

**239/13 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-17317-2021

Reserved on: 05.09.2023

Pronounced on: 22.09.2023

ASHWANI KUMAR YADAV

.....Petitioner

Versus

STATE OF HARYANA AND ORS.

....Respondents

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

Argued by: Mr. B.S.Rana, Senior Advocate with
 Mr. Nayandeep Rana, Advocate and
 Mr. Navdeep Doon, 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 29.01.2007.

2. The above notification(s) became respectively issued on 02.06.2004 and on 31.05.2005.

3. The learned counsel appearing for the petitioner has forcefully contended, by planking submission, 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 Land Acquisition Act, 1894 (hereinafter for short called as 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 is averred in the petition that the petitioner purchased this land alongwith his wife and had constructed residential house on the above land in the year 1997. That post issuance of notification

under Section 4 of the 'Act of 1894', the petitioner filed objections under Section 5A of the 'Act of 1894'. Pursuant to the objections filed, the notification under Section 6 of the 'Act of 1894' was issued and the house of the petitioner constructed on khasra No. 25//24/2, 3, 4 and 5 was released whereas portion of the house constructed on Khasra No.25//24/15 was acquired.

5. The petitioner instituted CWP-11822-2006 before this Court seeking release of his acquired land. The said petition was disposed off by this Court through an order made on 30.05.2008, thus in view of the reply filed by respondent-State, that the construction(s) of the petitioner, as existing on the acquired lands, at the time of issuance of notification under Section 4 rather had already been released.

6. That various CWPs were filed by other land owners challenging the acquisition relating to the land surrounding the land of the petitioner. It is contended that the respondents have proceeded to adopt the practices of invidious discrimination, inasmuch as, the respondents releasing the lands of other land owners surrounding the petitioner's land, whereas, the respondents yet proceeding to subject the petition lands to acquisition, through making the impugned notification(s). The land of the petitioner falls in the middle of the released lands and the same is of no use. Thus, the petition lands be released from acquisition on being rendered unviable or un-essential.

7. The petitioner has been throughout in possession of the disputed lands and has not been paid/disbursed any compensation of the said land till date. The acquisition of the land/house of the petitioner

discriminatory and without any public purpose, as no public purpose can be achieved by acquiring such a small plot having constructed house.

8. The petitioner has also made representation under Section 101-A of the 'Act of 2013' before the authority concerned, for considering the release of his land/house comprised in Khasra No. 25//24/15 situated in village Carterpuri, Gurugram.

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

9. 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.15 of the reply, on affidavit, as furnished to the petition by the respondent concerned, contents whereof are extracted hereinafter.

“15. 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 petitioners land affects the planning of 13 plots of 4 marla category, 8 plots of 8 marla category, 10m and 12m wide internal road. This clearly shows that the land in question has been duly planned and is very much essential for achieving the public purpose for which the land was acquired. True copy of the layout plan is annexed herewith as Annexure R-1 for the kind perusal of this Hon'ble Court. ”

10. 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 petitioners, 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'.

11. 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***

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.

12. The further reason for rejecting the relief relating to the writ lands, thus becoming released from acquisition, becomes sparked from the factum, that in the reply furnished to the writ petition, there occur unequivocal echoings, qua through Rapat No. 375 dated 29.01.2007, the possession of the acquired lands becoming assumed by the respondent concerned. Moreover with further echoing being made therein, as well as when it is stated at the bar by the learned State counsel, that in terms of Section 31 of the 'Act of 1894', the compensation determined by the Collector concerned, thus becoming tendered by the LAC at the time of pronouncement of award, and, thereby it being available for becoming released to the petitioner. Resultantly when the verdict made by the Hon'ble Apex Court rendered in case titled as 'Indore Development Authority Versus Manoharlal and others', to which SLP (Civil) Nos. 9036-9038 of 2016,

para whereof stands extracted hereinafter, it becomes propounded, that when in respect of acquisition proceedings, as become launched, under the 'Act of 1894', rather upon the acquiring authority begetting affirmative compliance, with both the contingencies, spelt therein, thus thereby the attraction of the lapsing provisions to the acquired lands, hence as required under Section 24(2) of the 'Act of 2013', rather becoming unavailable for becoming resorted by the estate loser.

363. In view of the aforesaid discussion, we answer the questions as under:

- 1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.*
- 2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.*
- 3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.*
- 4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is*

provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.

13. Consequently when both the conditions (Supra), inasmuch as, with both conditions relating to, the rapat possession of the acquired lands, becoming assumed, besides compensation amount, as determined through the apposite award rather becoming tendered under Section 31 of the 'Act of 1894', for thereafter its becoming available for being released to the estate loser concerned, rather become evidently complied with. In sequitur, the writ relief relating to both the acquisition proceedings, besides also the consequent thereto award becoming declared to become lapsed thus in terms of Section 24(2) of the 'Act of 2013', is but obviously rejected.

14. 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 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.”

Final Order of this Court.

15. 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.

pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

22.09.2023

(KULDEEP TIWARI)
JUDGE

kavneet singh

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