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

CWP-10527-2023

Date of Decision : 01.08.2023

ALKA JAIN AND OTHERS

.....Petitioners

Versus

STATE OF HARYANA AND OTHERS

....Respondents

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

Present : Ms. Ridhi Bansal, Advocate
for the petitioners.

Mr. Saurabh Mago, DAG, Haryana
for respondents No. 1, 3 and 4.

Mr. Deepak Sabharwal, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J. (Oral)

1. Through the instant writ petition, a challenge is made to Annexure P-24. Annexure P-24 has been addressed by the Assistant District Attorney, for Chief Administrator, HSVP, Panchkula to the Administrator, HSVP, Gurugram, Estate Officer-II, HSVP, Gurugram and the Land Acquisition Officer, Urban Estates, Gurugram. In making an adjudication qua the validity of making of the said order, it is deemed fit to extract the operative part of the said Annexure. The operative part of the said Annexure P-24, becomes extracted hereinafter.

*“..... Hence, it has been decided with the approval of the
Chief Administrator, HSVP that :-*

(1) The letters no. 31173 dated 15.02.2019 and letter No.

132900/902 dated 24.07.2019 issued by then CA HSVP is immediately withdrawn.

(ii) LAO (Gurugram) shall immediately withdraw the order dated 09.08.2019 and 19.09.2018 and restore status quo ante as per award dated 24.12.2013 and order dated 06.07.2017 be treated as operative for all intents and purposes.

(iii) Mutation of the land as per award dated 24.12.2013 be got entered/corrected immediately.

(iv) LAO(G) is directed to file Civil Misc Application in CWP No. 8304/1990 for correction of area recorded in order as in square feet instead of square yard. The same may be got filed through Sh. Ankur Mittal, Addl. A.G.

(v) Administrator, HSVP, Gurugram shall ensure compliance with the same.

(vi) CWP No. 12570/2022 be contested on merit after above action.

Sd/-

(Mukesh) Assistant District Attorney

For: Chief Administrator, HSVP, Panchkula.”

2. Though, there is a reference in Annexure P-24, about restoration of *status quo ante* as per award dated 24.12.2013 and of the order dated 06.07.2017, being also treated to in force and in operation for all intents and purposes. However, the counsel for the petitioners argues but on the anvil of Annexure P-14 and subsequent thereto correspondences, that there had been an error in the calculations of left out constructed area, inasmuch as, the area carried in a dimension of 2150 sq. yards, at the relevant time and left out area of 2150 sq.yards alongwith proportionate area, rather becoming correctly mentioned in the affidavit/reply of 22.10.1990, as became furnished on behalf of the respondent concerned, in CWP No. 8304 of 1990. Therefore, since it became also ultimately concluded in Annexure P-14 that, since in terms of

the Government policy, qua the constructed area of 1778 sq. yards alongwith the proportionate vacant area of petitioner No. 2 and 372 sq. yards alongwith the proportionate vacant area of petitioner No. 3, was left out of acquisition, and thus the said areas were to be not included in the award, as was made on 24.12.2013. In short, thus the counsel for the petitioners argues, that the mentionings in Annexure P-24, about there being assignment of validity to the award dated 24.12.2013, besides the mentioning in Annexure P-24, about the apposite areas, as occur therein are completely incorrect, and, thereby this Court be inclined to assign adequate weightage to Annexure P-14.

For the reasons to be assigned hereinafter, this Court does not deem it fit and appropriate to quash Annexure P-24.

3. Initially, this Court is bound to test the validity of the making of Annexure P-14, vis-a-vis the validity of Annexure P-9 and Annexure P-24, besides importantly to also test the validity of the acquisition proceedings and of the award dated 24.12.2013 (Annexure P-6), as was made in pursuance to decisions of this Court, as, respectively carried in Annexure P-5, and in Annexure P-7.

4. The primary reason for making the above conclusions, thus emerges from the factum, that earlier to the institution of the instant writ petition, as now becomes instituted, thus through the General Power of Attorney of the petitioner concerned, the latter had alongwith other co-petitioners instituted CWP No. 8304 of 1990 (Annexure P-5), before this Court. On the writ petition (supra), this Court after making certain relevant observation(s) in paragraph 13 of the verdict, as became made thereons, observation(s) whereof are extracted hereinafter, had ultimately proceeded

to dismiss the writ petition with costs of Rs. 25,000/-.

“13. It is clear that the writ petition was filed with misleading averments, may be to secure a favourable order. The facts mentioned above though are sufficient to dismiss the writ petition, but in all fairness we have considered the claim of the petitioners on merits as well and are of considered opinion that the writ petition deserves to be dismissed. We say so for the reasons as follows :-

(i) In the suit filed in the Court of Civil Judge (Sr. Divn.), Gurgaon the petitioners have taken a specific plea that the suit land has been sold to a builder namely M/s Samarthal Promoters and Developer Pvt. Ltd. in the year 2008. After receiving the entire sale consideration, a receipt and agreement to sell was executed in favour of the Builder. This reflects that the petitioners are left with no right ,title or interest in the suit property and presently they are litigating in proxy for the Builder to whom they have sold the land.

(ii) Learned counsel for the petitioners has denied the sale of suit land by the petitioners to a builder but has admitted that the petitioners have entered into collaboration with a Builder. This admission of the petitioners reflect their oblique motive to seek the release of the land not for the purpose as pleaded in the writ petition or their bona-fide personal need.

(iii) During the course of arguments, layout plan of District Shopping Centre Sectors 55-56, Gurgaon has been produced by learned State counsel, which reflect that the acquired land of the petitioners is required for the bonafide planning and regulated development by the government agency HUDA for parking, roads, SCOs, Shopping Plaza and other ancillary purposes.

(iv) Whenever there is a conflict between the public interest and private interest, it is former which has to prevail. In the present case, the petitioners do not require the suit land for the purpose pleaded in writ petition because they, as per their pleadings before the Civil Court, have sold the acquired land to a builder. Even if the submissions made by counsel for the

petitioners be believed regarding collaboration agreement of the petitioners with a builder, still the petitioners are left with no interest in the acquired land. It can be better developed and utilized for public purpose by the Government Agency (HUDA). The constructed portion with proportionate vacant area of petitioners No. 2 & 3 has already been released from acquisition. Petitioner No. 1 has absolutely no concern with the suit property. It appears that name of petitioner No.1 has been wrongly and mischievously used to gain sympathy of the Court to project that the petitioners are social activities and want to do a service to the society, while on record this is proved to be erroneous and false.

(v) A plea has been raised that about 200 acres of land, which was subject matter of notification under Section 4 of the Act was released but the details of that released land has not come forth. About 100.18 acres of land, which did not form part of the declaration under Section 6 of the Act, the respondents have come forth with the explanation in the written statement as follows :-

“.....The difference of 100.18 acres in the notification u/s-4 of the Land Acquisition Act and the declaration u/s-6 of the Land Acquisition Act in respect of the land of Village Ghata is due to the fact that there were hills in an area measuring 22.14 acres (appx.) 31.33 acres (appx.) nala, 8.98 acres (appx.) pond, totalling 62.45 acres and in the remaining 37.73 acres there was village abadi, phirni etc. The difference in the notification u/s-4 and the declaration u/s-6 of the Land Acquisition Act in respect of the land of villages Haiderpur & Wazirabad is due to the fact that constructed area alongwith proportionate vacant area was left out of acquisition. The constructed area alongwith proportionate vacant area of petitioners No. 2 & 3 was also left out of acquisition as has already been submitted in para No. 3 above.”

as occur in the verdict drawn by this Court (Annexure P-5), are but that the petitioner(s) herein, despite alienating the petition lands to a builder namely M/s Samarthal Promoters and Developer Pvt. Ltd. rather in the year 2008, and that too after receiving the entire sale consideration, thus yet without any vestige of right, title and interest inhering in the co-petitioner therein, and, in petitioners in the instant petition, rather not yet relenting in proceeding to claim relief for quashing of the acquisition proceedings. Therefore, but obviously the acquisition proceedings/notification(s), as became launched in the years 1989 and in 1990 and the consequent thereto award dated 24.12.2013 (Annexure P-6), as became made in the year 2013, thus became upheld respectively through decisions Annexure P-5, and Annexure P-7, as became made earlier by this Court. The said decisions were made on motions wherein one of the co-participants, thus was also the present petitioner. Resultantly, when the acquisition proceedings, as became launched in terms of Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'), and the award dated 24.12.2013, thus both became upheld, respectively through decision Annexure P-5 and Annexure P-7, thereby the present writ petition, as directed against the validity of the said acquisition proceedings as well as against the apposite award, is but completely estopped by the principle of *res-judicata*.

6. The writ petitioners despite becoming estopped by the principle of *res-judicata*, appear(s) to circumvent the said principle, merely in the garb of instituting the instant writ petition, through their General power of attorney. However, the said circumventing ploy to defeat the principle of *res-judicata*, as employed by the co-petitioner in CWP No.

8304 of 1990, and in CWP No. 3512 of 2014, whereons, respectively conclusive and binding verdicts (Annexure P-5 and in Annexure P-7), thus became made by this Court rather negating the challenge made therein to the acquisition proceedings and to the award made on 24.12.2013 (Annexure P-6), but rather is a completely mis-constituted endeavour. The said mis-constituted endeavour is required to be deprecated in the strongest terms, besides requires that exemplary costs, be imposed upon the present petitioners, as a measure to ensure, that completely frivolous petitions, are not constituted before this Court.

7. It appears that some dispute has yet arose amongst the present petitioners and the respondent concerned, and which resulted in the institution of CWP No. 3512 of 2014 before this Court. Through a decision made on the said writ petition (Annexure P-7), this Court upon addressing the controversy qua any alleged error regarding measurement(s) of the released lands, thus made a conclusion, that the said purported mis-measurement(s) of the released lands, rather being addressable by the petitioners concerned, through their moving an appropriate application before the Land Acquisition Collector concerned. Moreover, though another plea also became raised in the writ petition (supra), relating to the assignments to them, of the benefits of the lapsing provisions as contained in Section 24 (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, rather qua the earlier launched acquisition proceedings under the 'Act of 1894' but the said plea also became rejected by this Court. Moreover, another plea also became raised in the said writ petition appertaining to non-compliance of the mandatory statutory

provisions as engrafted in the 'Act of 1894', but yet the said plea was concluded to both evasive and vague, therefore, the said plea was also rejected. Resultantly, challenge on all scores in respect of the award, as made on 24.12.2013, by the Land Acquisition Collector concerned, acting as such under the 'Act of 1894' thus became rejected.

8. The only relief as such which became granted to the petitioners in the said writ petition related only to any purported mis-measurement(s) in respect of the released lands, and further that such purported mis-measurement(s) in respect of the areas of the released lands, being canvasable rather only before the Land Acquisition Collector concerned. Therefore, it has to be discerned from the records, whether the said purveyed relief to the petitioners, thus became canvassed as such by the petitioners, through an appropriate application being instituted before the Land Acquisition Collector concerned. In that regard, a ready reference to the order of the Land Acquisition Collector concerned (Annexure P-9), as made in terms of the verdict Annexure P-7, as made by this Court, thus reveals, that the Land Acquisition Collector concerned, who but is the solitarily designated statutory authority to make correction(s) in the award, did in the hereinafter extracted manner, thus reject the claim of the petitioner qua release of the lands, as became acquired in the earlier launched acquisition proceedings.

“.....On the perusal of the record, it is found that the land in question was acquired for above said purpose. The land measuring (OB-3B-4B) has already been released by the competent authority being constructed area alongwith proportionate area and rest of the vacant land was acquired in accordance with law. Moreover, I found that in written statement filed by the then LAC in civil writ petition no. 8304

of 1990 the area of the land measuring 1778 sq. yards was written instead of area measuring 1778 sq feet inadvertently. As per the spot inspection/survey report prepared after hearing the objection under Section-5A of the Act, the built up area measuring 38'x25' & 10'x12' in khasra no. 134min and 30'x12', 15'x12' 8'x6', 10'x12' in Khasra No. 135 min and 18'x14' in khasra no. 204 and 12'x10' in khasra no. 205. The exact total construction area was 2150sq. feet 484 sq. yard (i.e. 4356 sq. feet) was released considering constructed area alongwith proportionate vacant area after hearing the objection under Section-5A of the Act. As per rules, the area to be released should have been 2150'x2'-4300 sq. feet. Moreover, the released area is already more than the required released area as such the award of the land has already been announced and possession of the land in question has already been taken by the HUDA.

Thus the claim of the petitioner regarding release of the land is not maintainable and is hereby rejected.”

9. The said order (Annexure P-9) of the Land Acquisition Collector concerned, as made in terms of the verdict (Annexure P-7), which became passed by this Court, however remains unchallenged, and, therefore it acquires conclusive and binding effect. Resultantly the official/officer, or any other authority, who drew Annexure P-14, did in its drawing Annexure P-14, rather openly breached the mandate of this Court. Moreover, since Annexure P-9 was drawn in terms of the verdict (supra), made by this Court, therefore, when as above stated, it acquires binding and conclusive effect. In sequel, the only remedy available to the petitioners was to impugn Annexure P-9, than to move representation Annexure P-13 asking for review of Annexure P-9 nor also with Annexure P-9 acquiring binding and conclusive effect, thus for its remaining

unchallenged, rather the Collector concerned, thus could impermissibly review Annexure P-9. The fortifying reason for making the above conclusion stems from the factum, that the jurisdiction conferred upon the Land Acquisition Collector concerned, for the relevant purpose, thus by this Court through the making an order, as comprised in Annexure P-7, when became exercised as such by the Collector concerned, thereupon, unless it became challenged before this Court, it was but not reviewable, as untenably done by the Land Acquisition Collector through its drawing Annexure P-14.

11. Be that as it may, yet it appears that Annexure P-14 and other correspondences did yet untenably generate. Since this Court has not assigned any legal force to Annexure P-14, therefore any action takings thus planked upon Annexure P-14, rather by any officers/officials of the respondent concerned, also acquire a stain of such action takings thus being both colourable, as also becoming actuated by malafides. The reason being that such action takings were beyond the mandate of Annexure P-9, which became drawn strictly in terms of the verdict (Annexure P-7), as became made by this Court on CWP No. 3512 of 2014.

12. Since, the impugned annexure P-24, has assigned credence to Annexure P-9, which remained un-challenged, and as became made by the Land Acquisition Collector concerned, thus respectively in terms of Annexure P-5, and Annexure P-7, and who as above stated became solitarily bestowed, with the statutory jurisdiction, to make corrections relating to the areas besides relating to dimensions of the released lands. Therefore, the above impermissible review thereof, as done through Annexure P-14, cannot become countenanced by this Court.

13. In aftermath, obviously when this Court enters upon the exercise of determination(s) of inter-se validity of Annexure P-9 and Annexure P-24, thus drawn in terms of Annexure P-5 and Annexure P-7, vis-a-vis Annexure P-14 and subsequent thereto generated correspondences, as made by the jurisdictionally incompetent officer, thereupon, but obviously this Court would assign credence to Annexure P-9 and also to Annexure P-24, than to Annexure P-14.

14. Before parting, it is deemed appropriate also to re-allude to the observations (Supra), as made by this Court in a verdict (Annexure P-5), as became drawn on the apposite writ petition, which but highlights, the completest lack of right, title and interest of the petitioners therein to claim any right as such either for releasing the lands from acquisition and or with respect to the dimensions of such released lands being incorrectly recorded, thus in the award of the Land Acquisition Collector concerned.

15. Apart from the above, as above stated, the issue with respect to the challenge to the acquisition proceedings besides a challenge to the validity of the award made on 24.12.2013 (Annexure P-6), has already became clinchingly rested by this Court, through its respectively making decisions Annexure P-5 and Annexure P-7, in the writ petitions (supra). Moreover, when as above stated, the present petitioner was a co-petitioner therein, thus thereby the petitioner is intending to circumvent the principle of *res-judicata*, merely through hers instituting the instant writ petition through her general Power of Attorney.

16. Consequently, after dismissing the writ petition, yet since the instant writ petition is completely frivolous and also a mis-constituted endeavour. Therefore, to halt the institution of frivolous and mis-

constituted writ petitions before this Court, this Court deems it fit and appropriate after affirming Annexure P-24, to impose exemplary costs of Rs. 50,000/- upon the petitioners. The said costs shall be forthwith deposited with the Treasurer of the Punjab and Haryana High Court Bar Association.

(SURESHWAR THAKUR)
JUDGE

01.08.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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