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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : July 17, 2023

LALIT KUMAR AND ANOTHER

-Petitioners

V/S

STATE OF HARYANA AND ANOTHER

-Respondents

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

Present : Mr. Sanjeev Sharma, Advocate
for the petitioners.

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

KULDEEP TIWARI, J.

1. The petitioners, through the instant writ petition, seek issuance of a mandamus upon the respondent(s) concerned, inasmuch as, staying their dispossession from the petition lands, until a final decision is made on their application (Annexure P-8), as moved under Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), in accordance with the policy dated 14.9.2018 (Annexure P-11), titled as "The Policy for Return of Un-utilized lands", as well as, the order dated 22.07.2022 (Annexure P-13). The petitioners further seek making of a mandamus upon the respondent(s) concerned to make a final decision on their application (supra).

2. Before delving into the controversy at hand, it would be apt to record here, that through the present writ petition, the petitioners have entered into a third round of litigation, thereby seeking de-notification of their acquired lands from acquisition, proceedings whereof were terminated way back in the

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year 2004. As such, it is deemed imperative to first make a thorough survey of the factual backdrop of the present controversy, to conclusively give quietus to the litigation.

FACTUAL BACKGROUND

3. The lands of the petitioners, along with the lands of some similarly situated landowners, was brought to acquisition by the respondent- State, for the development and utilization of such lands as residential, transport/communication at Sectors 4 & 5, Rohtak. The acquisition of petitioners' lands was done through issuance of a notification under Section 4 of the lands Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') was issued on 04.01.2022, which was followed by issuance of another notification under Section 6 of the Act of 1894, on 31.12.2022. Thereafter, an award under Section 11 of the Act of 1894 was pronounced on 29.12.2004. Subsequent to the making of the award (supra), a rapat bearing No.444 was recorded on 29.12.2004, therein depicting assumption of possession of the acquired lands, by the acquiring authority concerned.

4. The acquisition proceedings (supra) caused grievance to the predecessor(s)-in-interest of the petitioners, which led them to institute CWP-111-2005, inter alia, on the grounds of discrimination inter se the petitioners and similar thereto situated persons, besides construction of superior quality residential houses over the acquired petition lands. However, the writ petition (supra), vide order dated 06.10.2010 (Annexure P-7), met the fate of dismissal.

5. Remaining yet dissatisfied, the petitioners, through filing CWP-25045-2016, again knocked the doors of this Court, seeking de-notification of the acquired petition lands, primarily on the ground that the acquisition (supra) has become lapsed, in view of Section 24(2) of the Act of 2013. The other averments made in the writ petition (supra) related to the petition lands being un-utilizable for any efficacious purpose, as the same formed only a small part of the total

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acquired lands, and, also related to amenability of the petition lands for getting released from acquisition, by the respondent- State. After considering the entire factual backdrop of the case, inasmuch as, assumption of lawful possession of the acquired lands by the acquiring authority concerned on 29.12.2004, apart from tendering of the compensation amount by the acquiring authority concerned, a Coordinate Bench of this Court, vide order dated 03.02.2022, also proceeded to dismiss the writ petition (supra) and held that the acquisition proceedings (supra) did not become lapsed.

6. For better understanding of the controversy and for arriving at a just decision, the Coordinate Bench of this Court, in its order dated 03.02.2022, had framed the hereinafter extracted questions:-

- “I. Whether the acquisition proceedings can be said to have lapsed under Section 24(2) of the Act of 2013?
- II. What is the scope of judicial review in the land acquisition matters as far as utilization of the land is concerned after it has vested in the State?
- III. What are the parameters for assessing the plea of discrimination raised by the petitioners in the land acquisition matters.
- IV. Whether the directions for first rehabilitating the land owners and then dispossessing them from the acquired land can be issued by the Courts generally?”

For ready reference, the negative answers, as made on the above extracted questions, are also extracted hereunder:-

“As a conspectus of the discussion made herein above, we hereby hold in that:-

- a. The principle of res judicata is applicable in the cases of land acquisition proceedings if the earlier petition has been dismissed on merits and the facts pleaded by way of fresh writ petition existed at the time of earlier decision. Merely because certain facts were not considered by the Court while negating

the challenge will not give new cause of action to assail the acquisition proceedings de novo.

- b. While dealing with the acquisition matters, if the Court is satisfied that there is no procedural lapse, the endeavor shall be to uphold the “public interest” as against the “private interest” since the entire process of acquisition involves the utilization of public money aimed at maximization of gains for the public at large. Once the challenge to the acquisition proceedings has been negated by the Court, consequential rights flowing from it shall not be obstructed at the drop of a hat.
- c. Once the vesting takes place, the petition laying challenge to the acquisition proceedings on any of the grounds is not maintainable and the landowner has no title to assert his claim as regards the acquired land as being a trespasser he loses any locus to challenge the acquisition proceedings. This is in fact the reason why the Courts have consistently refused to entertain any challenge to the acquisition proceedings after vesting of the land.
- d. There is no lapsing of acquisition proceedings as far as the case in hand is concerned, as earlier writ petition filed by petitioner’s father was dismissed and further the possession of the land stands taken and compensation stands paid.
- e. The scope of judicial review as regards the manner in which acquired land is to be utilized is narrow and limited only to the aspect that it shall be utilized for a “public purpose”. Change in planning, change in user and use of land for another public purpose does not call for interference by the Courts and these can certainly be no ground to challenge the acquisition proceedings.
- f. It is incumbent on the petitioner/landowner alleging discrimination to show that in what manner he has been discriminated and how he is identically placed to such persons in whose favour the order of release has been passed. If the order relied upon is itself illegal and against the provisions of law, the land owner/petitioner(s) cannot claim parity irrespective of the fact that he is identically placed, because Article 14 of the Constitution of India does not envisage the

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concept of negative equality and cannot be used as tool to perpetuate illegality time and again.

- g. Execution of development works cannot be stalled by the Courts by issuing sweeping directions to first rehabilitate the landowners and then dispossess them from the acquired land, as such directions run over and above the existing scheme of the governing statutes.”

REASONS FOR REJECTING THE INSTANT WRIT PETITION

7. The first and foremost reason for rejecting the instant writ petition, as emanate from the above extracted questions and the answers thereto, is that, the claim of the present petitioners is hit by the principle of *constructive res judicata*, as all the pleas, which the petitioners have now raised in the third round of litigation, subsequent to dismissal of their initial writ petition, were well available to be raised in the initial writ petition itself.

8. Strikingly, when Section 101-A was inserted in the Act of 2013, through Haryana Act No.21 of 2018 (which came into force from 01.01.2014), and, to give effect to the provisions of this Section, the policy (Annexure P-11) was issued way back on 14.09.2018, therefore the plea relating to the petition lands becoming unviable or unessential for the State Government/acquiring authority, was very much available to the petitioners, to be raised in the second round of litigation itself. However, the petitioners conveniently opted not to raise such pleas at that time, rather upon immediate dismissal of the earlier writ petition, moved another application seeking de-notification of the petition lands, under Section 101-A of the Act of 2013.

9. The present writ petition is a vivid example of the petitioners’ continuous attempts, inasmuch as, primarily focused at somehow obtaining a stay on their dispossession from the petition lands, which relief is camouflaged as a relief for making a decision on their application. Therefore, the above deliberate inactions on the part of the petitioners, relating to non raising of well available

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pleas at the earlier motion(s), estops the petitioners from raising such pleas now at a belated stage, in view of the principle of *constructive res judicata*.

10. The further reason for making a rejection order on the instant writ petition is that the status of the petitioners is no better than a trespasser, as, after the passing of an award under Section 11 of the Act of 1894, the possession of the acquired petition lands was lawfully assumed by the acquiring authority, through a Rapat bearing No.444, recorded on 29.12.2004. Despite lawful assumption of possession of the acquired petition lands, yet the petitioners continuing to retain possession thereof, makes them fall within the domain of trespassers. The Hon'ble Supreme Court in the case titled "**Indore Development Authority v. Manoharlal**", 2020 AIR (Supreme Court) 1496, has categorically held that after pronouncement of a valid award, the acquired land vests in the State Government free from all encumbrances, and, any person retaining the possession of such acquired lands even thereafter, has to be treated as a "trespasser", as such person does not have any right to possess such lands. The relevant paragraphs, carrying the above observations, are extracted as under:-

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has

to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression “physical possession” used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.”

11. Now, insofar as the prayer of the petitioners is concerned, who reiteratedly fall within the domain of trespassers, that until a decision is taken on their application (Annexure P-8), in accordance with the provisions of Section 101-A of the Act of 2013 and the relevant policy framed thereunder, their dispossession may be stayed. This Court is of the firm belief that this prayer of the petitioners deserves negation, as the provisions of Section 101-A of the Act of 2013, qua de-notification of acquired lands, are enabling provisions, which enables the State Government to de-notify the already acquired lands, if they become unviable or unessential for the purpose, for which they were acquired.

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However, the petitioners cannot assert that they have any vested right to retain their possession over the acquired petition lands, unless the respondent- State considers their claim, as made under Section 101-A of the Act of 2013. No landowner has any vested right to assert that the acquired lands have become unviable or unessential, mainly because the landowner continues to be in possession of such acquired lands.

12. The above aspect has also been dealt by the Hon'ble Supreme Court in case ***SLP (Civil) No.16421 of 2021***, titled ***"Ram Swaroop (Dead) through LRs and another Vs. State of Haryana and others"***, decided on 15.11.2021, wherein, while taking note of its earlier judgment rendered in case titled ***"Raghubir Singh and ors. Vs. State of Haryana and others"***, 2021(3) RCR(Civil) 533, it has been held as under:-

"8. Section 101-A of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government 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 landowner due to such acquisition. Section 101-A is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was acquired under the Land Acquisition Act, 1894 becomes unviable or non-essential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

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9. *The claim of the appellants for release of land on account of Section 24(2) had been rejected by the State Government on 12.09.2016. The writ petition against the said*

order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in Raghbir Singh has held that Section 101-A does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners.

12. Therefore, the appellants cannot compel an exercise of power by the State Government in their favour as the appellants have no vested right to seek denotification of the land. Consequently, the present appeal is dismissed.”

13. Now, insofar as the application (Annexure P-8) of the petitioners is concerned, we have perused the same. In the application (supra), the petitioners have asked for de-notification of the acquired petition lands, on the ground, that they have yet not received any compensation, and, that the physical possession of the petition lands is still in their hands. It has been further pleaded therein, that on the acquired petition lands, there exists a residential house of the petitioners, which is surrounded by dense constructions, thereby rendering the petition lands unviable to be utilized for any efficacious purpose, by the respondent/acquiring authority concerned.

14. However, this Court is not inclined to assign any merit to the application (supra), as the acquired petition lands are very much required for development of residential, transport/communication at Sectors 4 & 5, Rohtak. Moreover, the factum regarding existence of a residential house, if any, on the acquired petition lands, has already been considered by this Court and rejected.

Nonetheless, existence of a residential house is not a sufficient ground in itself, to

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grant the asked for relief of de-notifying the acquired petition lands. The judgment of the Hon'ble Supreme Court, drawn in case titled "**Raghubir Singh and another v. State of Haryana and others**", (2022) 4 SCC 728, lends strength to the above formed inference, wherein, it has been specifically held that if a landlord has constructed some structure over the acquired lands, which comes to vest in the State Government, thus can be no reason to de-notify the acquired lands. The relevant paragraph of the judgment (supra) is extracted hereunder:-

"13. The fact that the landowners have already constructed some structures on the acquired land, which has vested in the State Government, by itself can be no reason to denotify the acquired land. It can be done only if the State Government is fully satisfied that the land has become unviable or non-essential for the purpose of development and in particular for reason for which it was so acquired."

15. The intent of the State Government behind 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 de-notify only such lands, which have become unviable and unessential for the State Government. The Hon'ble Apex Court in case titled "**Haryana State Industrial and Infrastructure Development Corporation Ltd. & Ors. V/s Mr. Deepak Aggarwal & Ors.**", 2022(3) R.C.R. (Civil) 934, examined the scope and the extent of applicability of the provisions of the old Act of 1894, despite its repeal, in view of Section 24 of the Act of 2013. It has been held therein that Section 24 has been incorporated in the Act of 2013, by the legislature, as a balancing provision for controlling the extent of retrospectivity and for curtailing the erosion of right of landholders. The Hon'ble Apex Court, while arriving at the above conclusion, also observed that the legislature was fully aware of the fact that the lands acquired under the Act of 1894 are being used for several public purposes and will be required for infrastructural projects, therefore lapsing of everything on repeal of the Act of 1894 would be seriously

detrimental to public interest and at the same time, the interest of landowners were also taken into account.

“22. The legislative intention behind bringing up the 2013 Act was to have a unified enactment facilitating land acquisition for industrialization, infrastructure and urbanization projects in a timely and transparent manner and at the same time, providing for just and fair compensation, to make adequate provision for rehabilitation and resettlement mechanism for affected persons and their families. As a preamble its objects and reasons have been given in the 2013 Act thus:

"An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto."

23. Bearing in mind the aforesaid legislative intention we will have to construe Section 24 and also the word 'initiated' employed in section 24(1), of the 2013 Act. The word 'initiated' has to be construed with a view to implement the aforesaid twin purposes of providing fair and just compensation and facilitating acquisition of land for industrialization, infrastructure and urbanization projects. We have already referred to the impact of 'initiation' of land

acquisition proceedings and its culmination in an award under Section 11 of the L.A. Act and also non-culmination in such an award.

24. *For a proper and purposive construction of the word 'initiated', in the contextual situation it will not be inappropriate to look into the legislative history of Section 24 of the 2013 Act as well, as explained in the written submission filed on behalf of HSIIDC/STATE/COMMITTEE dated 11.04.2022. However, we do not deem it necessary to refer to or to deal with it, in detail. In short, it is stated therein that the events happened prior to the drafting of Section 24, as it exists on the statute book today, is a safe guide to cull out the legislative intent in formulating Section 24 in the 2013 Act, by the legislature. Furthermore, it is stated therein that the legislature was fully aware of the fact that lands acquired under the L.A. Act were already being used for several public purposes and more particularly for infrastructural projects and large number of acquisition proceedings under the L.A. Act, relating large number of public projects for various public purposes, are in progress at various stages. Hence, lapsing of everything would be seriously detrimental to public interest and at the same time, the interest of land holders is also taken into account. The consideration of all such relevant aspects and the pros and cons made the legislature to come up with a balancing provision under Section 24(1)(a) and clauses therein, in the 2013 Act. This was incorporated as a balancing provision for controlling the extent of retrospectivity and for curtailing the erosion of rights of land holders. (emphasis supplied)”*

16. This Court has examined the provisions of Section 101-A of the Act of 2013, in the light of the above laid down principle. For ready reference, Section 101-A of the Act of 2013 is reproduced as under:-

“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.”

17. A reading of the above extracted provisions elucidates that it is an enabling clause, giving right to the State Government, to de-notify such portion of lands, which according to the State, has become unviable and unessential. However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, by the State Government, thereby leaving this issue open for adjudication in an apt lis. Although there is no restraint on any landowner to approach the competent authority concerned to seek de-notification of his acquired lands, under the provisions (supra), however such landowner does not have any vested right to continue to retain his possession over the acquired lands, until their representation for release of acquired lands from acquisition, is ultimately decided. The provisions of Section 101-A of the Act of 2013 cannot be invoked in a mechanical manner, merely on asking of the petitioners/landowners concerned, to assert that they have vested right to seek de-notification of their acquired lands.

18. As has already been observed hereinabove, this is the third round of litigation, whereby the petitioners have primarily aimed at obtaining a relief to retain their illegal possession over the acquired lands. Moreover, the petitioners have not been able to point out any single cogent evidence on record suggestive that their acquired lands have become unviable or unessential for efficacious use by the acquiring authority concerned.

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19. As a sequel to the hereinabove made discussions, this Court finds no merit in the instant writ petition and the same is accordingly dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 17, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No