

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

CWP-10437-2023 (O & M)

Reserved on: 07.08.2023

Pronounced on: 17.08.2023

M/S SAMRAT CERAMICS

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

**Argued by: Mr. Ajit Singh Lamba, Advocate
for the petitioner.**

**Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.
Ms. Kushaldeep Kaur, Advocate**

**Mr. Pritam Singh Saini, Advocate and
Mr. Abhishek Goel, Advocate
for respondent – HSIIDC.**

SURESHWAR THAKUR, J.

1. The petitioners are aggrieved from the making of Annexure P-17, wherein the hereinafter extracted conditions, thus become imposed upon the estates concerned, for thereby the release of the writ lands, becoming fully functional or operative.

(i) M/s Samrat Ceramics shall obtain CLU permission within six months of the date of the order and

(ii) M/s Samrat Ceramics shall not sell the land until they obtain CLU permission and further, they shall not sell the land seven years beyond the date of obtaining CLU permission.

2. The learned counsel appearing for the petitioner, has vehemently argued before this Court, that the imposition of the said pre-conditions upon the lands concerned, thus for making fully functional hence the recommended releases thereof, is but, highly oppressive and arbitrary, and, as such the same be declared to be null and void.

3. The reason for the above argument becoming addressed before this Court, is hinged upon the premise that thereby the constitutional Right of Property, as contemplated under Article 300 A of the Constitution of India, provisions whereof has been extracted hereinafter, rather would become infringed.

300A. Persons not to be deprived of property save by authority of law.— No person shall be deprived of his property save by authority of law.

4. The further reason for the learned counsel for the petitioner addressing the above argument before this Court, is premised on the ground, that since the said pre-condition was yet not initially set forth in Annexure P-10, therefore, its becoming imposed in the impugned Annexure P-17, is also magnificatory of the said conditions, becoming arbitrarily or capriciously imposed upon lands concerned, thus, as an untenable pre-condition for their becoming released from acquisition.

5. Furthermore, the third ground, as raised by the learned counsel for the petitioner for impugning Annexure P-17, is anchored, on the premise, that the petitioner has been discriminated, inasmuch as, in respect of similarly situated persons, thus the purported arbitrary pre-conditions (supra), rather becoming not imposed by the respondent concerned.

Reasons for dismissing the above submissions.

6. The reason for negating the above submissions, is primarily centred upon Annexure P-21, which is an order drawn by this Court, on 24.08.2020 upon CWP No. 25495-2017. The said order is extracted hereinafter.

*1. In this writ petition, the prayer for declaration of deemed lapsing of land acquisition proceedings under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the 2013 Act') and/or for release of the land in question is required to be rejected in view of the judgment dated 6th March, 2020 of the Constitution Bench of the Supreme Court in **Indore Development Authority v. Manohar Lal and others etc.**, AIR 2020 SC 1496.*

2. Mrs. Peeyushi Diwan Jain, learned Counsel appearing for the Petitioner states that the Petitioner desires to invoke Section 101-A of 'the 2013 Act' which is a provision exclusive to the State of Haryana inserted therein by way of an amendment.

3. Accordingly the writ petition is dismissed, and the status quo order, if any, is vacated. It is clarified that if the Petitioner makes a representation invoking S. 101-A of the 2013 Act, it will be for the Respondent authorities to examine it and pass an appropriate order in accordance with law.”

7. Apparently, the recording of Annexure P-21, occurred on 24.08.2020, and when visibly then Annexure P-17 rather was in existence, yet it remained unchallenged in the writ petition (Supra), whereons, Annexure P-21 became recorded. If so, the telling effect thereof, is that, thereby the petitioner is estopped to make any challenge

conditions, as set forth in Annexure P-17, are but as evident on a reading of the said Annexure, rather a sequel of the orders being passed by this Court on 28.01.2011, in CWP-19595 of 2005, and other connected therewith 60 writ petitions. The operative part of the said order becomes extracted hereinafter.

“Accordingly, in the light of the undertaking given by the counsel for the petitioners and affidavits filed in support thereof by the petitioners, we direct that the portion of the lands, which in the layout plan form part of the roads/green belts or common sites or public utility services/area, shall not be considered for release. The remaining land of the petitioners be released to them in such a manner that it conforms to the already finalised layout plan of the Industrial Sectors 34 and 35, Gurgaon by acquiring the excessive land or by allotting the deficient land as the case may be to bring it within the integrated planning. In case a petitioner(s) forgoes his claim or is unable to accept the allotted land, it shall be deemed to have been acquired. The petitioners shall be entitled to the benefits of the Rehabilitation and Resettlement of the land owners/oustee Policy, if eligible. However, that shall be subject to obtaining Change of Land Use (CLU) by the petitioners and payment of applicable external and internal development charges and will be governed by the same terms and conditions as of the allottees of the plots/land except for the clause of enhancement of prices of the land which is released to the petitioners. They shall not sell the land/plot for a period of seven years from the date of grant of CLU as per their undertaking given in the Court.

The writ petitions are disposed in the above terms.”

Government filed SLP No. 20978 of 2011, before the Hon'ble Apex Court, which became dismissed by the Hon'ble Apex Court, through an order made on 12.08.2011, thereby the hereinabove mandate, as became imposed upon the petitioner(s) in the said writ petition(s), as a pre-condition for their lands becoming released from acquisition, thus thereby acquires binding and conclusive force.

9. Thereafter, the petitioner filed two writ petitions respectively bearing CWP-4592-2014 and CWP-15697-2014 thus seeking releases of the acquired land. However, both the CWPs were disposed of by this Court with directions to the respondent-State to pass appropriate orders.

10. Subsequently, the petitioner filed CWP No. 25495-2017, seeking the lapsing of the land acquisition proceedings in terms of Section 24 (2) besides in terms of Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioner espoused relief for thereby the acquired estates being released from acquisition rather on the premise, that they were both un-essential and unviable, for suiting the relevant public purpose. The said petition became dismissed through an order, as carried in Annexure P-21, being made thus by this Court, order whereof has already been extracted above.

11. The writ petition (supra), became decided on 24.08.2020 (Annexure P-21). Apparently, when the decision made on Annexure P-21, occurred subsequent to the drawing of Annexure P-17, thereby the challenge to the said conditions vis-a-vis their application to the petitioner's estates, thus was required to be set forth therein, and or,

thereins the plea of discrimination as urged today before this Court, but

was also required to be raised therein. However, despite Annexure P-17 being in existence at the time of institution of CWP No. 25495-2017, or when the same was subjudice before this Court, yet the said Annexure remained unchallenged then nor at that stage, the plea of discrimination inter-se the petitioner's estate, and, the estate of other similarly situated land owners concerned, thus became raised therein. Resultantly now, the above arguments qua the imposition upon the petitioner's land, of the said purported oppressive and arbitrary conditions, but centred upon any purported discrimination rather inter-se the petitioner, and, other purported similarly situated land owners concerned, upon whom, the said purported excessive or onerous conditions are not imposed, thus, are not liable to be raised in the instant writ petition. Contrarily, for non raisings thereof, in the earlier writ petition, rather the petitioner is estopped, in the wake of the provisions engrafted in Order 2 Rule 2 CPC, to raise the above arguments before this Court.

Final order of this Court.

12. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned orders are maintained and affirmed.

13. No order as to costs.

14. 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

17.08.2023

kavneet singh