

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 11383 of 2023 (O&M)

Date of Decision: 21.9.2023

Rati Ram Bhardwaj and another

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Roopak Bansal, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate
for the respondent-HSVP.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, the petitioners seek a mandamus, upon the respondents concerned, to release their land and house, situated in village Kanhai, Tehsil and District Gurugram, in view of policy dated 14.9.2018 (Annexure P-5).

2. One Ramesh and Hardwari (since deceased), who is the father of petitioner No. 1, and, the husband of petitioner No. 2, had earlier instituted CWP No. 4505 of 1992, before this Court. However, this Court made an order of dismissal thereons, on 12.11.1992. The aggrieved preferred thereagainst SLP(C) CC No. 22738 of 1993, before the Hon'ble Apex Court but the said SLP was also dismissed by the Hon'ble Apex Court in the year 1993.

3. The learned counsel for the petitioners submits, that the dismissal order, as made, upon the SLP (supra), does yet impliedly reserve

in the petitioners the right to avail the benefit of Section 101-A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'), as the Hon'ble Apex Court did not expressly restrict or limit the availment of the said right.

4. It appears, that in terms of the said claim, thus becoming impliedly reserved by the Hon'ble Apex Court vis-a-vis the petitioner, the latter proceeded to institute CWP No. 8844 of 2014, before this Court.

5. Even if assuming that the above argument prima facie, has an aura of truth. Nonetheless, bearing in mind the fact, that the decision, as made on the writ petition (supra), was thus made on 18.5.2023. Therefore when the provisions of Section 101 of the Act of 2013, were thus in vogue, inasmuch as, both during the pendency of the writ petition (supra), and, also on its termination, besides was in vogue during the pendency of SLP (supra) before the Hon'ble Apex Court. Consequently, when the petitioners could well raise in the earlier writ petition (supra), besides could well raise in the SLP concerned, a plea rested upon Section 101 of the Act of 2013, but yet the petitioners rather omitting to raise the said plea, thus respectively in the writ petition (supra), and, subsequently in the SLP concerned. Resultantly, the omission (supra), and, yet the said plea becoming raised in the instant petition, thereby the raising here of the said omitted plea in the petition (supra), becomes estopped from becoming raised, thus on the estopping principle, as engrafted in the Order 2 Rule 2 of the CPC.

6. Moreover, when this Court earlier in **CWP-15175-2023**, titled '**The Press Employees and Friends Co-operative Group Housing Society Ltd. V. State of Haryana and others**', 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.”

7. Consequently, this Court finds no merit in the instant petition, and, the same is hereby dismissed with costs of Rs. 50,000/- each, to be forthwith deposited by the petitioners with the ‘**Punjab and Haryana High Court Bar Clerks Association, Chandigarh**’.

8. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 21, 2023
Gurpreet

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