

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 2006 of 2015 (O&M)

Reserved on: 11.09.2023

Date of decision: 15.09.2023

ANIL KUMAR

-PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

-RESPONDENTS

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

Present : Mr. Chanderhas Yadav, 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
for the respondent- HSVP.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks the making of a writ of certiorari, thus for quashing the notification (Annexure P-3), as became issued on 07.07.2011, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894'). Moreover, the petitioner also craves for relief, that the declaration (Annexure P-4), as became issued on 06.07.2012, under Section 6 of the Act of 1894, be also quashed and set aside. In addition, the petitioner makes a challenge to Annexure P-11, whereby, the respondent concerned declined relief to the petitioner for the disputed lands becoming exempted, or, becoming released from acquisition.

2. In short, the petitioner claims, that since the above prayers are

rested upon the ground, that since the constructions, as existing on the disputed lands, were made prior to the issuance of a notification under Section 4 of the Act of 1894, thereby in terms of the relevant policy floated by the respondent concerned, the said constructions are required to be exempted, or, released from acquisition.

3. The making of the impugned Annexure P-11 was but a sequel to directions being made by this Court, upon, CWP-23703-2013, titled as “Anil Kumar Vs. State of Haryana & others”. The said writ petition became disposed of through the hereinafter extracted order.

“The issue whether the residential house was in existence at the time of issuance of notification under Section 4 of the Act is a question of fact which can be effectively ascertained by the respondent-authorities. The present writ petition is thus disposed of in terms of the cited order dated 11.07.2013 passed in Jitender and another's case (supra) with a direction to the respondents to verify the assertion made by the petitioner and take an appropriate decision in accordance with the Government Policy dated 26.10.2007, within a period of four months from the date of receiving a certified copy of this order.”

4. Since a reading of the above extracted orders reveals, that the same became rested upon a judgment rendered in case titled “Jitender and another V/s State of Haryana and others”, bearing CWP No.15617 of 2012. Therefore, it is also deemed essential to extract hereinafter, the operative part of the verdict drawn by this Court, upon, the writ petition (supra), operative part whereof becomes extracted hereinafter.

“.....Since the precise case of the petitioners before us is that [i] some of them have constructed their residential houses/properties; [ii] their vacant plots can not be utilized for regulated development of any Urban Sector; [iii] their residential houses/plots are located

in a thickly populated area; [iv] a part of the subject land is being utilized for various public utilities like schools/other Institutions and [v] since the above stated factual averments made by the petitioners have not been controverted by the respondents so far, coupled with the fact that there exists Government's policy to release the acquired properties constructed before issuance of notification under Section 4 or wherever it is not found feasible to utilize the same for public purpose, we dispose of these writ petitions with a direction to the respondents to conduct a fresh survey of the land in question after notice to the petitioners so as to facilitate the identity of their properties. The re-survey shall be conducted essentially to find out whether the constructed properties or the vacant plots of the petitioners can be released without affecting the development plan of Sector 8, Jhajjar. If the authorities find that the properties of the petitioners can be released without any detrimental effect to the public purpose and/or such release falls within the four-corners of their policy, necessary orders to this effect shall be passed by them. Let this exercise be undertaken as expeditiously as possible and preferably within a period of four months from the date a certified copy of this order is received.”

5. A reading of the impugned Annexures reveals, that at the time of issuance of a notification under Section 4 of the Act of 1894, one room was reportedly constructed at the relevant site. If the said one room was constructed at the relevant site, at the time of issuance of a notification under Section 4 of the Act of 1894, thereby since the said room was not raised prior to issuance of a notification under Section 4 of the Act of 1894, but was raised in contemporaneity to the issuance of a notification under Section 4 of the Act of 1894. Resultantly, the above begets an inference, that when on issuance of the said notification under Section 4 of the Act of 1894, the right, title and interest over the acquired lands became vested in the acquiring authority, and,

but with a concomitant divestment of right, title and interest over the acquired lands in the present petitioner, thereby except for determination of compensation in respect thereof, rather in terms of the policy (supra), the espoused exemptions cannot be assigned to the present petitioner.

6. Though the said fact could have been contested at the earliest stage, at the instance of the present petitioner, through his filing objections under Section 5-A of the Act of 1894, but yet the present petitioner failed to make a protest in respect of the above, through his raising the apposite objections under Section 5-A of the Act of 1894. The omission (supra) on the part of the petitioner to raise a protest in respect of the above echoings, as made in Annexure P-11, is that, thereby the said echoings are ingrained with an aura of truth, besides thereby the petitioner is deemed to abandon or waive any right to contest the truth of the said recitals. In other words, the present petitioner is also estopped to contest the truthfulness of the said made speakings in Annexure P-11.

7. Apart from the above, assumingly even if the petitioner was well entitled to, within the ambit of the relevant policy, seek an able claim for the acquired lands becoming released from acquisition, but yet the above would happen only when in the reply to the writ petition, a candid and forthwith speaking was made, and/or, was made in Annexure P-11, that the acquired lands were not an integral component of the layout plan, thus relating to the relevant public purpose.

8. In the above regard, a reading of the impugned Annexure, and, also a reading of the reply on affidavit, as became instituted to the writ petition by the respondent concerned, both conjointly speak, that the acquired land, is

an integral component rather for ensuring the widenings of Jhajjar-Sampla scheduled road, 30 mtrs wide green belt including 12 mtrs wide service road along Jhajjar-Sampla scheduled road and site of working women hostel provided in layout plan of Sector 9-A Jhajjar.

9. If so, this Court cannot, in the exercise of its writ jurisdiction, review the drawing of the above layout plan, as the drawing or re-drawing of the said layout plan by the acquiring authority concerned, through its deploying the expertise of an engineering cell, is completely outside the domain of the review jurisdiction of this Court.

10. The upshot of the above discussion, is that, this Court finds no merit in the writ petition and the same is accordingly dismissed. The impugned Annexures are affirmed and maintained. Accordingly, the instant writ petition 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.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

15.09.2023
devinder

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