inserted through Haryana Act No.21 of 2018, thus release the acquired estates from acquisition.

2. The above made argument is not well founded, upon any pleadings being raised in the instant writ petition. Therefore, at the outset for want of apposite pleadings, and, but obviously for want of any material supportive to the said pleadings, rather no conclusion can be made, that the

writ lands are either unviable or unessential for facilitating the relevant public purpose.

3. Be that as it may, it is reflected in the reply on affidavit furnished to the writ petition, that the writ lands are an integral, and, insegregable component for thus facilitating the public purpose for which they became acquired. If so, the apposite contemplation, as made by the respondent concerned, thus for retention of the writ lands, does not require any interference being made by this Court, as the public purpose for which they are required to be retained, does squarely fall within the objective contemplation of the respondent concerned. The said objective contemplation as made by the respondent, if was ill made, thereupon thus required some cogent material suggestive, that the said contemplation is falsely made or arose, from some collusion inter-se the respondent concerned, and, those landowners concerned, whose estates became released from acquisition.

4. 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 for its withdrawal being made.

5. The above raised argument is also 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.

6. Therefore, and, when even otherwise, the above view is supported by the judgment 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’**, thereby in concurrence therewith this Court declines the writ relief to the petitioner.

7. 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?

(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 ?

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.”

8. Paramountly, it is voiced in the order rejecting the petitioner’s representation, that the public purposes for which the disputed lands, became subjected to acquisition, has thus been accomplished thereby also the writ claim (supra), becomes rendered infructuous, and, is accordingly dismissed as such. Hence, the instant petition 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.

(SURESHWAR THAKUR)
JUDGE

21.09.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No