

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 13673 of 2023
Reserved on: 02.08.2023
Date of decision : 07.08.2023

SEWA NAND 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. Hemen Aggarwal, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J.

1. The petitioners, through the instant writ petition, ask for relief of their lands being released from acquisition, thus in terms of Section 101-A of the Right to Fair Compensation and Transparency in lands Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013'), as became inserted therein through Haryana Act No.21 of 2018. Moreover, a further prayer is made, that the subjudice representation (Annexure P-12), in respect of the above relief, be directed to be expeditiously decided by the authority(ies) concerned.

For the reasons to be assigned hereinafter, this Court refrains from granting the espoused relief(s) to the petitioners.

2. The most conspicuous fact, which leads this Court to form the above inference becomes comprised in the factum, as unfolded by the brief status report placed before this Court by the learned State counsel, thus with echoings

therein, that the possession of the acquired lands, vide Rapat No.425 recorded on 23.03.1993, thus became assumed by the acquiring authority concerned. Moreover, since it is further divulged therein, that the compensation amount, as, determined in terms of an award pronounced on 23.03.1993, under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'), thus, becoming tendered, and, hence becoming available to be disbursed to the landowners concerned. Therefore, but obviously when thus in terms of the verdict made by the Hon'ble Apex Court in case titled as **"Indore Development Authority v/s Manoharlal and Ors."**, reported in **(2020)8 SCC 129**, rather the petitioners became forbidden to make the above raised plea. Consequently, argument if any, as raised before this Court, that the earlier launched acquisition proceedings, thus under the Act of 1894, be declared to become lapsed, thus in terms of Section 24(2) of the Act of 2013, provisions whereof are extracted hereinafter, is an extremely flimsy, besides a pretextual plea, and, is but required to be discountenanced.

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–

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(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

3. Furthermore, despite the petitioners earlier instituting two

successive writ petitions before this Court, inasmuch as, writ petitions respectively bearing No.25537 of 2016 and No.24230 of 2016, petitions whereof rather became dismissed as withdrawn, respectively on 13.12.2022, and, on 13.12.2022, yet they have re-instituted the instant petition before this Court. Imperatively, the launching of the instant writ petition is but a complete abuse of the process of law. The reason is but simple, that the dismissal of the earlier writ petitions, as withdrawn, completely estops the petitioners to re-agitate any controversy, which became earlier incorporated therein. Predominantly, when no relief or liberty was granted to the petitioners to re-institute a fresh writ petition, before this Court, thus with a cause of action, or, relief similar to the one, as carried in the writ petitions (supra). In addition, even if the above raised plea was not raised therein, and, is strived to be raised now in this writ petition, then too, the omission of raising of the plea (supra) in the earlier writ petitions, is but barred to become raised in the instant writ petition rather by the rule of estoppel, engrafted in Order II Rule 2 CPC, provisions whereof become extracted hereinafter.

“2. Suit to include the whole claim.—

(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.”

4. In other words, if the plea (supra), as raised in the instant writ petition, though was to be canvassed in the writ petitions (supra), and yet it remain uncanvassed therein, thereupon its re-canvassing in the instant writ petition, is barred by the above rule of estoppel, as created in the above extracted provision of CPC.

5. Fortifying vigour to the above inference, but stems from the factum, that the writ petitions (supra) though became instituted in the year 2016, but when they were decided in the year 2022, and, when at that stage, the provisions

of Section 101-A, as are embodied in the Act of 2013, thus became incorporated therein, through Haryana Act No.21 of 2018, besides became assigned force from 01.01.2014. Therefore also, with the writ petitions (supra), becoming decided in the year 2022. Resultantly, when the espousal (supra), thus planked upon the said provisions could have been well raised in the earlier writ petitions (supra), if not incorporated therein, thus through an application for amendment being filed within the writ petitions (supra). However, despite the said provision being in force, during the pendency of the writ petitions (supra), and, yet no application for amendment being filed, for thereby leave to incorporate the said plea in the writ petitions (supra), thus becoming sought. Therefore, the said plea is deemed to have been waived or abandoned, and/or, is deemed to have not been, and/or is deemed to have been omitted to be pleaded thereins. In sequitur, the omission to plead, the above plea premised on the statutory provision (supra), thus in the earlier writ petitions, and, its now becoming raised in the instant writ petition, also attracts thereagainst the bar of estoppel as engrafted in Order II Rule 2 CPC.

6. In aftermath, this Court finds no merit in the instant writ petition, and, is constrained to dismiss it. Accordingly, the writ petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

07.08.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No