

239/8 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-14722-2021 (O & M)

Reserved on: 05.09.2023

Pronounced on: 22.09.2023

JAGMAL SINGH

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. S.K.Bhardwaj, Advocate
for Mr. Pankaj Gupta, Advocate
for the petitioner.

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. Through the instant petition, the petitioner challenges the validity of a notification, as became issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894'). Moreover, the petitioner also makes a challenge to the validity of issuance of a notification under Section 6 of the 'Act of 1894', besides challenge the validity of makings of consequent thereto award, as became passed on 23.03.1993.

2. The above notification(s) became respectively issued on 20.04.1990 (Annexure P-6) and on 18.04.1991 (Annexure P-8).

3. The learned counsel appearing for the petitioner has

forcefully contended, by planking submissions, on the mandate of Section 101 A 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') 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 '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.

“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.”

4. It has been averred in the writ petition that even after 28 years of the pronouncement of the award, the respondent authorities have failed to take the possession of the land and the petitioner is still in possession of the disputed lands. Thus, the petition lands be released from acquisition on being rendered unviable or un-essential.

5. It is apt to mention here that landowners of village Kanhai including the present petitioner filed CWP-4647-1992 challenging the acquisition proceedings before this Court. However, the said petition became dismissed by this Court through an order made on 03.11.1992. Against the aforesaid order, the landowners filed SLP before Hon'ble Supreme Court, whereons the Hon'ble Apex Court through an order made on 03.04.2001, thus disposed of the said petition as withdrawn and gave liberty to the petitioners to file review before this Court. Thereafter, Review application No. 341 of 2001 was filed which was disposed off on 24.10.2002 by giving liberty to the petitioners therein to file fresh writ petition incorporating facts regarding discrimination and in pursuance to that order, the present petitioner filed CWP-2371-2003 challenging the acquisition proceedings. However, this Court through an order drawn on 13.02.2003, dismissed the said writ petition.

6. It is apt to mention here that the petitioner filed CWP-13519-2015 before this Court claiming lapsing of earlier launched acquisition proceedings under Section 24 (2) of the 'Act of 2013' in view of the fact that the State has failed to take possession of land or has not paid compensation. The said petition was disposed of on 09.07.2015, reserving liberty to the petitioner to make a detailed representation and directed the respondent to consider the same and pass speaking order on it after giving opportunity of hearing to the petitioner.

7. The respondent concerned through a speaking order made on 21.09.2016 rejected the representation of the petitioner.

8. A reading of the rejection order unveils that the respondent

under Section 24(2) of the 'Act of 2013', as became interpreted by the Hon'ble Supreme Court, in the verdict rendered in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016, has been assigned. Therefore, the order made by the Competent Authority, thus rejecting the petitioner's representation, for declaring lapsed rather the earlier launched acquisition proceedings under the 'Act of 1894', but becomes a validly drawn order.

9. Further, it has been averred in the writ petition, that the land of the petitioner is adjacent to lands already released/not acquired by the respondent-State considering the facts that structures are existing thereons but prior to issuance of a notification under Section 4 of the 'Act of 1894'.

10. Moreover, it is also contended that the respondents have proceeded to adopt the practices of invidious discrimination, inasmuch as, the respondents releasing the lands acquired by the same award, whereas, the respondents yet proceeding to subject the petition lands to acquisition, through making the impugned notification(s).

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

11. The learned counsel appearing for the petitioner has planked his submission, on anvil of Section 101 A (supra), but yet the said submission becomes completely unhinged, in the face of a specific contention existing in paragraph No.24 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“24. 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 present petition falls in Sector 45, Gurugram and the layout plan of the said sectors stands duly approved. Killa No. 33//18 affects the planning of institutional site. It is further submitted that not only the land in question but the entire acquired land of the petitioner stands planned and some of land also stands utilised. ”

12. 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 petitioner 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 A of the 'Act of 2013'. Contrarily, post valid termination of earlier launched acquisition proceedings under the 'Act of 1894', thereupon yet the retention, if any, of the petition lands, by the petitioner, 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 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 petitioner has untenably planked the above argument, thus premised on the provisions of Section 101 A of the 'Act of 2013'.

13. 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.

14. Further, on a perusal of para 4 of the reply, it is revealed that out of the total determined compensation, the petitioner has

(3-7) and the remaining determined amount is available for disbursement to him.

15. The effect of the above, is that, thereby the petitioner is deemed to accept the validity of the launching of the acquisition proceedings, and thereby he is rather estopped from challenging the validity of the launching of the acquisition proceedings.

16. 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 assert 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.

17. 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/- to be forthwith deposited by the petitioner with the 'Himachal Pradesh Aapada Raahat Kosh - 2023' for mitigating the natural disaster in the State concerned.

18. 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

22.09.2023

kavneet singh

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