

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP No. 10776 of 2023****Reserved on: 01.08.2023****Date of decision : 08.08.2023**

SUNITA THAKRAN AND OTHERS

-PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS

-RESPONDENTS

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

Present : Mr. Gaurav Mohunta, Advocate and
Mr. Gaurav Gogna, Advocate
for the petitioners.

Mr. Saurabh Mago, DAG, Haryana
for the respondents No.1, 2 and 5.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivan Garg, Advocate
for the respondents No.3 and 4- HSVP.

SURESHWAR THAKUR, J.

1. The notification (Annexure P-1), under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') became issued on 03.03.2003, and, it became succeeded by a declaration (Annexure P-2) made under Section 6 of the Act of 1894. Subsequently, an award in terms of Section 11 of the Act of 1894, became made on 29.12.2005.

2. There is no wrangle amongst the contesting litigants, that the petition lands comprised in Rect.No.19, Killa No.2/2(2-0), though became acquired, but, a serious dispute has emerged with respect to, no compensation being determined, in respect of the superstructure(s), which was existing on

the acquired lands. Moreover, a serious dispute also exists qua the said superstructure(s) becoming raised on the acquired lands of the petitioners rather prior to the issuance of the notification under Section 4 of the Act of 1894.

3. In consequence, the petitioners claim relief in the instant petition, that the notification (Annexure P-1) and the declaration (Annexure P-2), as became respectively issued under Sections 4 and 6 of the Act of 1894, besides the award (Annexure P-3), as made in terms thereof, thus being quashed and set aside. Moreover, the further relief, as asked for in the instant petition, appertains to a mandamus being made upon the respondent(s) concerned to, in terms 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, thus make release of the petition lands from acquisition.

4. Having set forth the controversy (supra), as emerges amongst the contesting litigants, it is deemed befitting to refer to the institution of CWP-13723-2006 before this Court, by the petitioners therein, who were admittedly co-owners along with the present petitioners in the acquired lands.

5. The relief(s), as became asked for in the writ petition (supra), as is apparent on a reading of Annexure P-5, is but similar to the relief asked for in the instant writ petition. However, this Court, through Annexure P-5, proceeded to decline the relief(s), as embodied therein, and, which is but completely similar to the one, as claimed in the instant writ petition. The reason for declining the asked for relief(s) in the writ petition (supra), became comprised in the factum, that the notification(s), as became challenged in the

writ petition (supra) became already challenged by one Bharat Kumar, through his instituting CWP-18375-2004 before this Court, and, which but had resulted in an order of dismissal, through Annexure P-4, hence being made thereons.

6. However, the aggrieved petitioners from Annexure P-5, instituted a review application before this Court, for recalling and reviewing of the verdict (supra), but the said review application, rather through an order made thereon on 04.04.2008, thus became dismissed.

7. Be that as it may, the aggrieved from the verdicts, as become enclosed in Annexures P-4 and P-5 respectively, instituted respective SLP(C) bearing Nos.18918 of 2008, and, 15881-15882/2008, before the Hon'ble Apex Court, and, thereons the Hon'ble Apex Court, after setting aside the order(s) (supra), as became made by this Court, made a decision that only insofar as the appellant in the said SLP(C), who is but one Bharat Kumar, and, not the present petitioners, thus being entitled to the asked for relief in his petition, qua the provisions of sub-section (2) of Section 24 of the Act of 2013 being squarely applicable to his case.

8. In addition, Gyani Ram and others, who did not join Naresh Kumar in the latter instituting Annexure P-8, before the Hon'ble Apex Court, proceeded to institute CWP-13723-2016 before this Court, claiming a relief therein, that the acquisition proceedings, as became launched under the Act of 1894, be declared to thus become lapsed, thus in terms of Section 24(2) of the Act of 2013, as interpreted by the Hon'ble Apex Court in its judgment titled ***“Indore Development Authority v. Manoharlal and ors.”, SLP(C) 9036-9038 of 2016.*** However, as is evident on a reading of the verdict (Annexure P-9), as

became made thereon, thus on 14.10.2022, the above claimed relief was declined to the petitioners therein, who are co-owners along with the present petitioners, in the acquired lands.

9. Therefore but obviously, since the Hon'ble Apex Court had in Annexure P-7, granted relief thus solitarily to one Bharat Kumar, appellant before it, relief whereof appertains to the acquisition proceedings becoming lapsed, and, when obviously the present petitioners did not join Bharat Kumar, before the Hon'ble Apex Court, at the time of the making of Annexure P-7, therefore the relief (supra), as became granted solitarily to one Bharat Kumar, thus cannot become assigned to the present petitioners.

10. Importantly also, when the other co-owners along with the present petitioners, did also not achieve success in claiming the espoused relief qua the acquisition proceedings, as became launched under the Act of 1894, being declared to become lapsed. Therefore too, the present petitioners have to be treated at par with the co-sharers concerned, who did not receive, any affirmative verdict qua relief (supra) from this Court.

11. Be that as it may, the core issue which remains yet alive for an adjudication being made thereon, appertains to purportedly no award being made, in respect of the superstructure(s), or, other structure(s) existing on the acquired lands, thus falling to the share of the present petitioner. Though it is argued before this Court, that the said construction(s) was existing on the acquired lands rather prior to the issuance of the notification (Annexure P-1), as issued under Section 4 of the Act of 1894. However, if so, the remedy available to the present petitioners was to challenge the award of the Land Acquisition Collector concerned, insofar as, he did not award compensation in

respect of such alleged superstructure(s), as was existing on the acquired lands, but prior to the issuance of notification (Annexure P-1). Since the said remedy remained unrecoursed. Therefore the consequence of non availment of the said remedy by the present petitioners rather cannot well equip the learned counsel for the petitioners to argue, that but on the above score, the award (Annexure P-3) be quashed and set aside, nor can this Court proceed to make a direction upon the respondent(s) concerned to draw a supplementary award, thereby declaring therein the compensation amount qua the superstructure(s), if any, which was existing on the acquired lands, but purportedly prior to the issuance of notification (Annexure P-1).

12. In other words, for want of recouring of the above apposite proceedings, thereby the above asked for relief is deemed to have been waived or abandoned or thereby the present petitioners are estopped to much belatedly from the year 2005, claim that the award (Annexure P-3), but on the above score be declared as vitiated, besides they are estopped from claiming that a mandamus be made upon the respondent(s) concerned, thus to make a supplementary award in respect of the superstructure(s), if any, which was purportedly existing on the acquired lands prior to the issuance of the notification (Annexure P-1).

13. The above inference formed by this Court garners corroboration from a judgment rendered by the Hon'ble High Court of Gujarat in case titled **"Kanchanbhai Jhaverhai Desai and ors. V. State of Gujarat and ors."**, **(1995) 1 GLH 641 (FB)**, the relevant paragraph whereof is extracted hereinafter.

"12. The reading of the Act in general and Sections 11, 12 and 18 of the Act in particular further shows that in respect

of the same parcel of land only one award is contemplated. When the Collector makes his award under Section 11 of the Act, the same is with regard to the area of the land, the compensation and the apportionment thereof. With regard to that area of land for which award is made the same is final under Section 12 of the Act. This being so, the question of any supplementary award being given in respect of the same area or pail thereof does not arise. In arriving at the amount of compensation all the factors mentioned in Section 23 of the Act have to be taken into consideration. If some of the factors are not taken into consideration it cannot be that in respect of those factors which are omitted supplementary awards can be made. If the contention of the petitioners is right, then it can be conceivable that in respect of the same parcel of land there can be six different awards, each dealing with one aspect. If the award of the Collector does not deal with one or more aspects contained in Section 23 of the Act, the remedy is not to ask for a supplementary award, but the only recourse which is open to a claimant is to file an application under Section 18 of the Act for a reference. As directed, if it is only one award in respect of a parcel of land by the Collector, it would ipso facto follow that the court can also make only one award on the reference being made to it.”

14. Even otherwise, on completion of acquisition proceedings, as became launched under the Act of 1894, thus in the year 2005, there is a complete divestment of right, title and interest in the landowners concerned, over the acquired lands, whereons, allegedly superstructure(s) existed purportedly prior to the issuance of the notification (Annexure P-1). Contrarily, there is complete vestment of right, title and interest thereons, in the appropriate authority concerned. Therefore it appears, that despite the non launching of appropriate proceedings (supra) at the instance of the petitioners,

inasmuch as, thus through theirs at the appropriate stage rather making a reference petition under Section 18 of the Act of 1894 before the Collector concerned, for thereby the said petition becoming transmitted to the learned Reference Court concerned. Nonetheless, yet relief (*supra*) becomes claimed before this Court, despite the fact that there is complete divestment of right, title and interest in the petitioners, over the acquired lands. Resultantly, it appears that yet there is some purported resistance on the part of the petitioners to hand over vacant possession of the acquired lands to the appropriate authority concerned.

15. Though the above resistance appears to be banked upon a Jamabandi appertaining to the year 2004-2005, wherein, there is a reflection of a *gair mumkin structure* existing upon the petition lands. Moreover, a reference is also made in CM-11564-2023, as becomes filed in the instant petition, about objections under Section 5-A of the Act of 1894 being raised before the learned Collector concerned, for determining compensation in respect of the above purported superstructure(s), as existing on the acquired lands thus purportedly prior to the issuance of the notification (Annexure P-1). Moreover, in addition to the above, a Daily Encroachment Removal Drive Report, as made on 13.07.2023, is enclosed with the CM (*supra*), thus carrying disclosure(s) therein, about removal of approx. 180 numbers of labour quarters and 50 numbers of tin sheds. Therefore, it is argued that the said demolition drive was untenable, as the said structures were purportedly in existence prior to the issuance of the notification (Annexure P-1) and yet no compensation became determined in respect thereof.

16. However, the above made argument does not appeal to the

judicial conscience of this Court, and, is liable to be rejected. The reason being that there is only a presumption of truth to the said entry(ies), as carried in the Jamabandi (supra), and unless the petitioners, assuming that became aggrieved from no decision being made on the objections (supra), or, upon their becoming aggrieved from a decision adversarial to them being made by the learned Collector concerned, thereupon the said respective inactions or adversarial decisions, if any, as made on such objections (supra), thus in the year 2003, was then remediable thus through a petition being filed before this Court. However, at that appropriate stage, no motion for a mandamus being made upon the respondent(s) concerned, to make a decision upon the objections (supra), if they remain undecided, was asked to be made by this Court, nor also any decisions adversarial to the petitioners, if became made on the objections (supra), were challenged, nor the said challenge apparently succeeded. For want of the above recourse being adopted by the petitioners, at the relevant stage, results in theirs now becoming estopped to canvass, that yet there be assignment of credence to the Jamabandi (supra), nor they can argue that the said structure(s), if any, were purportedly existing on the acquired lands, prior to the issuance of the notification (Annexure P-1).

17. Contrarily, for the non drawing of the above motion(s) before this Court, an inference does become stemmed, that thereby there is complete abandonment or waiver of rights, if any, of the petitioners over the structures purportedly existing on the acquired lands, thus prior to the launching of acquisition proceedings.

18. In nut shell, it has to be concluded that at the relevant stage of issuance of the notification (Annexure P-1), the superstructure(s) was not in

existence over the acquired lands. The corollary of the above inference is but, that on issuance of the notification (Annexure P-1), there was complete divestment of right, title and interest in the petitioners over the acquired lands, and, concomitantly there was complete vestment of right, title and interest in the State. Therefore, it appears that superstructure(s), if any, were raised on the acquired lands post the issuance of the notification (Annexure P-1), and as such, when there was no right, title and interest in the petitioners over the acquired lands post the termination of acquisition, thus the same was required to be demolished, as is aptly evident from a reading of Demolition Drive Report (supra).

19. Fortified vigour to the above inference stems from a judgment rendered by this Court in case bearing No. **CWP-1080-1987, titled “Nirman Singh v. State of Punjab and anr.”**, wherein this Court had made the hereinafter extracted observations:-

“It is no doubt true that the entire award which is contemplated under Section 11 of the Act by virtue of the prescription in Section 11-A has to be made within the period of two years failing which the entire proceeding shall lapse. The question is whether it can be said in the present case that no award has been made under Section 11 of the Act in this proceeding? In our view it cannot be said that no award under Section 11 has been made for the land acquired. Admittedly, compensation has been determined in the award so made for the entire area of 0.99 acre. In view of the fact that no piecemeal award by making a subsequent award after the expiry of the period of two years is contemplated in law, the award dated 23-9-1986 must be construed as the whole award made under Section 11 awarding compensation for the entire area of 0.99 acre with no compensation awarded for the building. The seeking a reference under Section 18 of

the Act treating the award as one in which compensation had been determined and awarded only for the entire land measuring 0.99 acre but no compensation was awarded for the building therein. The appellants had the remedy to claim compensation for the building in accordance with law treating the award made as not awarding any compensation for the building. That is however a different matter and it does not require any further consideration in this context. It is sufficient to say that the award dated 23-9-1986 made within the period specified in Section 11-A of the Act must be construed as an award under Section 11 in the proceedings for acquisition of the appellants' land bearing Plot No. 1311 having a total area of 0.99 acre. The contention that the entire proceeding for acquisition of the land has lapsed by virtue of Section 11-A cannot, therefore, be accepted."

Also, the Hon'ble High Court of Andhra Pradesh, in case titled ***"Chundu Pullaiah and others v. Government of A.P.", 2012 (49) RCR (Civil) 861***, has observed as under:-

"11 > a > 11. We are of the opinion that if the appellants are aggrieved by not awarding any compensation for the structures said to have been existed on the lands, the only remedy available for them is to approach the Reference Court under Section 18 of the Act. The learned Single Judge therefore has rightly declined to entertain the writ petition and we see no reason to take a different view. Therefore, the writ appeal is devoid of merits and the same is liable to be dismissed."

20. Now, the further core question which requires to be meted an adjudication appertains to the relief, as becomes espoused in the writ petition, and, as relates to the petition lands being released from acquisition, thus in terms of Section 101-A of the Act of 2013, as became inserted therein through

Haryana Act No.21 of 2018, thus is liable to be granted or not. Predominantly since the above argument is premised on the ground, that the acquired lands are unviable or unessential for facilitating the public purpose, thus as unfolded in the notification of acquisition, as made under Section 4 of the Act of 1894.

21. Nonetheless, when the writ lands have been acquired in the exercise of the power of eminent domain, and, unless the exercising of the said power was shown to be an unjust expropriatory measure, thus through no compensation being awarded to the landowners concerned, that thereby the said acquisition could be termed to be unlawful. However, when for the reasons spelt hereinabove, rather compensation has been declared qua the petitioners qua the acquired lands, thereby the acquisition of the acquired lands, thus in the exercise of the power of eminent domain by the State of Haryana, thus cannot be termed to become capriciously or arbitrarily exercised, nor can it be said that an unjust expropriation of the petition lands has been made by the State of Haryana.

22. If so, and, further as stated above, since the public purpose is still alive and when no evidence, both tangible and potent, becomes adduced before this Court rather in display, that the lands are unviable or unessential for facilitating the public purpose, thereupon, this Court would not accept the above argument of the learned counsel for the petitioners, hence as becomes premised on Section 101-A of the Act of 2013.

23. Contrarily, thus this Court construes, that the public purpose is yet alive and if so, if this Court yet makes an order for releasing the petition lands from acquisition, thereby the yet alive public purpose would not become subserved, rather would become completely defeated. Since the above is not

the intention of the legislature, in engrafting Section 101-A of the Act of 2013, therefore the relief appertaining to release of petition lands is declined.

24. In summa, this Court finds no merit in the instant writ petition and is constrained to dismiss it. Accordingly, the writ petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

08.08.2023
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Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No