

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 09.10.2023
Pronounced on: 18.10.2023

1. CWP-1568-2007 (O & M)
MEWA SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

2. CWP-17658-2006 (O & M)
HARCHAND SINGH AND ORS.Petitioners

Versus

STATE OF PUNJAB AND ORS.Respondents

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

Argued by: Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Datt, Advocate
for the petitioners (in CWP-17658-2006).

Mr. Mohit Jaggi, Advocate
for the petitioners (in CWP-1568-2007).

Mr. Maninder Singh, DAG, Punjab.

Mr. R.S.Khosla, Sr. Advocate with
Ms. Shreya Singh, Advocate
for respondents No. 2 and 3 (in both the writ petitions)

SURESHWAR THAKUR, J.

1. Since both the writ petition(s) arise from common theretos
notification(s) issued under Section 4 of the Land Acquisition Act,

1894 (hereinafter for short called as the 'Act of 1894'), besides also arise from common theretos declaration(s) issued under Section 6 of the 'Act of 1894'. Therefore, both the writ petition(s) are amenable for becoming decided through a common verdict.

2. The present petitioner(s) claim the hereinafter extracted reliefs.

Civil Writ Petition under Article 226 of Constitution of India, for quashing:

a) Notification issued under Section 4 and 6 of the Land Acquisition Act, 1894 dated 23.1.2004 and dated 18.1.2005.

And

b) For Declaration that Section 23(1) 1st of the Land Acquisition Act. 1894 is ultravires of Article 31-A, 2nd Proviso, because, the said Act does not provide the fixing of compensation, at no less than market price", as on the date of acquisition.

And for declaration

c) That in view of the 73rd and 74th Amendment of the Constitution of India, Chapter IX and IXA have been added and special provisions are made for Municipalities and Panchayats. For such areas the development can only be done by the Committees for District Planning under Article 243 ZD & 243 ZF of the Constitution of India and PUDA has no jurisdiction to carry on the planning at Municipal and Panchayat level.

And for declaration

d) That the provisions of Punjab Regional and Town Planning and Development Act. 1995 Act are violated by not complying with the provisions of Chapter VII, IX, X, XI and XII. the proceedings for acquisition had been started.

And for declaration

e) That Section 3, 4, 14, 17 and 28 of the Punjab Regional and Town Planning and Development Act, 1995, are ultravires of Article 243 ZD and 243 ZF of the Constitution of India.

And for declaration

f) That the area within the "Phirni" cannot be acquired in accordance with the Policy of the Government dated 20.1.2006.

And for declaration

g) That the Secretary of the Department does not have the power to change the policy of Punjab Regional and Town Planning & Development Act, 1995, by passing an exemption order under Section 178 of the said Act. If the policy is to be changed, then it is function of the legislature or in the alternative the Cabinet. But, in no case, the Secretary has the power to do so. The expression "State Government" used in Section 178 of 1995 Act means that the decision lies with the Cabinet only and not with the Secretary of the department. Even otherwise, the exemption order dated 13.2.2004 is without jurisdiction, based on extraneous considerations and irrelevant material and is thus void.

And for declaration

That the notice u/s 12(2) and 31(1) of 1894 Act (Annexure P-7) be declared void and illegal; being in violation of the policy of the State Government that land within phirni/ lal lakir cannot be acquired.

3. However, during the course of arguments, the learned counsels for the petitioner(s) abandoned the reliefs at clauses (b), (c), (d), (e) and (g). However, they maintain the reliefs espoused at clauses (a) and (f).

4. Before proceeding to determine the validity of the reliefs (supra), as, espoused in the writ petition(s), it is necessary to delineate

the essential facts.

5. A notification bearing No. 6-9/2000-1HG1/501 under Section 4 of the 'Act of 1894' became issued on 23.01.2004 and it became succeeded by a declaration issued under Section 6 of the 'Act of 1894' on 18.01.2005. Subsequently, an award bearing No. 494, was made on 02.12.2006, thus for setting up of an urban estate known as 'Knowledge City' in Sector 81, SAS Nagar.

6. The disputed khasra numbers are declared in the notification (supra) to be essential for widening of road in Sector 81.

7. It is apt to mention here that when the instant writ petition(s) came up for hearing on 13.02.2014, the hereinafter extracted direction(s) were made.

“..... Having heard learned counsel for the parties for some time, it appears to us that the petitioner-farmers whose agricultural land is being acquired and would be left with no source of livelihood deserve to be suitably rehabilitated by allotment of commercial sites in the same and/or adjoining sectors. The other option can be to give a slight curve to the proposed road dividing Sector 80 and the Knowledge City, if there is lying unallotted land towards Sector 80.

The Registry would also tag the records of CWP Nos.9060, 9083, 8682 and 9119 of 2005 and 14793 of 2006.

Let appropriate affidavits by the State as well as GMADA be filed.

List on 21.3.2014 for further arguments.

Meanwhile, the GMADA authorities shall also carry out a fresh spot inspection to examine the feasibility of exempting the construction and structure.”

Further, on 25.04.2014, the hereinafter extracted order was

passed by this Court in the writ petition(s) (supra).

“.....

Meanwhile, the respondents are directed to verify the petitioners' claim under the Oustees' policy and offer them allotment in accordance with that policy.....”

8. In compliance to the said order, the respondent concerned filed compliance report in both the writ petition(s) (supra), relevant portion of the said report is extracted hereinafter.

Compliance report in CWP-1568-2007

“2. That in compliance with the aforesaid directions, the claim of the petitioners has been examined under the Oustee Policy dated 08.05.2013 issued by the Government of Punjab, Department of Housing & Urban Development. Since in the present writ petition, the petitioner has challenged the acquisition of land falling in Khasra No. 47/2 (1 Kanal 2 Marla), which forms part of abadi deh of Village Mauli Baidwan & its ownership vested with the Gram Panchayat, so the petitioner is not eligible for the allotment of a residential plot against this land of abadi deh.

Compliance report in CWP-17658-2006

“.....Since individual land holding of each petitioner is less than half acre, so none of the petitioners is eligible for the allotment of a plot under the Oustee Policy.”

Facts mentioned in the reply filed on behalf of respondent No. 2 in CWP-17658-2006.

9. It has been stated, on affidavit, that the present petitioner(s) who are the land owners of Village Mauli Baidwan have challenged the impugned notification(s). The said notification(s) were issued for setting up of an Urban Estate at SAS Nagar now known as 'Knowledge City' in Sector – 81, SAS Nagar.

10. The impugned notification(s) were earlier challenged by the petitioner(s) in CWP-9060-2005 and CWP-9083-2005, which was dismissed by this Court through an order made on 26.09.2006. The present petitioners No. 1 to 4 were also petitioners in CWP-9083-2005. Further, the review application(s) filed in the aforesaid writ petition(s) against the order (supra) were also dismissed by this Court through an order drawn on 09.02.2007.

11. Thereafter, Civil Appeal No. 8431-2010 arising out of SLP (C) No. 9924-2017 and Civil Appeal No. 8432-2010 arising out of SLP (C) No. 9926-2017, as became filed by the petitioners, thus also became dismissed by the Hon'ble Supreme Court.

12. Further, in CWP-11523-2004 filed by petitioner Amarjit Singh, the petitioner (supra), challenged the validity of exemption order dated 13.02.2004 passed by the Government of Punjab under Section 178(2) of the Punjab Regional and Town Planning and Development Act, 1995, but the CWP (supra) became also dismissed by this Court, through an order drawn on 02.09.2013.

13. In para No. 7, of the reply, it is stated that all the issues/grounds in para no. 19 of the writ petition, except sub para (f) wherein the petitioners are seeking the release of their lands on the basis of policy guidelines dated 20.01.2006, on the ground, that the land in question falls within the *phirni* of village Mauli Baidwan, thus already stand adjudicated and settled.

14. In para No. 9, of the reply, it is stated that the acquired lands have already been allotted by the GMADA in favour of various departments of the Union of India and the State Governments for setting up institutions of national repute.

15. Furthermore, it has been stated, in the reply, that the land of the petitioners is an almost triangular piece of land and forms part of Sectoral Grid of SAS Nagar. The land is under agricultural use and is very much required for proper integration of the scheme as per the Master Plan of SAS Nagar.

16. Further, it has been stated that the Land Acquisition Collector, Urban Development, SAS Nagar, had awarded compensation of Rs. 40 lacs per acre, plus statutory benefits under the provisions of Section 23 (1) (A) of the 'Act of 1894'. Also, while disposing of a number of reference petitions filed by the land owners of village Mauli Baidwan, the Reference Court has awarded compensation of Rs.71,40,000/- per acre plus statutory benefits.

17. Therefore, prima facie, it appears that since in the earlier petition, thus the petitioners could well raise the contention relating to exemption(s) of their lands on the premise qua theirs falling in the *lal lakir* and *phirni* of the village, whereas, the said contention remained un-raised therein, thereby the said omission rather attracts to the raising of the said contention(s) in the instant writ petition, thus the principle of estoppel engrafted in Order 2 Rule 2 CPC.

18. Be that as it may, if as a matter of fact, the said contention though become omitted to be raised and is now raised, yet if otherwise, the same breaches or infracts the relevant enforceable policy, thereby it may constitute an exception to the principle of estoppel, as created by the provisions of Order 2 Rule 2 CPC.

Contentions of the learned counsel for the petitioner(s) for seeking the writ reliefs.

19. The learned counsel appearing for the petitioner(s), have

with much vigor made a contention, that those part of the acquired lands which fall within the '*lal lakir*' and the '*phirni*' of the village, since become declared in clause (g) of the policy dated 20.01.2006, of the State Government, clause whereof stands extracted hereinafter, to be not amenable for acquisition. Therefore, they contend that qua those portions of the writ lands as are falling in the village *abadi* besides are within the extended *abadi*. Resultantly the said lands are part of the heritage site of the village and are thus required for maintaining the agrarian cultural ethos of the village.

(g) Existing Rural Settlements. - Considering the existing as well as future development needs of the villages falling within the Periphery as well as with a view to cater to their increasing population, it would be prudent to provide a sufficiently compact and contiguous belt of land around the village "phirni" for ensuring the organic growth of these villages. Any area falling between the "lal lakir" and the 'phirni' of the village shall also be treated as part of the extended belt. The area should be allowed to be used primarily for meeting individual residential and petty commercial needs of the existing and future population of a village. However, charges for change of land use should be levied on prescribed rates, except in the case of bona fide residents. No industry should be permitted in such area. Similarly, formal colonization shall also not be permitted in the extended 'abadi' area on the pretext of this recommendation alone.

With these caveats, the Committee proposes to allow the village "Abadi" area extension by 60% subject to a minimum of 50 metres and maximum of 100 metres in radial length from the 'phirni'. However, where the existing Abadi Deh or a part thereof is an area which forms a part on the rural/agricultural and afforestation

zone of the Outline Master Plan/Draft Comprehensive Master Plan/Comprehensive Master Plan prepared under the Punjab Regional and Town Planning and Development Act, 1995, the extent of such area shall be limited to 50 metres. Permitting construction in the notified forest areas falling in these villages would, of course, be subject to due approval as regards change of land use. No permission should, however, be granted in any area which falls within the Sectoral Grid of SAS Nagar (Mohali), as reflected in the Outline Master Plan. The extent of area where such constructions are to be permitted will be demarcated and certified for each village falling within the Periphery by the Revenue Authorities, subject to the final approval of PUDA. In order to promote planned development, it is proposed that construction in the area should be regulated by a set of simple building norms, subject to payment of Land Use conversion charges and in accordance with other details as contained in Annexure C. However, to avoid hardship to villages and land owners, the area in the extended abadi deh shall be exempted from the provisions of the Punjab Apartment and Property Regulation Act, 1995.”

20. In consequence, they argue that on makings of acquisition(s) of the above lands, there would be effacement of the sacrosanct site of the village.

Contentions of the learned State counsel.

21. The learned State counsel has placed on record, written synopsis, wherein, he contends that in case the writ reliefs are allowed thereby this Court would be proceeding to untenably accord to the petitioners, the benefit of the lapsing provisions, as carried in sub section (2) of Section 24 of the 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'), despite the adduction of the relevant discharging evidence, thus in satiation of the twin parameters enshrined therein, inasmuch as, despite rapat possession becoming evidently assumed, of the acquired lands, but prior to the coming into force of the 'Act of 2013', and, also despite compensation but before the coming into force of the 'Act of 2013', thus becoming deposited in the Government Treasury, for thereby it becoming available for being disbursed to the land-losers concerned.

22. In making the above submission, the learned counsel for the petitioners though had made reliance, upon, paragraph No. 363 of the verdict rendered by the Hon'ble Supreme Court, in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned, para whereof is extracted hereinafter.

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.*
- 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.

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.*

For the reasons to be assigned hereinafter, the submission made by the learned counsel for the petitioner(s) are rejected and the contentions raised by the learned State Counsel is accepted.

23. Even, if assumingly the benefit of the lapsing provision, as enshrined in the mandate carried in Section 24 (2) of the 'Act of 2013' may not be available to become assigned to the land-losers concerned.

However, irrespective of the above, the launching of the acquisition proceedings at the very inception were, prima facie, rather in contravention of the above extracted clauses, as exist in the relevant policy, as becomes framed by the Government of Punjab.

24. This Court for planking its inference thereons, for thereby it prima facie, tentatively declaring non est the issuance of the notification(s) (supra), in-so-far as, they relate to evident infraction being made to the above extracted clause, rather becomes led to do so on the hereinafter premise(s).

a) The *abadis* within the declared *abadi deh* zones of the village concerned, but are an integral part of the agrarian ethos.

b) The *abadis* or the *abadi* homes of the *abadi* owners which fall within the *abadi deh* are a sacrosanct heritage of the village or of the *mohal*. Therefore, they are to be preserved as such, through ensuring that on urbanized planing taking place, thus the heritage *abadi deh*, rather the sacrosanct site of the village, does not either disappear nor becomes effaced.

c) The earmarkings of *abadis* do take place during the consolidation operations and the reservation of *abadi dehs* by the consolidation officer, does also advance, the agrarian character of the village.

d) Since the agrarian character of the village, is to be maintained and/or is to be preserved, thereby the acquisition of *abadis* or acquisition(s) of adjacent thereto lands, may be avoided, especially when in times to come,

the extensions of the *abadi* areas thus may be required, for accommodating, the increasing population in the *mohal*, thus for enabling the increased population to create *abadis*, on such extended *abadi* belts.

e) Though in the column of ownership *abadi deh* lands are described to be owned by the *abadi deh*. However, the person who raises *abadis* within the *abadi deh*, are yet not interdicted to amongst themselves alienate possessions through execution of deeds of conveyance. Therefore, if so, the records of rights which in the column of possession thereof, declare the *abadi deh* land to be owned by the *abadi deh*, thereupon they rather appear to be antithetical to the concept of ownership which obviously inheres with the *abadi* raisers on *abadi deh*.

f) The above would facilitate, that thereby the principles of succession apply thereto, especially when in absence of the above declaration(s) in the column of ownership, thereby the possession of the *abadi* homes, would be the relevant principle rather for succession thereto becoming assumed by the surviving possessor thereof. Resultantly thereby the rules of succession may become whittled down, unless a testamentary disposition is made by the deceased *abadi* owner concerned.

g) In sequel, for overcoming the above, this Court recommends to the State of Punjab to make orders for updating the revenue records, relating to the ownership column of *abadi deh* lands, thus through in substitution of

the designation of *abadi deh*, rather occurring in the ownership column of *abadi deh lands*, thus the name of the raiser of the *abadi* on the *abadi deh* land, does become incorporated therein.

h) The above may also facilitate the entitlement of the *abadi* holders concerned, to receive compensation which they otherwise may, prima facie, become dis-entitled to, but on a mis-presumption that the *abadi* owners who have raised *abadi* on the *abadi deh* land, are not reflected in the column of ownership, to be owning such raised *abadis*, on *abadi deh* lands.

25. Though this Court has made the hereinabove inferences but since there are plain speakings in the reply, on affidavit, furnished to the writ petition CWP-17658-2006, by the respondents, as well as, the written synopsis filed by the respondent-State, that the relevant sites are vacant, besides that compensation in an amount of Rs. 9,23,213/- qua the acquired land of purported *abadi deh* qua **petitioners in CWP-1568-2007** stands deposited by the Land Acquisition Collector, Urban Development, S.A.S. Nagar, in Government Treasury vide RD No. 80 dated 07.10.2008, whereas, in respect of the **petitioners in CWP-17658-2006**, compensation to petitioner No. 1 stands paid vide cheque No.141 dated 03.11.2010. Further, when it is revealed therein, that out of total amount of compensation of Rs. 1,39,98,730/- an amount of Rs.1,21,72,372/- has been paid vide voucher no. 141 dated 03.11.2010 and the balance amount of Rs. 18,26,358/-, standing deposited, in Government Treasury vide RD No. 80 dated 07.10.2008, for the same

being available to be disbursed to the land-losers concerned. Moreover,

it is also stated in the written synopsis filed by the learned State Counsel, that the compensation in respect of the other petitioners stands deposited in Government Treasury vide RD No. 81 dated 07.10.2008 for thereby it being available to become released to the land-losers concerned.

26. Furthermore, also it evidently emerges that, *prima facie*, the existence of any purported *abadi* on any purported *abadi deh* rather is a mis raised contention. Moreso, also when in the earlier round of litigation, the above became not raised. The reasons for forming the above conclusion arises from the fact that the above contention is raised upon the relevant entry existing in the relevant jamabandi, but yet conclusive and cogent evidence but was required to be adduced by the petitioners, thus displaying that the said entry also relates to the acquired lands. However, the said evidence is grossly amiss.

27. In consequence, the above becomes a disputed question of fact. Therefore, irrespective of the makings of hereinabove inferences, this Court does not deem it fit and appropriate to clinch here, the disputed question of facts (*supra*), nor thereby the petitioners are entitled to seek a mandamus rather for enforcing the Government Policy (*supra*).

28. Further, the respondents in their reply-affidavit, as well as in their arguments, firmly contend that the writ land(s), were acquired for furthering the requisite public purpose, and, that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose. Therefore, since this Court is not well enabled to review or re-call the layout plans. Resultantly this Court refrains from doing so.

29. Furthermore, since predominance is to be assigned to the larger public purpose than to individual interests of the estate holders concerned. Therefore, in doing so, this Court also refrains from allowing the petitioner(s) claim for the acquired lands becoming released from acquisition.

Final Order of this Court.

30. In aftermath, this Court finds no merit in the writ petition(s), the same being completely frivolous, thus are required to be dismissed with costs. Therefore, the same are dismissed with costs of Rs.25,000/- each, upon each of the petitioners to be forthwith deposited by them with the Treasurer of the **“Punjab and Haryana High Court Employees Welfare Association”**.

31. The impugned notification(s) and the consequent thereto award are maintained and affirmed.

32. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

18.10.2023

kavneet singh

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