IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20256-2005 (O&M)
Reserved on: 21.08.2023
Date of decision: 29.08.2023

SURAJ MAL AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Shailendra Jain, Sr. Advocate assisted by
Mr. Nitin Jain, Advocate and
Mr. Ayush Gupta, Advocate
for the applicants/petitioners.

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

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

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Shobit Phutela, Central Govt. Counsel for UOI.

Mr. Prateek Mahajan, Advocate with
Mr. Daanish Mahajan, Advocate
for respondents No.2 and 5.

Mr. Akashdeep Singh, Advocate
for respondent No.9.

****

SURESHWAR THAKUR, J.

1. The prayers made in the instant petition *inter-alia* are that the notifications under Sections 4 and 6, as became issued under the Land

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

Acquisition Act, 1894 (hereinafter referred to as the "Act of 1894") respectively on 4.11.2003, and, on 03.11.2004 being ordered to be quashed, and, set aside.

i) That through the issuance of the said notifications breach is done to the provisions of Sections 11, 12(1), 19, 27, 28 and 29 of National Capital Region Planning Board Act, 1985 (hereinafter referred to as "the Act of 1985").

ii) That the acquisition proceedings, as became launched by the Acquiring Authority are discriminatory inasmuch as, the lands of other estate holders have been released, whereas, the present petitioners' lands have been yet not released from acquisition.

iii) That no opportunity of hearing was granted to the petitioners for considering their objections, as became filed under Section 5A of the Act of 1894, thus before the learned Collector concerned.

2. Before proceeding to adjudicate, upon the merits of the above raised grounds by the learned counsel for the petitioners, before this Court, it is deemed imperative to extract certain orders which became made by this Court, during the pendency of the instant writ petition, and, which but pointedly exemplify the factum, that the petitioners had conceded to the validity of acquisition being made in respect of 25 acres of petition lands, and, that they had protested against the makings of acquisition only in respect of 2 Kanals of land.

3. The initially made order by this Court during the pendency of the instant writ petition was on 23.12.2005, order whereof hence making the above speaking, is extracted hereinafter.

"Notice of motion for 24.4.2006.

Learned counsel for the petitioners states, that the land of the petitioners has been sought to be acquired for

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

residential, commercial and institutional area vide a notification dated 4.11.2003, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). It is vehemently contended, that inspite of the fact, that the petitioners filed objections under Section 5-A of the Act, the authorities did not exclude the land of the petitioners from acquisition proceedings, as is established from the declaration dated 3.11.2004, issued under Section 6 of the Act.

Learned counsel for the petitioners states, that 27 acres of the petitioners' land is under acquisition proceedings in terms of the aforesaid notifications, and that, the petitioners have no objection to the acquisition of almost 25 acres of the said land on account of the fact, that the petitioners are only interested to retain the constructed portion in the nature of a school, seven houses and one Nazim's house, which are constructed on a total of 2 acres of land.

In view of the above, while allowing the respondents to take possession of 25 acres of the petitioners' land, we hereby restrain the respondents from taking possession of 2 acres of land on which the petitioners have constructed a school, seven houses and one Nazim's house."

4. However, on 24.04.2006 an application was moved accompanied by an affidavit of co-petitioner No.3 namely Devinder Singh, wherein he stated, that he has not instructed Mr. M.L. Sharma to make the aforementioned statement. The learned counsel for the petitioners also further stated that the statement, as became made earlier by Mr. M.L. Sharma, was without any valid authority, and, that the petitioners have withdrawn the power of attorney, as became executed *qua* Mr. M.L. Sharma. Therefore, this Court given the above made statement proceeded to make an order that the lis is required to be heard afresh. The relevant portion of the order, as made on 24.04.2006 is extracted hereinafter.

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

"Now an application has been filed which is accompanied by an affidavit of the petitioner No.3 namely Devinder Singh wherein he has stated that he never instructed Mr. M.L. Sharma to make the afore-mentioned statement. Mr. Jain states that the statement made by Mr. Sharma, was without authority and the petitioners have withdrawn the power of attorney from Mr. Sharma.

Keeping in view the stand taken by the petitioners and their earlier counsel, Mr. M.L. Sharma, therefore, we deem it appropriate to hear this case a fresh.

Adjourned to 1.5.2006."

5. However, on 31.05.2006 since Mr. M.L. Sharma had made the statement before this Court, on 23.12.2005, thus leading this Court to make the order (supra), on the said date, hence re-appeared before the Bench concerned, and, reiterated the earlier made statement before this Court. Resultantly, the Bench concerned, ordered that the lis be listed before the Bench concerned, before whom Mr. M.L. Sharma had made the said statement. The relevant portion of the order, as made by this Court, is extracted hereinafter.

"Today, Mr. M.L. Sharma, Advocate, has appeared before us and he has reiterated that the statement made by him was correct and was made after receiving instructions from the petitioner and that the matter had been heard extensively on 23.12.2005.

In view of the peculiar facts of the case, we deem it appropriate that the matter be heard by the same Bench before whom Shri M.L. Sharma is said to have made his statement. Accordingly, the matter be placed before the same Bench who heard the matter on 23.12.2005 after obtaining orders from Hon'ble the Chief Justice."

6. Ultimately when the lis came up before this Court, on February 3, 2023, the learned counsel for the petitioners made the hereinafter

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

extracted statement before the Bench of this Court, statement whereof, is extracted hereinafter.

> *"Mr. Jain submits that he will not press the petition on the issue of Section 24(2) of the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, though the matter was kept pending on account of that on an earlier occasion."*

7. Therefore, the import of the said made statement, is that, this Court is not required to be either delving into or making any adjudication with respect to the applicability of the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), qua the disputed lands.

8. Resultantly, also the only surviving issue relates to whether the petitioners are entitled to seek exemption from acquisition qua 2 acres of land.

9. On the said disputed two acres of land exists a kothi measuring 85'x110', school building measuring 94'x40', latrine-bathroom measuring 15'x8', piayu measuring 40'x30', and, boundary wall.

10. Now alluding to the ground (supra), as relates to no opportunity of hearing becoming granted to the petitioners, on their objections raised under Section 5A of the Act of 1894. It appears that the said ground is laid on a shaky foundation. The reason becomes erected on the evident fact, as revealed in the reply, on affidavit instituted to the petition on behalf of the respondents, that it was only in sequel to the well considered objections relating to release being made of 7 Kanal 10 Marlas of land, that the said area(s) of land became released from acquisition. If so, the learned counsel for the petitioners cannot make any argument before this Court, that thereby

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

the objections filed under Section 5-A of the Act of 1894 by the petitioners were decided thus without any opportunity of hearing becoming granted to the petitioners nor he can argue that the petitioners became condemned unheard. Predominantly when they were beneficiaries of the release(s).

11. The further ground, as raised in the instant petition relating to the respondents concerned, practicing discrimination against the present petitioners in theirs not releasing the petitioners' lands, despite the respondents viz-a-viz similarly situated lands rather ordering for their release, also appears to be an argument which requires its becoming rejected by this Court. The above inference becomes founded upon the factum, that when alike other purported similarly situated estate concerned, the present petitioners were also the beneficiary of the apposite lands becoming released from acquisition. Therefore, unless in the objections filed under Section 5A of the Act of 1894, before the learned Collector concerned, the unreleased portions of the disputed lands hence became well canvassed to become amenable for being so released, thus on the ground, that thereby there would be no discrimination against the present petitioners, thereupon the present petitioners would become disabled, to raise the above ground of discrimination in the instant writ petition.

12. Now assuming that the said ground was raised in the objections filed under Section 5A of the Act of 1894, and, that even if assumingly the said objections as relating to the above facet, thus become dismissed. However, yet since for reasons (supra), the petitioners have acquiesced qua scope of the instant writ petition becoming restricted to the purported illegal retention of land measuring only 2 acres. Resultantly, it has to be concluded, that the effect of the above acquiescence, besides the effect of the above restricted scope of the relief, is that, the said purported ground(s)

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

of discrimination, as, asserted in the writ petition, does thereby become completely eclipsed. Contrarily, an inference is to be drawn that the present petitioners are untenably asserting a right to the said area measuring 2 acres only, and, that too despite completest termination of lawful acquisition proceedings whereby there is complete divestment of right, title and interest over the disputed lands in the petitioners, whereas, there is concomitant investment of right, title and interest in the respondents concerned, over the disputed lands.

13. In consequence, if in the garb of any stay against the dispossession of the petitioners over the said disputed parcel of land, thus becoming granted by this Court, thereupon yet if in terms of the mandate recorded by the Hon'ble Apex Court, in ***'Indore Development Authority Versus Manoharlal and others'***, to which ***SLP (Civil) Nos. 9036-9038 of 2016***, has been assigned, wherein in paragraph 363 thereof, which becomes extracted hereinafter, in paragraph whereof, it becomes expounded, that on launching of lawful acquisition(s) proceedings, there is complete investment of right, title and interest over the acquired lands in the Authority concerned.

> *363. In view of the aforesaid discussion, we answer the questions as under:*
>
> *1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.*
>
> *2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.*

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 *of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under* Section 4 *of the Act of 1894.*

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2)of the Act of 2013.

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) *is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2)of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).*

8. 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 Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority 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.*

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

14. Moreover, since it has also been expounded therein, that on such vestment of right, title and interest over the acquired lands in the Authority concerned, thus there is no entitlement in the land looser concerned, to yet retain possession thereof. In addition, when it has also

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

been expounded therein, that such retention of possession over the acquired lands, by the land looser concerned, is but as a tress-passer thereons. Therefore, also the untenable possession of the petitioner over the acquired lands, even if it is in terms of an order against dis-possession becoming made by this Court, yet does not endow any leverage to the petitioners to claim, that he has any right to continue to retain possession. Contrarily, the extant possession of the acquired lands, thus are required to be handed over, by the petitioners, if not already handed over to the respondent concerned. Thereupon the petitioners are directed to, forthwith deliver the possession of the disputed lands, to the respondent concerned.

15. The learned counsel for the petitioners has also argued before this Court, that the provisions (supra), as contained in the Act of 1985 have been violated inasmuch as, no regional plan has been prepared by the Board indicating therein, the exact location whereby the requisite public purpose would become potentialized. In the above regard, a detailed reply has been filed by the respondent-State, and, which exists at page No.156 of the paperbook, relevant paragraph whereof is extracted hereinafter.

> *"8. Thus, the Regional Plan prepared by the National Capital Region Planning Board is prepared at a macro level. The details elaborating the regional plan are indicated at the micro level in the various subsequent plans i.e. Sub-regional Plans and Master/Development Plans prepared by the NCR participating state governments in conformity with the Regional Plan. That the Regional Plan is a broad policy document which provides for inter-related policy framework for harmonious and balanced development of the Region. It lays down policies forvarious sectors such as settlement pattern, economic activity & fiscal policy, transport, power, water, sewerage, solid waste management, drainage, irrigation, shelter, social infrastructure, environment, regional*

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

land use, tourism, heritage, disaster management, etc. NCR Planning Board in the Regional Plan- 2021 has identified seven Metro Centres (having proposed population 10 lakhs and above) and eleven Regional Centres (having proposed population 3 to 10 lakhs) and the Participating States are required to adopt the proposed population, city-level population density and land use given in the Regional Plan-2021 for identified seven Metro & eleven Regional Centres. The Regional Plan does not indicate the exact location for any particular use or function in the urbanisable area. The urbanisable areas of remaining settlements (other than identified seven Metro Centres and eleven Regional Centres) are to be identified and proposed in the Sub-Regional Plan by the participating States. Therefore, the urbanisable area in the regional land use map are approximate and are to be clearly defined and elaborated minutely in the plans in lower hierarchy such as the Sub-regional and Master/Development Plans. The participating States while preparing the further plans based upon Regional Plan of the NCRPB have to ensure that the land in the aforesaid region is put to only those land uses which have been allowed in the regional plan for that area. Thus the regional plan which is prepared with a perspective year say 15 years hence is implemented as foreseen in the Regional Plan for that perspective year. It is stated that the Regional Plan 2001 was notified in 1989. The Regional Plan 2021 was notified on 17.9.2005 and is presently in force."

16. Be that as it may, the above aspect has been considered in detail in case titled as '***Karambir Rathi and others V. State of Haryana others,*** reported in ***2013 (51) RCR Civil***, wherein, qua a similar hereto situation, it has been held that the non existence of a plan would not affect the power of acquisition of the State government.

17. Even the Hon'ble Apex Court in a verdict rendered in case of ***'Bhagat Singh V. State of U.P.'***, reported in ***AIR 1999 SC 436***, thus has

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

expounded a similar principle of law. Therefore, but obviously the above made argument erected on breach being made to the relevant provision of the Act of 1985, becomes completely unsuccessful.

18. Furthermore, it has also been clarified in the reply that the acquired lands have been acquired for erecting thereons dispensary, convenient shopping centre, 24 meter wide internal road, 12 meter wide road, 38 number of plots of 1 Kanal category, 37 number of plots of 14 marla category, 92 plots of 8 marla category, 149 plots of 6 marla category and 9 plots of 4 marla category. As such, when thereupon acquired lands are tailored to suit the public purpose, besides are essential for furthering the requisite public purpose. Resultantly, no claim for theirs being released from acquisition can be well laid before this Court.

19. What compounds the ill-acts of the present petitioners, are comprised in the factum, that the present petitioners are not bonafidely claiming, the lands for theirs being put for their benefit or personal use, but are intending to handover the possession of the acquired lands, to an entity or a person, with whom a collaboration agreement has been executed by the present petitioners. The said ill-event has occurred but post the launching of lawful acquisition proceedings in respect of the acquired lands, thereby through the said collaboration agreement, qua which a declining order has been made by the Competent Authority, is but an untenable attempt, to usurp possession of the acquired lands, from the Acquiring Authority concerned. As but a natural corollary thereof, the said ill-event as stated (supra), is but manifestative, that both the grounds of discrimination (supra), as well as the ground that the petitioners' lands are required, but for the genuine bonafide personal requirement of the petitioners, is but a merely

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment

pertextual or an invented plea, and, thereto no countenance can be made by this Court.

20. Consequently, this Court finds no merit in the writ petition, and, is constrained to dismiss the same. Hence, the same is dismissed. However, the possession of the acquired lands, are required to be forthwith handed over, if not already handed over, thereupon the petitioners are directed to to forthwith deliver the possession thereof, to the respondent concerned. Costs of Rs.50,000/- are also imposed upon the petitioners. The said imposed costs be forthwith deposited in the Himachal Pradesh Chief Minister's Relief Fund, as, set up for mitigating the present disaster.

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

(SURESHWAR THAKUR)
JUDGE

29.08.2023 **(KULDEEP TIWARI)**
Ithlesh **JUDGE**

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

ITHLESH KUMAR
2023.09.02 16:07
I attest to the accuracy and
authenticity of this order/judgment