

117

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-12425-2023 (O&M)
Date of decision:11.10.2023

BHOOP SINGH 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. Sandeep Sharma, Advocate
for the petitioners.

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

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivam Garg, Advocate for HSIIDC.

SURESHWAR THAKUR, J. (ORAL)

CM-10250-CWP-2023

Allowed as prayed for subject to all just exceptions.

CM-15093-CWP-2023 & CM-15095-CWP-2023

Leave to amend the writ petition is not opposed. Therefore, the
applications claiming relief for amending the writ petition is allowed.

MAIN CASE

1. Short reply by way of an affidavit has been filed in the Court
today by the learned State counsel which is taken on record.

2. The petitioners claim relief for their lands comprised in the
relevant khasra numbers, which are admittedly acquired through an award

drawn on 27.01.2006, be released from acquisition, rather 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 an amending Act No.21 of 2018, being made by the Haryana State Legislative Assembly.

3. Learned counsel for the petitioners in making the above submission has rested the same on the ground, that the petitioners concerned, who earlier held only a minimal areas of land, totaling 7 Marlas, thus in the relevant khasra numbers, dimensions whereof total 5 Kanal and 10 Marlas, thereby given the minimality of such lands. Resultantly, their release is required, as thereby they would not sub-serve the public purpose.

4. The above made argument, does not appeal, to the judicial conscience of this Court, as even if all the co-petitioners, who were prior to the culmination of the acquisition proceedings, through an award being made qua their respective shares, thus holding only a minimal area (supra), in the relevant khasra numbers, the total dimension thereof, being 5 Kanal and 10 Marlas. However, the minimality of areas of the acquired lands of the petitioners, but cannot become agitated, for thereby rather theirs becoming released in terms of the provisions (supra), as carried in the Act of 2013, especially when they are an integral component of the layout plan, whereby the petitioners become forestalled to claim their exemptions from acquisition.

5. Moreover, thus reiteratedly on the premise (supra), though the learned counsel for the petitioners argues, about the retention of the petition lands, being both unviable, and, unessential, rather for facilitating the public purpose concerned.

6. However, the above argument is also required to be set at naught. Primarily besides reiteratedly for the reason that not only in the integrated development plan, the said area is reflected to be facilitative factor, thus for furthering the requisite public purpose, but also the preparation of the layout plan including therein the writ khasra numbers, rather is within the exclusive domain, of the Engineering Cell of the Acquiring Authority concerned. If so, the present petitioners cannot make any argument before this Court, that yet the layout plans being interfered with or being scuttled by this Court, as thereby this Court would exceed its writ jurisdiction, as invested under Article 226 of the Constitution of India, especially with a plethora of judgments rendered by Courts of law, rather excluding the jurisdiction of the writ Courts, to make any review of the layout plan, as become drawn by the Specialized Engineering Cell, of the Acquiring Authority concerned.

7. Conspicuously, the writ petitioners, who are the landlosers concerned, besides thus were previously joint owners over the writ lands. Therefore, since after the lawful termination of the acquisition proceedings, through an award (supra), becoming rendered, and/or, even earlier thereto also upon issuance of a notification under Section 4 of the Land Acquisition Act, 1894, the landlosers concerned, forfeit any right, title, and, interest over the acquired lands.

8. Consequently, since thereby there is complete divestment of any right, title and interest of the petitioners/ co-owners over the acquired lands, in capacity whereof(s) they were earlier holding the above lands. Therefore, assumingly even if there is some merit in the lis, yet the ill-effects of releases, being made to the landlosers concerned, would be that, thereby this

joint estate concerned, which otherwise was to be done at a stage prior to the launching of acquisition proceedings. Consequently, the lack of happenings of lawful dismemberment(s), of the joint estate, which otherwise, but has now completely vested in the Acquiring Authority concerned, thereby also makes this Court to refrain from assigning specific portions of the erstwhile joint lands, thus to each of the co-sharers concerned. Since the effect thereof would be that the unity of title, and, community of possession of the joint owners over joint land, still subsists, thereby each co-owner becomes forestalled from exclusively utilizing any specific part of such jointly owned lands. If he does so, thereby thus would occur the obviable likelihood of litigations erupting amongst the joint owners concerned.

9. In immense fortification to the above inference, stems from an *ad nauseam* discussion, being made by this Court in a verdict rendered by this Court, in CWP-15175-2023, titled '**The Press Employees and Friends Co-operative Group Housing Society Ltd. V. State of Haryana and others**', relevant paragraph whereof stands 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.”

10. In consequence, since this Court refrains from interfering or modifying or recalling the layout plan, thereby this Court also proceeds to neither release nor exempt the writ lands, from theirs becoming retained for the relevant public purpose.

11. Consequently, this Court finds no merit in the instant petition, and, the same is hereby dismissed with costs of Rs.50,000/- upon each of the petitioners to be forthwith deposited by the petitioners with the '**Punjab and Haryana High Court Employees' Welfare Association**'.

(SURESHWAR THAKUR)
JUDGE

11.10.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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