

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

CWP-12854-2023 (O & M)

Reserved on: 02.08.2023

Pronounced on: 08.08.2023

Jai Singh and another

.....Petitioners

Versus

State of Haryana and others

....Respondents

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

Argued by: Mr. Shailendra Jain, Senior Advocate with
Ms. Janvi Verma, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep K. Manchanda, Advocate and
Mr. Shivam Garg, Advocate
for respondent No. 3 – HSVP.

SURESHWAR THAKUR, J.

Factual Background.

1. The present petitioners claim relief for quashing of notification, as became issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter for short called as the 'Act of 1894') and to which Annexure P-6 is assigned. They also seek further relief for quashing of notification issued under Section 6 of the 'Act of 1894' and to which Annexure P-7 is assigned. Moreover, they ask for relief for quashing of the award No. 19 of 22.11.2006, as became passed under Section 11 of the 'Act of 1894', and to the said award, Annexure P-8 is assigned.

2. In addition, the petitioners claim relief, that, in terms of

Section 101 A of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter for short called as the 'Act of 2013'), as became [inserted through Haryana](#) Act No. 21 of 2018, provisions whereof are extracted hereinafter, thus the acquired lands be released from acquisition, as they are both un-essential or unviable for being put to use for the relevant public purpose.

***“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. Before proceeding to make a decision upon the above espouseds relief in the instant writ petition, it is deemed necessary to extract an order made by this Court on 02.06.2023, order whereof becomes extracted hereinafter.

“....Learned counsel for the petitioner prays for some time to inform whether petitioners/their predecessor-in-interest had ever challenged notifications dated 27.11.2003 (Annexure P-6) and 24.11.2004 (Annexure P-7), respectively issued under Section 4 and 6 of the Land Acquisition Act, 1894 (for short the Act') and award dated 22.11.2006, Annexure P-8, passed under Section 11 of the Act...”

4. In terms of the said order, the learned counsel for the petitioners has appended with CM No. 10883 of 2023, a verdict made by this Court on 21.04.2008, upon CWP No. 3543 of 2006, (Annexure A-1). Though the petitioner in the said writ petition was one Parbhu, but evidently he is the predecessor-in-interest of the present petitioners, and thereby the present petitioners are deemed to be pursuing the previous litigation through their predecessor-in-interest, and, as such the order made thereons, (Annexure A-1) is binding equally upon them, as it was binding upon their deceased predecessor-in-interest.

5. Therefore, it is but imperative to extract the order, as carried in Annexure A-1, and which as such becomes extracted hereinafter.

“.....This petition is directed against the notifications dated 27.11.2003 and 24.11.2004 issued under Section 4 and 6 of the Land Acquisition Act, 1894 (for brevity 'the Act') (Annexure P-1 and P-7 respectively).

Learned State counsel has filed an affidavit of Land Acquisition Collector, Urban Estate, Gurgaon. Along with the affidavit, the details of land in dispute, which is subject matter of notifications under challenge, has also been given in Annexure R-1. According to Annexure R-1, the area comprised in Khasra No 356 has been found to be vacant and cannot be released from acquisition. The rest of the land has been released from acquisition.

After hearing learned counsel for the parties, we do not find any illegality in the acquisition proceedings. The objections filed by the petitioner have been considered and the land belonging to him has been released and only small portion has been acquired, which appears to be necessary for the execution of plan. Accordingly we

dispose of the writ petition in terms of the concession given by the State...”

6. A reading of the above extracted order, as made by this Court on CWP No. 3543 of 2006, reveals that a challenge alike the challenge as made in the instant writ petition was thus made therein, but the said challenge failed. Resultantly the present petitioners are estopped to re-institute before this Court the instant petition, thus embodying therein causes of action and reliefs which are similar to the ones as became propagated in the earlier writ petition.

7. Since it is apparent from a reading of the operative part of the verdict (supra), that the claim of the predecessor-in-interest of the present petitioners qua the disputed lands becoming released from acquisition, thus became declined. Therefore, a plea alike the one which became raised earlier cannot be raised subsequently in the instant writ petition.

8. The reason being that since the above claim became founded upon Section 48 of the 'Act of 1894', provisions whereof are extracted hereinafter. Therefore, when Section 101 A (supra), as embodied in the 'Act of 2013' carries coinages, which are synonymous to the coinages as carried in Section 48 of the 'Act of 1894'. Resultantly, when the extant relief for releasing of lands from acquisition, thus premised on a statutory provision alike to the one as is embodied in Section 48 of the 'Act of 1894', whereas, it became declined, thereby a similar thereto plea premised upon a statutory provision, thus synonymous to the earlier apposite statutory provision, but obviously requires that the same be also rejected.

“48. Completion of acquisition not compulsory, but

compensation to be awarded when not completed. - (1)

Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

9. Be that as it may, as apparent on a reading of paragraph No. 32 of the writ petition, the petitioners had earlier instituted CWP No. 4129 of 2016 before this Court and with a relief therein, that the earlier launched acquisition proceedings under the 'Act of 1894', be declared to thus become lapsed in terms of Section 24 (2) of the 'Act of 2013'. However, the said petition/relief was declined by this Court. Resultantly the counsel for the petitioners cannot now argue before this Court, that assumingly if the provisions of Section 101 A of the 'Act of 2013' were not in existence at the time of the predecessor-in-interest of the petitioners instituting CWP No. 3543 of 2006 nor were in existence when an order was made thereons in the year 2008, besides irrespective of there being analogy inter-se the statutory provision as carried in Section 48 of the 'Act of 1894' thus with Section 101 A, as carried in the 'Act of 2013', that yet visibly with the introduction of the said provision (101 A) in the 'Act of 2013', occurring in the year 2018 and

the same being applicable from 01.01.2014, rather the petitioners have any well canvassable ground for propounding a claim for the disputed lands being released from acquisition, thus on the premise that they are both unviable and un-essential for being put to use for the relevant public purpose.

10. The reason for making the above inference becomes derived from the factum that Section 101 A (supra) became incorporated through the Haryana Act No. 21 of 2018, and, though was deemed to have come into force on 1st January, 2014. However, when the writ petition (supra) became dismissed by this Court on 08.09.2022. Therefore, when the said statutory provision was in existence at the time when the writ petition (supra) was pending before this Court, and yet when the said writ petition became dismissed, thus without liberty to the petitioners to re-access this Court. Therefore, the said order of dismissal creates an estoppel against the present petitioners to re-raise, in the instant writ petition, the above plea but premised on the provisions of Section 101 A of the 'Act of 2013'.

11. The paramount reason for drawing the above conclusion stems from the factum, that when the said provision was in existence during the pendency of the writ petition (supra), yet also then no plea but founded upon the said provision became neither pleaded therein, or if not pleaded earlier, thus, nor when leave became asked for the said plea becoming introduced therein, rather through an application being filed under Order VI Rule 17 CPC nor when the said leave became granted. Therefore, also for want of filing of the said application for amendment and also for want of an affirmative order becoming made

thereons, rather completely, estops the petitioners to raise the said plea

in the instant petition, thus on the ground that the said plea became waived and abandoned.

12. Moreover, even if the said plea became not raised in the earlier writ petition and now is strived to be raised in the instant writ petition, yet the omission, if any, to raise the said plea in the earlier petition. Thus, renders any attempt to raise it in the instant petition, rather to become also barred by the principle of estoppel, as, engrafted in Order 2 Rule 2 CPC, provision whereof becomes extracted hereinafter.

2. SUIT TO INCLUDE THE WHOLE CLAIM.

(1) xxxxxxxxx.

(2) Relinquishment of part of claim- *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) xxxxxxxxx.

13. Lastly in paragraph No. 32 there occurs an averment which becomes extracted hereinafter.

“ There is no writ other writ petition except the one filed by the petitioners, which was on a different cause of action, either before this Hon'ble Court or before the Hon'ble Supreme Court of India on the same cause of action.”

14. However, the veracity of the above averment comes under cloud, rather in the face of the predecessor-in-interest of the petitioners instituting CWP No. 3543 of 2006 before this Court, and, which resulted in the drawing thereons of Annexure A-1. As the earlier writ petition (supra), was instituted by the predecessor-in-interest of the present petitioner, therefore, they were but obviously bound by the result of the decision made thereons. Therefore, they could not aver as

writ petition they had not filed any writ petition with relief or causes of action thus similar to the ones, as embodied in the instant writ petition.

15. Therefore, the institution of the instant writ petition before this Court is a gross abuse of the process of Court, besides the said averment as made in paragraph No.32, relating to the petitioners not earlier instituting any writ petition before this Court, thus on causes of action or with reliefs common to the ones, as embodied in the instant writ petition, rather also becomes completely falsified.

Final Order

16. In aftermath, this Court finds no merit in the writ petition, and, is constrained to dismiss it with costs of Rs. 50,000/- to be deposited forthwith by the petitioners in the 'Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh.

17. The impugned notification(s) and subsequent thereto award are maintained and affirmed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

08.08.2023
kavneet singh

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