In the High Court of Punjab and Haryana at Chandigarh

CWP No. 7573 of 2023
Reserved on : 9.10.2023
Date of Decision: 18.10.2023

Select Holiday Resorts Pvt. Ltd ......Petitioner

Versus

State of Haryana and others .....Respondents

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

Argued by: Mr. Chetan Mittal, Senior Advocate with
Mr. Siddarth Gupta, Advocate,
Mr. Mayank Aggarwal, Advocate,
Mr. Vikas Thakur, Advocate and
Mr. Ritvik Garg, Advocate
for the petitioner.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivam Garg, Advocate
for respondent No. 3-HSIIDC.

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SURESHWAR THAKUR, J.

1. The petition land(s) became notified to become acquired through the issuance of a notification under Section 4 of the Land Acquisition Act, 1894 (for short '*the Act of 1894*'). The said notification was issued on 15.11.1994 (Annexure P-4), and, became succeeded by a declaration made under Section 6 of the Act of 1894, on 5.4.1995 (Annexure P-6). An award in respect of the acquired land(s) was made on 3.4.1997 (Annexure P-7).

2. The public purpose for making the acquisition of the disputed lands, was for setting up of an Industrial Model Township, to be planned as

an integrated complex for industrial, commercial, institutional, commercial, recreational, and, other utilities in villages Manesar, Naharpur Kasan, Khoh and Kasa, Tehsil and Distrcit Gurugram.

Submissions of the learned senior counsel for the petitioner

3. (i) The learned senior counsel for the petitioner has contended, that the present petitioner is entitled to become assigned the benefit of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'). He rests the above submission on the plank, that since for the last 26 years, no utilization of the petition land(s) has been made, therefore, the contemplated project for the benefit of the public purpose, has become abandoned, thereby in terms of the provisions (supra), the acquisition proceedings be declared lapsed. In making the above submission, the learned senior counsel for the petitioner makes dependence, upon paragraph 366.8, as occurs in the verdict made by the Constitutional Bench of the Hon'ble Apex Court in ***Indore Development Authority versus Manohar Lal and others,*** reported in ***(2020) 8 SCC 129***, paragraph whereof, stands extracted hereinafter.

> *"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 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned 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."*

4. In the above extracted paragraph, an expostulation has been made, thus for a deemed lapsing of acquisition proceedings, as become initiated under the Act of 1894, in case the authorities have failed due to

their inaction to take possession, and, pay compensation for five years or more before the Act of 2013 coming into force, inasmuch as on 1.1.2014.

5. The learned senior counsel for the petitioner, on the plank of the above expostulation of law, has argued, that since the acquiring authority concerned, has abysmally failed to take possession or give compensation for five years, thus before the coming into force, on 1.1.2014, vis-a-vis, the Act of 2013, thereby the acquisition proceedings, as became drawn under the Act of 1894, are required to be declared to become lapsed.

6. (ii) The learned senior counsel for the petitioner further argues, that since neither any symbolic, nor constructive possession became assumed, over the acquired land(s), thus by the acquiring authority concerned, thereby any assumption of possession over the acquired land(s), through a rapat being drawn, is of no avail for thereby the mandate made in the verdict (supra) becoming attracted against the present petitioner.

7. (iii) The learned senior counsel for the petitioner has also argued, that as a matter of fact, as revealed by Annexure P-10, the compensation became tendered or deposited in the Treasury Office, Gurugram, only on 30.4.2020, after about 23 years, since the date of the making of the award, thereby since within the ambit of the declaration of law made, as, in the verdict (supra), the compensation determined under the Act of 1894, was to be deposited, thus in terms of Section 31 of the Act of 1894, but prior to coming into force the Act of 2013, whereas, in view of the above annexure, it remaining not tendered therebefore, thus prior to the coming into force of the Act of 2013, thereby the petitioner is entitled to a declaration, that as such the acquisition proceedings, as became drawn under the Act of 1894, be declared to become lapsed.

8. (iv) The learned senior counsel further submits, that the petitioner has been discriminated, inasmuch as, vis-a-vis the similarly situated lands of the other estate holders, rather the acquiring authority making releases thereofs. In the above regard, a reference has been made to Roop Rubber Mills, Enkay Rubber, Essel Industries, Alks Plywood, M/s Duracell India Ltd.

9. (v) It is further submitted by the learned senior counsel for the petitioner, that since a CLU has been granted to the present petitioner prior to the issuance of the said notification, thereby the disputed lands are to be released from acquisition. He has also submitted, that the relevant public purpose for which the disputed lands become acquired i.e. construction of a flyover connecting Sectors M1 and M2 over the NH8, is not viable/possible considering, that a flyover has already been constructed, on the National Highway, which in turn provides adequate underpass connecting the Sectors M1 and M2. Therefore, the acquired lands be released from acquisition.

Reasons for rejecting the above submissions

10. For the reasons to be assigned hereinafter, all the above raised contentions are required to be dispelled.

11. The respondents have evidently affirmatively discharged, the onus of proving the twin statutory conditions, mentioned in Section 24(2) of the Act of 2013, inasmuch as, through rapat possession bearing No. 441 of 3.4.1997, rather the possession of the acquired lands becoming handed over to HSIIDC. The date of assumption of rapat possession is prior to the coming into force the Act of 2013. Thereafter, in pursuance to the award made on 3.4.1997, the compensation becoming deposited by the answering respondent with the DRO, and, as such the same became available for becoming disbursed to the land loser concerned, who however, did not

choose to claim the disbursements therefrom.

12. Since there is evident discharging of onus of proof, qua the twin statutory conditions, relating to rapat possession being assumed before coming into force the Act of 2013, besides qua deposit of compensation being also made in terms of Section 31 of the Act of 1894, thus prior to the coming into force of the Act of 2013, for thereby it becoming available for becoming disbursed to the land loser concerned. Resultantly, the petitioner becomes not enabled, to claim the releases from acquisition, rather of his erstwhile land(s).

13. Though, the learned senior counsel for the petitioner has made dependence, upon Annexure P-10, declaring thereins, that the compensation amount became deposited in the Treasury concerned, in the year 2020. Therefore, he argues, that since the said condition(s) (supra), rather was also required to be conjointly complied with, thus along with the condition relating to the assumption of rapat possession over the acquired land(s) by the acquiring authority concerned, but prior to the coming into force of the Act of 2013. However, since the requisite conjoint condition(s) remain(s) unproven to become complied with, by the acquiring authority concerned, as such, the acquired lands are to be released from acquisition, thus in terms of Section 24(2) of the Act of 2013.

14. However, it appears, that the said annexure, is only manifestative, that for lack of the land loser concerned, accessing the authority concerned, to claim releases of the compensation amount, as became deposited before it, rather led the said authority, to remit the said amount to the Treasury concerned.

15. If so, since the said affidavit, as, made by the contesting respondent concerned, remains not belied by adduction of cogent evidence,

therefore, Annexure P-10, but for the above reasons, rather does not countervail the effect of the categorical contentions, raised in the reply on affidavit, furnished to the petition by the respondent concerned, declaring thereins, that the determined compensation amount, rather in terms of Section 31 of the Act of 1894, became deposited before the authority concerned, thus for the same becoming available to become disbursed to the land loser concerned. Resultantly, and, reiteratedly, the twin conditions (supra), do become completely satisfied, vis-a-vis, the acquiring authority concerned, and, that thereby the land loser concerned, does not become well enabled to claim exemption from acquisition of its acquired land.

16. The learned senior counsel for the petitioner has argued, that since 30 years commencing from 31.8.1998, rather the acquiring authority concerned, has not assumed physical possession of the acquired land(s), thereby the public project is deemed to have become abandoned. However, the said argument becomes belied in the face of rapat possession over the acquired land(s), becoming assumed by the acquiring authority on 3.4.1997, thus thereby in terms of the verdict (supra), the said assumption of rapat possession rather not enabling the land loser concerned, to claim the benefit of Section 24(2) of the Act of 2013.

17. Moreover, the plea of abandonment of the project, as raised by the petitioner, is also not tenable, as the petitioner has remained in possession, only in terms of an order made by this Court, on 31.8.1998, passed in CWP-9402-1997 (Annexure P-8), order whereof, becomes extracted hereinafter.

> *"During the course of arguments, a consensus has been arrived at between the learned counsel representing the parties. It is undertaken on behalf of HSIIDC that till such time sufficient*

> *potable water is supplied to the petitioner, the land subject matter of acquisition shall not be taken possession of. It is undertaken that as and when water supply is made available to the petitioner at that time only possession will be taken and such supply of potable water will be made on no profit and no loss basis.*
>
> *It may be clarified that "respondent will not take possession of the land" means that the water resource of the petitioner which is presently in existence would continue to supply water to the petitioner till such time alternate supply of potable water is made available. The petitioner would itself maintain the present water source. It is undertaken by the petitioner that the developmental work of the respondent-HSIIDC shall not be hampered by the petitioner. Disposed of in terms of the compromise arrived at between the parties."*

18. A reading of the above extracted order reveals, that the acquisition proceedings were upheld, but given an *ad idem* consent, rather the assumption of possession over the acquired land, rather became deferred till such time that potable water is provided to the land loser concerned. The effect of the upholding of the acquisition proceedings, through the making of order (supra), completely estops the present petitioner to make any valid challenge to the launched acquisition proceedings. Significantly also thereby the petitioner becomes barred by waiver(s), and, abandonment(s) to lay a well made challenge to the launched acquisition proceedings. In addition, since the award in respect of the acquired land(s) was made on 3.4.1997, and, possession thereof also became evidently taken through rapat bearing No. 441 of 3.4.1997.

19. Moreover, since the dispossession of the petitioner over the acquired land(s), became stayed through an order (supra), becoming made by this Court, and, which is still in operation. Therefore, the failure(s) or

inaction(s) on the part of the respondents concerned, to take possession of the petition land(s), thus within five years or more before coming into force of the Act of 2013, does not beneficially work vis-a-vis the petitioner. Reinforcingly, since the said order is still alive, and, is a conditional order, thus it appears, that in the garb of the said conditional order, the learned senior counsel for the petitioner has made a misplaced submission (supra).

20. Even otherwise, the Hon'ble Apex Court in *Indore Development Authority*'s case (supra), in paragraph 331 thereof, para whereof becomes extracted hereinafter, has made a declaration of law, that the period whereins, the stay order against dispossession of the land loser concerned, is in operation, thereby the said period is to be excluded for determining the period of five years, for the acquiring authority prior to coming into force the Act of 2013, rather failing to assume physical possession over the acquired land(s). Moreover, when assumption of rapat possession over the acquired land(s) rather is the befitting mode.

> *"331. For all these reasons, it is held that the omission to expressly enact a provision, that excludes the period during which any interim order was operative, preventing the State from taking possession of acquired land, or from giving effect to the award, in a particular case or cases, cannot result in the inclusion of such period or periods for the purpose of reckoning the period of 5 years. Also, merely because timelines are indicated, with the consequence of lapsing, under Sections 19 and 69 of the Act of 2013, per se does not mean that omission to factor such time (of subsistence of interim orders) has any special legislative intent. This Court notices, in this context, that even under the new Act (nor was it so under the 1894 Act) no provision has been enacted, for lapse of the entire acquisition, for non-payment of compensation within a specified time; nor has any such provision been made*

regarding possession. Furthermore, non-compliance with payment and deposit provisions (under Section 77) only results in higher interest pay-outs under Section 80. The omission to provide for exclusion of time during which interim orders subsisted, while determining whether or not acquisitions lapsed, in the present case, is a clear result of inadvertence or accident, having regard to the subject matter, refusal to apply the principle underlying the maxim actus curae neminem gravabit would result in injustice."

21. Therefore, while entwining the upholding of the acquisition proceedings by this Court, through an order (supra) (Annexure P-8), thus with the declaration (supra), as made by the Hon'ble Apex Court, thereby the learned senior counsel for the petitioner, cannot derive any succor, from the relevant provisions, as occur in Section 24(2) of the Act of 2013.

22. Though, the learned senior counsel for the petitioner, has vociferously argued, that the present petitioner has been discriminated, inasmuch as, the similarly situated lands of the other estate holders becoming released from acquisition, whereas, the petition land(s) rather not being released from acquisition. However, the said argument also fails. The reason for drawing the above conclusion stems, from the trite factum, that in the earlier raised petition, though may be similar thereto grounds became agitated, yet when through the order (supra), as made on the said petition, the acquisition proceedings became upheld, but with assigning of only an *ad idem* conditional right of possession of the acquired land(s) to the petitioner. Resultantly, the plea of discrimination cannot be re-advanced before this Court, thus also for the reason, that if it remained earlier uncanvassed, thereby too its being now raised, thus becomes barred by the estopping principle, engrafted in Order 2 Rule 2 of the CPC.

23. In addition, even if any CLU has been granted in favour of the

petitioner, yet since it is declared in a plethora of judgments, that thereby the bar of *eminent domain,* thus vested in the acquiring authority, does not wane, nor becomes blunted. Consequently, the granting of CLU to the petitioner, is inconsequential.

Final Order

24. In summa, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is hereby dismissed with costs of Rs. 50,000/-, to be forthwith deposited by the petitioner with the ***'Himachal Pradesh Aapada Raahat Kosh-2023'*** for mitigating the natural disaster in the State concerned.

25. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

October18, 2023
Gurpreet

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