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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-11872-2023

Date of Decision: 02.06.2023

NARESH SINGH AND OTHERS

... Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Sumeet Goel, Senior Advocate with
Mr. Parveen Kumar, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional AG Haryana with
Mr. Saurabh Mago, DAG Haryana.

LISA GILL, J.

1. Prayer in this writ petition is for directing the respondents to release land measuring 7 kanals as described in the writ petition in view of Section 101-A (as applicable to the State of Haryana) Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the '2013 Act') and policy dated 14.09.2018 (Annexure P-7) promulgated by the respondent-State.

2. Petitioners claim to be owners of the land as described in the writ petition. Their land was acquired in acquisition proceedings with notification under Section 4 of the Land Acquisition Act, 1894 (for short, the '1894 Act') being issued on 24.04.1990 for public purpose, namely, for residential, commercial, institutional and open spaces/recreational areas in Sectors 44, 45 and 46 at Gurugram under the

Haryana Urban Development Authority Act 1977. Notification under Section 6 of the 1894 Act was issued on 18.04.1991 and award in respect to the said land was ultimately passed on 23.03.1993. It is pleaded that petitioners had constructed their houses and shops on the land in question in 1985 and had raised objections under Section 5A of the 1894 Act. However, the award acquiring their land was passed on 23.03.1993.

3. Petitioners/their predecessors-in-interest along with others filed CWP No.2819 of 2006 for quashing of the notifications issued under Sections 4 and 6 of the 1894 Act which was dismissed by this High Court on 26.10.2006. SLP No.244 of 2007 filed by the petitioners was also dismissed. CWP-7486 of 2015 filed by the petitioners seeking release of their residential houses under Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the '2013 Act') was disposed of on 24.04.2015, whereby liberty was afforded to the petitioners to file a detailed and comprehensive representation raising the pleas as raised in the said writ petition before the appropriate authority. It was further directed that in the event of a representation being filed by the petitioners within a period of two months, the same be decided in accordance with law by passing a speaking order and affording an opportunity of hearing to the said petitioners within a period of four months. Petitioners were held entitled to lead any evidence to substantiate their claim before the concerned authority and that status quo was directed to be maintained by parties till a decision

taken by the competent authority.

4. Speaking order dated 25.01.2017/03.02.2017 was passed by the competent authority rejecting claim of the petitioners under Section 24 (2) of 2013 Act. CWP-246 of 2018 filed by the petitioners challenging order dated 25.01.2017/03.02.2017 was dismissed by the Ist Division Bench of this High Court on 18.05.2023 while observing that the matter is squarely covered against the petitioners in view of decision of the Hon'ble Supreme Court in **Indore Development Authority Vs. Manohar Lal and others, AIR 2020 SC 1496.**

5. Present writ petition has been filed on 25.05.2023 with a prayer that application under Section 101-A of the 2013 Act was submitted by the petitioners three years ago on 11.07.2020 but official respondents are still sleeping over the same and that acquired land of the petitioners which is still in their physical possession should be released.

6. Before proceeding any further, we would note at this juncture that petitioners have not appended copies of order dated 23.04.2015 passed in CWP-7486-2015, order dated 26.10.2006 passed in CWP-2819-2006, speaking order dated 25.01.2017/03.02.2017 passed by the competent authority or a copy of order dated 18.05.2023 in CWP-246-2018 filed by them.

7. Learned counsel for the State, to whom advance copy of the writ petition has been supplied, has assisted this Court. It is vehemently argued by learned counsel for the State that there is selective concealment of facts by the petitioners as some of the orders passed by this Court as well as speaking order dated 25.01.2017/03.02.2017 passed

by the competent authority against the petitioners has not been attached, though mention thereof is present in the writ petition. Learned counsel for the State submits that in this third round of litigation qua the acquired land, no ground for interference is made out by this Court.

8. We have accessed the orders as passed by this High Court in the previous writ petitions from the website of the Court and copy of speaking order was furnished by learned counsel for the State during the course of hearing. We have also called for the file of CWP-246-2018, wherein challenge was to speaking order dated 25.01.2017/03.02.2017 with a prayer to release the houses/land of the petitioners under Section 24(2) of the 2013 Act and have perused the same.

9. For reasons as are discussed in the following paras, we find no ground whatsoever for interference in this writ petition at the instance of the petitioners. Acquisition of the land in question attained finality with culmination in award dated 23.03.1993. Petitioners/their predecessors-in-interest did not challenge the same immediately. CWP-2819 of 2006 subsequently filed by them was dismissed with the following observations:-

“Learned counsel for the petitioner contends that although the proceedings with regard to the acquisition were initiated on 20.4.1990 and award has also been passed on 23.3.1993, however, the petitioners are entitled to release of their lands on the basis of report of a Sub Committee, Annexure P-9 by which the lands of various land owners have been released from acquisition. Counsel for the petitioner contends that the petitioners are also similarly situated, as the persons mentioned in Annexure P-10.

Counsel for the State submits that the constructed portion

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of the land belonging to the petitioners has already been released from acquisition, as is mentioned in para 3 of the preliminary objection. It is further submitted that the petitioners have filed the present petition after a delay of more than 16 years hence the present petition is liable to be dismissed.

We are of the considered opinion that the petitioners are not entitled to release of their land, as they have filed the writ petition after a delay of more than 16 years. It has been held in Municipal Counsel, Ahmednagar and another vs. Shah Hyder Beig and others, 2000(2) SCC 48 that delay defeats equity. Apart from the above, the constructed portion of the petitioners have already been released from acquisition. In view of the above, we find no merit in the writ petition and the same is dismissed.”

10. Thereafter, this High Court vide order dated 23.04.2015 in CWP-7486 of 2015 afforded liberty to the petitioners/their predecessors-in-interest to file a representation within two months of the order with a commensurate direction to the concerned/competent authority within four months of submission thereof.

11. Admittedly, petitioners' claim was rejected by the Chairperson-cum-Zonal Administrator HUDA-cum-Additional Director Urban Estate, Gurugram vide order dated 25.01.2017/03.02.2017. The competent authority while specifically noting that the Zonal Committee on considering the request of the petitioners found no merit for acceptance of the same held as under:-

“1. It is a mis-conception that structures prove the possession of the land because the existing structure, if any is/was acquired alongwith the land so after payment it becomes the sole property of the department and department demolishes the structure in due course of time so if any structure is/was present at the time of acquisition, vest in state/ department free from all encumbrances. The payment details of the Land acquisition Officer can ascertain and if additional

payment has been made that means the structures were acquired. If no additional payment was made that proves that there was no structure at the relevant time and the construction, if any, raised is with mala-fide intention and at a later stage.

2. Physical possession of the land has been taken by HUDA which is corroborated by the Rapat Roznamcha No. 425 dated 23.03.1993. The Rapat Roznamcha is substantive piece of evidence to prove change physical possession, written by an independent Authority ie. Land Acquisition Collector. Further, it is worth mentioning that due to LARR Act there has been a spurt of such cases where HUDA land had been encroached upon with mala-fide intention just to take benefit of Section 24(2) of LARR Act. Hence the present occupation is unauthorized, illegal and has no meaning because it is of recent origin and not a continuous possession. Due to status quo granted by the Hon'ble court, action could not be taken against these trespassers and encroachers on the HUDA land.

Though the petitioner has mentioned that he is in possession of the disputed land but he has not submitted any evidence to prove his claim. Even at the time of his personal hearing he did not submit any evidence thus his claim cannot be accepted.

3. Land in question is to be utilized for the planned development of sector-45, Gurugram i.e. for the purpose of 30 mtr vide sector dividing road of sector-44 & 45 and its 10 mtr vide service road."

12. Furthermore, CWP-246-2018 filed by the petitioners challenging the speaking order dated 25.01.2017/03.02.2017 was also dismissed by the Ist Division Bench of this High Court being covered by judgment of the Hon'ble Supreme Court in **Indore Development Authority (supra)**.

13. Curiously the petitioners within a week of dismissal of CWP-246-2018, filed the present writ petition seeking relief under Section 101-A of 2013 Act as applicable to the State of Haryana with the contention that an application dated 11.07.2020 had been filed by them

but no decision had been taken thereon till date. Sections 101 and 101-A of the 2013 Act as applicable to the State of Haryana read under:-

“101. Return of unutilised 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.”

14. Section 101-A was inserted by the Haryana Act No.21 of 2018 as published vide notification dated 24.05.2018. Subsequent incorporation of such ground was clearly available to the petitioners in their pending CWP No.246-2018 but this course was never adopted and neither was any liberty sought by the petitioners to pursue the matter under Section 101-A of the 2013 Act.

15. Be that as it may, we do not find any ground whatsoever to interfere for the simple reason that it is categorically mentioned in the speaking order dated 25.1.2017/03.02.2017 that land in question is to be utilized for the planned development of Sector 44 Gurugram i.e. for the

purpose of 30 meters wide sector dividing road of Sectors 44 and 45 and 10 meters wide service road.

16. In the face of the above, learned counsel for the petitioners is unable to point out how the land in question becomes unviable or non-essential. Merely because the petitioners have managed to hold on to possession of said land in one way or the other cannot be a ground for interference. Constructed portion of the petitioners' land is noted to have been released in order dated 26.10.2006 passed in CWP-2819-2006.

17. Learned counsel for the petitioners is unable to deny that petitioners do not have a vested right to seek denotification of the acquired land. Gainful reference at this stage can be made to the judgment of the Hon'ble Supreme Court in **Ram Swaroop (Dead) through LRs and another vs The State of Haryana** wherein while taking note of its earlier judgment in **Raghubir Singh and another Vs. State of Haryana and others, 2021(3)R.C.R.(Civil) 533**, it has been held as under:-

“8. Section 101-A of 2013 Act (as inserted in State of Haryana) gives liberty to the State Government 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 landowner due to such acquisition. Section 101-A is an enabling provision with the State Government to denotify the land vested with the State if it finds that any public purpose for which land was acquired under the Land Acquisition Act, 1894 becomes unviable or non-essential. In other words, the power is with the State Government on its satisfaction that the land acquired has become unviable or non-essential. No landowner has a vested right to assert that the land acquired has become unviable or non-essential mainly because the landowner continued to be in possession by virtue of an interim order passed by the High Court.

10. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred [De Smith's Judicial Review, (6th Edn., p. 225)] . There is no unfettered discretion in public law [*Food Corpn. of India v. Kamdhenu Cattle Feed Industries* , (1993) 1 SCC 71] . Discretion conferred on an authority has to be necessarily exercised only for the purpose provided in a statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. If the authority pursues unauthorised purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law. It is useful to refer to *R. v. Vestry of St. Pancras* [*R. v. Vestry of St. Pancras*, (1890) LR 24 QBD 371 (CA)] in which it was held: (QBD pp. 375-76) "... If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

11. The claim of the appellants for release of land on account of [Section 24\(2\)](#) had been rejected by the State Government on 12.09.2016. The writ petition against the said order stands dismissed on 12.10.2020. Thus, the present appeal is merely an attempt to continue to be in possession of the land on one pretext or the other so as to defeat the public purpose of acquisition of the land for development and utilization of residential, commercial and institutional area, Sector-51, Gurgaon (now Gurugram). This Court in *Raghubir Singh* has held that [Section 101-A](#) does not give a vested right to the landowner to seek denotification or even that upon denotification, the land in question must return to the erstwhile owners only. The State Government is at liberty to pass such order other than release of land in favour of the landowners."

18. Thus argument raised on behalf of the petitioners that once an application had been submitted, it is incumbent upon the authorities

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to first pass a speaking order thereon and only then proceed further, is an argument devoid of any merit. Once the petitioners do not have a vested right, they cannot seek such direction without even making out a prima facie case to indicate that the land has become unviable or non-essential. At this stage, we also take note of the fact that complete dissemination of material facts necessary for adjudication of this matter is absent.

19. Present writ petition is clearly a misguided attempt in futility by the petitioners to retain possession of the acquired land and we find no ground whatsoever to interfere in this matter.

20. No other argument has been addressed.

21. Writ petition is, accordingly, dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

02.06.2023

Rimpal

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