239/4 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-12682-2021
Reserved on: 05.09.2023
Pronounced on: 22.09.2023

BIR SINGH ALIAS BALBIR AND ORS. .....Petitioners

Versus

STATE OF HARYANA AND ORS. ....Respondents

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

Argued by: Mr. Akshay Kumar Jindal, Advocate with
Mr. Samar Ahluwalia, Advocate
for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur Manchanda, Advocate
Mr. Shivam Garg, Advocate
Mr. Jugam Arora, Advocate and
Mr. Siddharth Arora, Advocate
for respondent-HSVP.

****

SURESHWAR THAKUR, J.

1. The claim made in the instant writ petition is for a mandamus being made upon the respondents concerned, to, in terms of Section 101 as well as Section 101 A 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'), thereby, the petition lands be released from acquisition, thus, on theirs becoming un-essential or unviable for being used for the requisite public purpose.

2. The learned counsel appearing for the petitioners has

forcefully contended, by planking submissions, on the mandate of Section 101/101-A (supra) as became incorporated in the 'Act of 2013', through Haryana Act No. 21 of 2018, provisions whereof are extracted hereinafter, that the petition lands are un-essential or unviable for the relevant public purpose. Therefore, he has argued that the petition lands, irrespective of the earlier launched acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') thus becoming fully terminated, rather are un-essential or are unviable for being used for the relevant public purpose, thereby they are yet available for becoming released from acquisition.

> ***"101. Return of unutilized land.*** *When any land acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.*
>
> *Explanation.--For the purpose of this section, Land Bank means a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use.*
>
> ***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."

3. The learned counsel for the petitioners further contends that even after passing of the award on 13.08.2002, the petitioners or their family members were never dispossessed from the said lands and the land has not been utilized for any public purpose. Thus, the petition lands are un-essential or unviable for the relevant public purpose.

4. Further, it has been averred in the writ petition, that in the revenue records, the petitioners are shown in continuos possession of the petition lands. That a co-sharer in the petition lands had filed CWP-21550-2013 claiming similar relief and the said petition was disposed of 24.08.2020 with directions to the respondents to consider the representation of the petitioner invoking Section 101-A (supra) and pass appropriate order in accordance with law.

Reasons for rejecting the submissions of the learned counsel for the petitioners.

5. The learned counsel appearing for the petitioners has planked his submission on anvil of Section 101 and Section 101 A (supra), but yet the said submission becomes completely unhinged, in the face of a specific contention existing in paragraphs No.12 and 13 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

"12. That it is respectfully submitted that in the case in hand, the land surrounding the land in question is acquired land and is in the possession of the answering respondent. The land of the petitioners' falls in Sector 20A Faridabad and the layout plan of the said sectors stands duly approved vide Drawing No. DTP(F)2256/2003 dated 20.11.2003. The land in question affects the planning of call centre/ shopping mall in sector 20A, Faridabad and 3 no. plot of 1 acre

category. True copy of the layout plan is annexed herewith as Annexure R-1 for the kind perusal of this Hon'ble Court.

13. That it is respectfully submitted that the a total of 39 institutional plots have already been allotted in Sector 20A Faridabad and as per development report a total of 1293.01 lacs have been spent on providing water supply, sewerage, road and SWD for Sector 20A, Faridabad and a total of Rs. 204.07 lacs have been spent for providing water supply, sewerage road and SWD for Sector 20B, Faridabad at present roads of length of 4375 mtrs. water supply line of length of 6300 water supply line of length of 6300 mtrs, sewerage line of length of 3490 mtrs. and Storm water drainage system of length of 7460 mtrs. stands constructed in Sector 20A, Faridabad.....”

6. A reading of the said contents, does make graphic emergence(s), that the petition lands are earmarked for the apposite public purpose and thereby are utilized, or are utilizable, and or, are viable for facilitating the apposite public purpose. Consequently, the counsel for the petitioners cannot argue, that the petition lands are either un-essential or unviable for facilitating the apposite public purpose nor he can well rest any argument premised, on the provisions of Section 101 or Section 101 A of the 'Act of 2013'. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention, if any, of the petition lands, by the petitioners, especially when they evidently sub-serve the public purpose, thus is rather completely unlawful. The reason being that the above ground premised on anvil of Section 101 or Section 101 A of the 'Act of 2013', is completely capricious and also is arbitrary. The reason being that the statutory ingredients therein, appertaining to un-essentiality or unviability of the disputed lands, thus for facilitating the apposite public purpose, rather are to be tested, on anvil of objective

contemplations, as made by the authority concerned, and since the above objective thereto contemplation, is but manifestative, that the petition lands are an integral component of the layout plans relating to the completion of the relevant public purpose. Therefore, the learned counsel for the petitioners has untenably planked the above argument, thus premised on the provisions of Section 101 or Section 101 A of the 'Act of 2013'.

7. Conspicuously upon vesting of ownership over the acquired lands, in the respondent concerned, thus happening on issuance(s) of notification(s) (supra), thereby when the State becomes absolute owner of the acquired lands. Resultantly the investment of complete or absolute ownership over the acquired lands in the respondent-State, thus makes it well empowered within the ambit of the verdict rendered by Hon'ble Apex Court in the case of ***"State of Kerala Vs. M.Bhaskaran Pillai", AIR 1997 SC 2703*,** even make sale of the acquired lands through public auction. Thus, in the event of it being not utilized, the exercisings of the above power by an absolute owner, rather is tenable, as thereby the auction monies as become fetched by the State of Haryana, thus would also result in theirs sub-serving some other public purpose(s). Therefore, except in a very rare or exceptional circumstances, inasmuch as, upon occurrence of *vis major* or upon exorbitant sums of compensation monies being determined, thus making their liquidations, to cause an onerous burden to the State exchequer, thus, thereby the statutory parameteres of un-essentiality or unviability of retention of the acquired lands, may become adopted by the State of Haryana. However, the above exceptions are not available on the records of the case.

8. Further, on a perusal of para 4 of the reply, it is revealed that out of the total determined compensation, an amount of Rs.2,49,652/- has been paid to Lal Singh son of Gyasi Ram, who is the brother of petitioner No. 1, and the remaining amount is available to the land losers concerned, for disbursement. Therefore, as such when the acquisition of the lands of the land losers, is not partitioned by metes and bounds, and with one of them choosing to receive compensation, thereby, the other co-sharers in the acquired lands, do also become estopped to challenge the acquisition proceedings. Conspicuously when thereby there would be breach of the principle of unity of title and community of possession, inhering the joint estates of the co-owners.

9. Further, this Court earlier in case titled as ***'The Press Employees and Friends Co-operative Group Housing Society Ltd.*** Vs. ***State of Haryana and Others', 2023: PHHC:106793-DB***, had in length dealt with similar issues as in the instant writ petition. The relevant paragraphs of the verdict (supra) are extracted hereinafter.

> *"17. From the above facts and the legal submissions, as made by the learned counsels for the parties, the following issues arise for determination and adjudication, for arriving at a just decision upon the present lis:-*
>
> ***(i) Whether the intent of the legislature behind insertion of Section 101-A in the Act of 2013 is to release the "unutilized" acquired lands, or, its aim and object is to enable the State Government to de-notify only such lands, which become "unviable" and "non-essential" for the State Government, as acquired under the Act of 1894?***
>
> ***(ii) Whether the insertion of Section 101-A in the Act of 2013 can give rise to a new cause of action, in favour of the landowner concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894?***
>
> ***(iii) Whether the landowner concerned has a vested right to assert that the acquired land has become "unviable" and "nonessential", on the ground, that the land has not***

been utilized, or, the land continues to be his possession, even after pronouncement of the award ?

27. Though Section 101 of the Act of 2013, contemplated the return of the land acquired under this Act, but it mandated the said land to have remained unutilised for a period of five years from the date of taking over the possession. Moreover, this provision is applicable only to the lands acquired under the Act of 2013, but, it does not have any applicability qua the lands acquired under the Act of 1894.

28. Therefore, faced with the impediment of de-notification of the lands acquired under the Act of 1894, the State legislature inserted the provisions of Section 101-A in the Act of 2013, through Haryana Act No.21 of 2018, thereby empowering the acquiring authority/State Government to denotify the lands acquired under the Act of 1894, acquisition proceedings whereof stand lawfully terminated, but only if such lands have become "unviable" or "non-essential". However, at this stage, we are not examining the constitutional validity of insertion of Section 101-A in the principal Act, through the State Amendment Act (supra), leaving this issue to be decided in an aptly instituted lis.

29. Section 101-A has been inserted by the State legislature only with the intent to protect the State Government/acquiring authority from the saving effect of Section 6 of the Act of 1897 and that protection is available only in the circumstances, when the acquired land has become "unviable" and "nonessential" for any public purpose.

30. The combined effect of Section 114 of the Act of 2013 and Section 6 of the Act of 1897 has limited the scope and applicability of Section 101-A. The saving, as assigned in Section 6 of the Act of 1897, would not apply to the extent hindered by Section 101-A. Therefore, the power to denotify lands, by virtue of Section 101-A, can only be invoked when the twin statutory ingredients, are fulfilled. Therefore, the de-notification of acquired lands is only possible when such lands fall within the domain of the above prescribed twin conditions, which are the mandatory pre-conditions for the State Government to form a subjective opinion, while taking into consideration the larger public interest.

34. Furthermore, the provisions of Section 101-A does not vest any discretionary power in the State Government for de-notification of the lands, which remained unutilized for a long span, rather the only permissible ground for de-notification is "unviability" or "non-essentiality" of the *acquired lands for being put to **any efficacious public purpose**. **(emphasis supplied)***

38. As a natural corollary of the hereinabove discussions as well as the propositions of law, as laid down by the Hon'ble Supreme Court, it can be safely concluded that the intent of the legislature, behind the 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 empower the State Government to de-notify only such lands, which have been acquired under the Act of 1894 and which have become "unviable" and "non-essential" for it, based upon tangible evidence, for executing any "public purpose".

44. Therefore, in the light of the legal propositions (supra), it is abundantly clear that though the landowners can approach the State Government seeking de-notification of the acquired lands, in exercise of powers conferred under Section 101-A of the Act of 2013, however, this Section does not give them any vested right to seek a mandamus for denotification of the acquired lands. A writ of mandamus can be issued only for the enforcement of any right conferred upon a person by law. In the absence of any vested right conferred by law, a mandamus cannot be passed upon the authority(ies) concerned. Therefore, we refrain ourselves from passing any mandamus upon the authority(ies) concerned to examine the representation of the petitioner-Society for de-notification of the acquired lands.

47. Once the land is lawfully acquired, it vests in the State Government/acquiring authority concerned, free from all encumbrances, and thereafter, the landowner concerned does not have any concern in respect of the user of his acquired land, i.e. whether the land has been used for the purpose for which it was acquired or for any other purpose.

49. Therefore, in view of the hereinabove elaborately made discussions, the issues, as formulated above, are reiteratedly answered in the hereinafter extracted manner:-

"QUA ISSUE NO.(I):
The intent of the legislature, behind insertion of Section 101-A in the Act of 2013, is not to release the "unutilized" acquired lands, rather its aim and object is to enable the government to de-notify only such lands, as acquired under the Act of 1894, and, which have become "unviable" and "non-essential" for facilitating any public purpose.
QUA ISSUE NO.(II):
The answer to the issue No.(ii) is also in negative. The

insertion of Section 101-A does not give rise to any new cause of action, in favour of the landowners concerned, to challenge the lawfully concluded acquisition proceedings, under the Act of 1894.

QUA ISSUE NO.(III):

The answer to this issue is also in negative. The landowners do not have any vested right to asset that the acquired lands have become "unviable" and "non-essential", on the ground, that such lands have not yet been utilized, or, that such lands yet continues to be in possession of the landowners, even after pronouncement of the award."

Final Order of this Court.

10. In aftermath, this Court finds no merit in the writ petition, the same being completely frivolous, thus is required to be dismissed with costs. Therefore, the same is dismissed with costs of Rs. 50,000/- upon each of the petitioners to be forthwith deposited by them with the '***Himachal Pradesh Aapada Raahat Kosh - 2023'*** for mitigating the natural disaster in the State concerned.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

22.09.2023

kavneet singh

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