

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(I)

CWP-20463-2006 (O&M)

Reserved on: 14.09.2023

Date of Decision : September 26, 2023

RAJINDER SINGH AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

(II)

CWP-21930-2020

RAJBALA AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND OTHERS

...Respondents

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

Present : Mr. P.R. Yadav, Advocate
for the petitioners (in both cases)
(except petitioners No.2 and 4 in CWP-20463-2006 and
petitioners No.4 and 6 in CWP-21930-2020).

Mr. Ajay Jain, Advocate
for the petitioners No. 1 to 6 (in CWP-21930-2020)
for the petitioners No.1 to 4 (in CWP-20463-2006)

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

SURESHWAR THAKUR, J.

1. Since both the writ petitions arise from different notifications,
but since the disputed lands are similar in both the notifications, therefore
both the writ petitions are amenable for a common verdict becoming made
thereons.

2. In CWP-20463-2006 a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), became issued on 06.01.2006. The same became succeeded by a declaration made on 09.08.2006 under Section 6 of the Act of 1894. An award in terms of Section 11 of the Act of 1894 became rendered, on 07.12.2006.

3. In CWP-21930-2020 a notification under Section 4 of the Act of 1894 became issued on 14.03.2012. The same became succeeded by a declaration made on 31.01.2013 under Section 6 of the Act of 1894. An award in terms of Section 11 of the Act of 1894 became rendered, on 22.04.2013.

4. In both the petitions, the petitioners seek relief for the quashing of respectively Annexures P-1 and P-3, wherein becomes enclosed, notifications issued respectively under Sections 4 and 6 of the Land Acquisition Act, 1894.

5. The predecessor-in-interest of the petitioners, had earlier challenged, the launching of the acquisition proceedings, in respect of the petition lands, thus at the instance of the respondent(s) concerned. The said challenge was embodied in CWP-8439-2013. However, through a verdict made thereon, on 11.12.2015, and, which becomes enclosed in Annexure R-3, the said challenge became negated. Though the aggrieved therefrom filed thereagainst SLP(C) No.29371-72 of 2016, however, the Hon'ble Apex Court dismissed the said SLP on 31.01.2020. Thereafter CWP-10208-2014 was also filed, and, the same was also dismissed on 13.08.2018. Recently, another writ petition pertaining to the same acquisition proceedings bearing CWP-17711-2021 became also dismissed vide order of 21.09.2021.

6. In sequel, the present petitioners, who are the successors-in-interest of their father, who received thus adversarial judgments, upon, lis'

(supra), are bound by the earlier decision(s), as became made against their predecessor-in-interest. Resultantly, the lis relating to the legality of the launching of the acquisition proceedings, at the instance of the respondent(s) concerned, when becomes earlier completely rested, through binding and conclusive decision(s) being made thereon(s). Therefore, on the principle of estoppel, as, becomes engrafted in the statutory norm of *constructive res judicata*, thereby the earlier recorded clinching decision(s), thus appertaining to the legality of the launching of the acquisition proceedings, under the Act of 1894, cannot but be re-opened.

7. The decision, as was made by the Hon'ble Apex Court, on the SLP (supra), was made on 31.01.2020. Consequently, when at the stage of the SLP (supra) being subjudice before the Hon'ble Apex Court, thus the provisions of 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'), as became inserted therein, through Haryana Act No.21 of 2018, and, which were brought into force w.e.f. 01.01.2014, provisions whereof stand extracted hereinafter, rather were then in existence. However, no liberty was asked for, nor became granted by the Hon'ble Apex Court to the predecessor-in-interest of the petitioners to, on the anvil of the above statutory provisions, thus make a motion before this Court.

“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 nonessential, 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. Therefore, in the wake of the said motion not being addressed before the Hon’ble Apex Court, despite the statutory provisions (supra) being then in existence, thus results in a conclusion that the non-availment(s) of the said statutory provision, rather thereby leading to an inference that thereby they became waived or abandoned. Therefore, the petitioners are estopped from raising the said argument before this Court.

9. Even otherwise, the makings of pleading qua the above fact, in the earlier motion, which continued uptill the Hon’ble Apex Court, though was enjoined to be, in terms of Order II Rule 2 CPC, provisions whereof become extracted hereinafter, thus raised therein, whereas, evidently no pleading qua the availment or applicability of the provisions (supra), rather becoming raised therein. Resultantly, thereby begets attraction, to the espousal (supra), as, made in respect of the availability now of above statutory provisions (supra), thus the estopping principle, as engrafted in Order II Rule 2 CPC.

“2. Suit to include the whole claim.—

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”

10. Be that as it may, even on merits, the plea raised by the petitioners but banked upon the statutory provisions (supra), relating to the acquired lands being both “non-essential” or “unviable” for furthering the requisite public purpose, is also a misfounded plea. The reason becomes

embedded in the factum, that in the relevant drawn layout plan, a Bus Stand has to be constructed on the acquired lands. The above is a dire public purpose and cannot be frustrated, merely on account of the present petitioners mis-raising or mis-espousing a ground, thus upon the statutory provisions (supra). The statutory provisions (supra) are not meant to be purveying, or, assigning any latitude to the land looser(s) concerned to, at any time, proceed to frustrate the relevant public purpose, and, that too on any purported ground of invidious discrimination, as this Court, in a verdict rendered upon **CWP-15174-2023**, titled ***“The Press Employees and Friends Co-operative Group Housing Society Ltd. V/s State of Haryana and others”***, relevant paragraph whereof becomes extracted hereinafter, has restricted and trammelled the exercise of executive discretion, vis-a-vis, the statutory provisions (supra). Therefore, when the instant case is also not an exceptional case, whereby, in the Executive exercising its statutory discretion, thus would not make breaches of the expostulations of law, as made by this Court, in CWP (supra). Predominantly also when on the said purported ground, thus the exercising of discretion, is thus trammelled by the necessity of the acquired lands, being imminently required for subserving a salutary public purpose.

*“The mandate recorded by the Hon'ble Apex Court in **M. Bhaskaran Pillai's** case (supra) that mere non utilization of the acquired land(s) yet does not withhold the authority of the State to, in the larger public interest, thus make utilization thereof for any other public purpose or through sale by way of public auction, but obviously is required to be read into the un-essentiality or unviability of the retention of the acquired land. Therefore, the Executive in the exercise of its executive contemplation, in terms of the above statutory discretion, has to also bear in mind the above expostulation of law. The fate thereof would be that the Executive while making an objective*

*contemplation about non-availability of the benefit of the statutory coinages vis-a-vis the land loser concerned, thus has to enlighten itself to the fact that the above exercise, as made in **M. Bhaskaran Pillai's** case (supra). Therefore, any exercising of jurisdiction by Executive in favour of the land loser concerned, has to be an extremely cautious exercise thus requiring its being made with a well informed objective, besides judicious application of mind, so as to save the acquired land, from becoming hit by the expostulation occurring in **M. Bhaskaran Pillai's** case (supra). Necessarily hence the availability of the parameter (supra), as enshrined in the statutory provisions (supra), thus to my considered mind, has to be exercised by the Executive, if it is deemed fit to be exercised by the Executive in favour of the land loser concerned, thereby such exercisings of discretion in favour of the land loser concerned is to be done in extremely urgent and exceptional cases. In nut shell, the statutory discretion is an extremely trammled or is a restricted discretion vested in the Executive, thus by the verdict (supra).”*

11. Consequently, the above espousal relating to release of the acquired lands to the landloser(s) concerned, is but a feeble and a frail attempt, to make any dependence thereons. Contrarily, when evident public purpose would be facilitated, on the acquired lands being put to use, for construction thereon, of a Bus Stand. Therefore, this Court does not deem it fit to forestall the carrying ahead of the said public purpose.

12. Predominantly also since 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 parameters 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 this case.

FINAL ORDER

13. As a sequel to the above, this Court finds no merit in the instant writ petitions, and, is constrained to dismiss them. Since the instant writ petitions are a frivolously raised writ petitions, therefore, they are dismissed with cost of Rs.50,000/- upon each of the petitioners to be forthwith deposited by the petitioners with the 'Punjab and Haryana High Court Employees' Welfare Association'.

14. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 26th, 2023
Ithlesh

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No