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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-9085-2023

Date of Decision : 19.07.2023

RAJESH KUMAR 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. Ram Pal Verma, Advocate
for the petitioners.

SURESHWAR THAKUR, J. (Oral)

1. Notice of motion.
2. Mr. Saurabh Mago, DAG, Haryana waives service of notice on behalf of respondents No. 1, 3 and 5.
3. Mr. Ankur Mittal, Advocate, Ms. Kushaldeep Kaur Manchanda and Mr. Shivam Garg, Advocates waive service of notice on behalf of respondents No. 2 and 4-HSVP.
4. In respect of the acquired lands, a notification under Section 4 of the Land Acquisition Act, 1894 (for short hereinafter call as the 'Act of 1894' was issued on 18.10.2002 and a declaration under Section 6 of the 'Act of 1894' was issued on 08.09.2003 and subsequently an award in terms of Section 11 of the 'Act of 1894' was passed on 05.09.2005.
5. It is also not disputed amongst the contesting litigants that subsequently possession of the petition lands became assumed by the

respondent and also the amount of compensation became deposited before the Collector concerned.

6. Though the learned counsel appearing for the petitioners has yet vehemently argued that even in the light of the above uncontested facts, that in terms of Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short refer to as the 'Act of 2013') provisions whereof are extracted hereinafter, rather the earlier proceedings launched under 'the Act of 1894', thus become lapsed, and thereby the lands be released or de-notified from acquisition.

“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such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section(1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken and the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

7. Moreover, though he has also argued that since also in terms of Section 101-A as occurs in the 'Act of 2013' or thus becomes inserted through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, thus the acquired lands are both un-essential and unviable for being put to the relevant public purpose. Therefore, also the petition lands be ordered to be released from acquisition.

“101A. Power to denotify land.- *When any public purpose, for which the land acquired under the Land Acquisition Act, 1894 (Central Act 1 of 1894) becomes unviable or non-essential, the State Government shall be at liberty to denotify such land, on such terms, as considered expedient by the State Government, including the payment of compensation on account of damages, if any, sustained by the land owner due to such acquisition:*

Provided that where a part of the acquired land has been utilized or any encumbrances have been created, the landowner may be compensated by providing alternative land alongwith payment of damages, if any, as determined by the State Government.”

8. However, insofar as, the above primary submission is concerned, the effect thereof is completely rudderless, in the face of it being averred in paragraph No. 5 of page 13 of the paper book, that an additional award in terms of the 'Act of 2013', thus became pronounced and the determined compensation amount became deposited.

9. Moreover, there is also a graphic echoing therein, that the petitioners are aggrieved only to the extent of inadequacy of compensation as became determined under the 'Act of 2013'. Therefore, obviously when it appears that the respondent-State apart from concluding proceedings for acquisition, as became launched under the 'Act of 1894', did also thereafter take to launch further proceedings under the 'Act of 2013', besides became led to pronounce an additional award in terms thereof.

10. Consequently, in the face of the above and also in the face of the writ petitioners becoming aggrieved only from the inadequacy or deficiency of the compensation amount, as became determined under the 'Act of 2013', thereby in respect of the above limited relief, this Writ Court, has no jurisdiction at this stage, as the jurisdiction to settle or rest the said dispute is completely at this stage, thus vested in the District Judge concerned.

11. However, yet the secondary submission as addressed before this Court by the learned counsel for the petitioners, as, relates to that in terms of Section 101A of the 'Act of 2013', provisions whereof are extracted hereinabove, the acquired lands are un-essential or unviable, for the relevant public purpose, yet no cogent material as such has been placed on record, but suggestive that the petition lands are as such unviable or un-essential for the public purpose concerned.

12. In the face of no cogent evidence (supra), thereby this Court becomes constrained, to make the above conclusion, thereupon, this Court is of the considered view that the instant writ petition is surmisedly drawn, and or, is misconstituted and as such is liable to be dismissed.

13. In view of the above, the writ petition is dismissed. However,

liberty reserved to the petitioners to access, if now permissible, thus the appropriate authority for seeking enhancement of compensation amount, beyond the one, as became determined by the Collector concerned, under the 'Act of 2013'.

14. It is further clarified that in writ petition(s) which canvass relief for de-acquisition of land but on the basis of Section 101A (supra), and also claim a further relief, that the authority concerned, be directed to make an adjudication, on the apposite representation(s), thus in view of the above being preferred, and or, being subjudice, thereupon this Court would not become coaxed to accord relief in respect of the above. The reason being that the Writ Court, deems it fit and appropriate through its exercising the power of judicial review, to incisively scrutinize, whether as such the acquired lands are suggested, by cogent and clear evidence, to be un-essential or unviable, for being utilized for the relevant public purpose. In case on a deep scrutiny of the facts and evidence, no material emerges, thus to coax this Court to rather make the above conclusion, thereupon, this Court would straightway dismiss the writ petition(s) instead of allowing reliefs for any subjudice representation being decided by the authorities concerned.

15. In other words, the power of judicial review shall be always exercised by this Court and such a power shall never be abandoned to the authorities concerned.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

19.07.2023
kavneet singh