

239/7 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-13888-2021

Reserved on: 05.09.2023

Pronounced on: 22.09.2023

M/S SHANKAR WOOLEN PRIVATE LTD. AND ANOTHER.

.....Petitioners

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. Jagdeep Singh Rana, 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 of Section 101/101A 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 besides a mandamus be made directing the respondents concerned to taken an expeditious decision on representation (Annexure P-16).

forcefully contended, by planking submissions on the mandate of Section 101 and Section 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. It has been averred in the writ petition that numerous persons including the petitioners had challenged the acquisition of their running industries through their filing writ petition(s) before this Court. However, through an order drawn on 02.04.2002, this Court upheld the acquisition proceedings and dismissed the writ petition(s). Feeling aggrieved, the petitioners and other land owners concerned approached the Hon'ble Supreme Court by filing SLP (Civil) No. 11735/2002. The said petition was disposed of by the Hon'ble Apex Court through an order made on 10.01.2006, with direction to the respondents concerned, to consider the cases of the petitioners before it and dispose of accordingly through a reasoned order.

4. Further, through an order drawn on 23.08.2011 (Annexure P-11), by the Land Acquisition Collector concerned, the representation/claim made by the petitioners for release(s) of the petition lands was declined. The relevant portion of the order (supra) is extracted hereinafter.

“Therefore, keeping in mind the above facts and circumstances, the request for release of land measuring 2604/86 Sq Yds. In Khasra Nos. 57//24/2/2/2/1, 6//4/1/2, 4/2/1 is hereby rejected. It is also evident that he is not utilizing the land for industrial purposes for which not only CLU permission was granted but release of land subsequently was done on 29.11.2002. It is also pertinent to mention that this specific Sector was carved out by HUDA for setting up of dyeing units for which acquisition had taken place. However, instead of running a dyeing

unit on the plot, he is running a Banquet Hall, photographs of which taken on 22.8.2011 by DTP (Enf.), Panipat are enclosed as Annexure - 'K'. The DTP, Panipat is being separately directed to ensure compliance of the restoration orders and to ensure that already released land is used only for industrial purposes and not for commercial purposes and if this illegal use is continued, Government will be constrained to review the release orders and revoke the CLU permission.”

5. Feeling aggrieved from the order (supra), as made by the competent authority concerned, the petitioners filed CWP-4677-2012 and the same was disposed of as withdrawn with liberty to make a representation to the State/respondent concerned and to decide the same within a period of two months. The petitioners accordingly approached the Department through its representation for release of the land in question. However, the same was not decided.

6. Thereafter, the petitioners filed another writ petition bearing no. CWP-15520-2014, which was disposed of by this Court through an order made on 06.08.2014. The relevant part of the order is extracted hereinafter.

“.....Learned counsel submits that the petitioner has filed representation (Annexure P-2) before respondent No. 2 for revision of his land measuring 4 kanals 6 marla but the same has not been decided so far. After hearing learned counsel for the petitioners, this writ petition is disposed of with the direction to the respondent No. 2 to decide the representation (Annexure P-2) expeditiously.”

7. In pursuance to the order (supra), as averred in the writ petition, the claim/representation of the petitioners for releases of the writ lands was declined.

thereafter kept on pursuing the matter for release of land with the authorities. However, his claim for release of the land was declined.

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

9. 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 paragraph No. 16 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“16. 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 involved in the petition affects the planning of open space. This clearly shows that the land in question has been duly planned and is very much essential for achieving the public purpose for which the lands was acquired. True copy of the layout plan is annexed herewith as Annexure R-1 for the kind perusal of this Hon'ble Court.

10. 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 101/101 A of the 'Act of 2013'. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act

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 101/101 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 101/101 A of the 'Act of 2013'.

11. 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 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 the case.

12. 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.

13. 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.

14. 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