

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

205

CWP-15672-2017 (O&M)

Date of Decision: 16.12.2023

SUBHASH CHANDRIKA & ANR.

-Petitioners

Versus

STATE OF HARYANA AND ORS.

-Respondents

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

Argued by: Mr. Akshay Bhan, Sr. Advocate assisted by
Mr. Alok Mittal, Advocate
for the petitioner.

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

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

Mr. Ritesh Khattri, Advocate and
Mr. Lovekesh Mehta, Advocate
for respondent No.5.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioners seek the grant of
the hereinafter extracted reliefs:-

*(i) Set aside the order dated 16.02.2015 (Annexure P-13),
whereby, the respondent No.1 has recalled its earlier order
dated 20.07.2007 (Annexure P-5), wherethrough, the land of
the petitioners, which was brought to acquisition through
issuance of notification and declaration respectively under
Section 4 and 6 of the Land Acquisition Act, 1894 (hereinafter*

referred to as the 'Act of 1894'), was released from acquisition;

AND/OR

(ii) Set aside the Award dated 23.04.2009 (Annexure P-8), as drawn in respect of the petitioners' acquired land;

AND/OR

(iii) Issue directions to the official respondents concerned to release the land of the petitioners from acquisition, on the ground of parity, as land of similarly situated landowners has been released from acquisition, vide notification dated 03.01.2013 (Annexure P-11).

AND/OR

(iv) Issue a mandamus upon the official respondents concerned to pass an award in respect of the petitioners' acquired land, in accordance with the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013').

2. The instant writ petition constitutes the second round of litigation qua the relevant acquisition proceedings. A Co-ordinate Division Bench of this Court, while deciding a set of 22 writ petitions headed by CWP-10529-2008, titled as “Joginder Singh and Ors. V/s State of Haryana and Ors.”, Decided on: 07.11.2016, wherein, the instant acquisition proceedings and award (supra) were challenged, upheld the impugned acquisition proceedings and award.

3. Before commencing to pen down any opinion, as regards the legitimacy of the hereinabove sought relief(s), it is deemed imperative to extract the factual matrix of the instant case.

4. The impugned acquisition proceedings commenced upon the recommendations of the respondent No.3-HSIIDC, for a public purpose, namely, for setting up Industrial Estate, Sector 37, Karnal. The

recommendation (supra) resulted in the issuance of a notification under Section 4 of the Act of 1894, in respect of land measuring 237 acres 5 kanals and 9 marlas, situated in Villages Karnal and Kambopura, Tehsil and District Karnal. The notification (supra) was published in the Official Gazette on 27.04.2006, besides it was also published in two daily newspapers.

5. Thereafter, objections were invited by the acquiring authority, which led the aggrieved landowners concerned to file objections under Section 5-A of the Act of 1894. The objections so filed, were well considered by the Land Acquisition Collector concerned, who thereupon, submitted his recommendations to the government. Subsequently, the government sought comments of the respondent No.3-HSIIDC on the recommendations of the Collector concerned, as it is the project development and implementation agency. Ultimately, taking into consideration the recommendation and comments, as made on the objections (supra), a declaration under Section 6 of the Act of 1894 was published in the Official Gazette on 26.04.2007, and, in two daily newspapers.

6. However, immediately after issuance of the declaration, the aggrieved therefrom, i.e. present petitioners, made a representation directly to the then Chief Minister, State of Haryana, thereby seeking exemption of their lands from acquisition. The representation made by the petitioner was entertained and resulted in the making of an order dated 20.07.2007, whereby, the entire land of the petitioners was ordered to be released from acquisition. The reasoning, as assigned in the order (supra), for releasing the land of the petitioners from acquisition, is reproduced

hereinafter:-

“CM has observed that since house of the applicants has already been released which is situated in the centre of the chunk of land of the applicants, the surrounding land cannot be utilized for proper planning. He has, therefore, ordered that the land of the applicants contained in Khasra Nos. mentioned in their representation be released from acquisition.”

7. It would be worth to record here that no formal notification, in respect of the above decision taken by the then Chief Minister, was ever issued or published.

8. In the meanwhile, the respondent No.4 herein, whose land was also brought to acquisition through the impugned acquisition proceedings, approached this Court through its filing CWP-2227-2008, titled as “M/s Haryana Rice Land, Karnal and ors. V/s The State of Haryana and ors.”, thereby seeking release of its/their land from acquisition. In fact, the present petitioners were also impleaded in the array of respondents in the writ petition (supra), on the ground of perpetration of hostile discrimination, as land of the present petitioners/ respondents therein was released from acquisition, as it belonged to the then M.L.A of the then ruling political party.

9. A Co-ordinate Division Bench of this Court, through an order made on 08.01.2009, upon the writ petition (supra), stayed the operation and effect of the order of release dated 20.07.2007, as made in favour of the present petitioners.

10. Consequently, the present petitioners, being aggrieved by the above order of stay, accessed the Hon’ble Supreme Court, through filing SLP(C) No.6672/2009, titled as “Smt. Subhash Chandrika vs. M/s

Haryana Rice Land & Ors.”.

11. However, in the meanwhile, since the operation and effect of the order of release dated 20.07.2007 was stayed by a Co-ordinate Division Bench of this Court, through order dated 08.01.2009, therefore, the acquiring authority concerned brought the halted acquisition proceedings into motion and announced an award under Section 11 of the Act of 1894, on 23.04.2009. This award was made even in respect of the land of the petitioners, which was earlier released from acquisition vide order dated 20.07.2007.

12. The Hon’ble Supreme Court, through an order made on 14.05.2009, upon the SLP(C) (supra), granted a stay only against dispossession of the present petitioners from the petition land. Ultimately, the SLP(C) (supra) was disposed of, on 24.02.2015, with a request to this Court to dispose of the subjudice writ petition concerned, as early as possible. However, the writ petition, i.e. CWP-2227-2008, was withdrawn by the petitioners therein, on 08.09.2016.

13. Thereafter, a Co-ordinate Bench of this Court while deciding a set of writ petitions headed by CWP-10529-2008, wherein, the present petitioner(s) was also impleaded in the array of respondents, well considered all the pleas, as raised therein by the present petitioners, however, disallowed the claim of the present petitioner(s). The submission(s), as raised by the present petitioner(s) in the earlier round of litigation, i.e. writ petition (supra), and, as recorded in the verdict made thereon on 07.11.2016, are extracted hereinafter:-

“STAND OF SMT. SUBHASH CHANDRIKA AND OTHERS;
[69] It may be noticed that though the State Government has

recalled its earlier decision dated 20.07.2009 whereby the land of respondent No.15 and her family-members was exempted from acquisition, yet respondent No.15 (Smt.Subhash Chandrika) has chosen to defend the State action dated 20.07.2009. She has filed a comprehensive written statement and her learned counsel made submissions to justify the release of her land. Interestingly, the plea taken is that the acquisition qua her land has lapsed in view of Section 24(2) of 2013 Act and the fresh acquisition can be made only in accordance with the provisions of 2013 Act. It is further claimed that the said respondent has constructed a residential house of 'A' class construction which cannot be acquired as per the Government policy and once the said house is released, the adjoining vacant land also cannot be utilized for the notified public purpose."

14. The relevant findings, besides the conclusion, as rendered by this Court in the verdict (*supra*) are also extracted hereinafter:-

"FINDINGS:

*[70] Having heard learned counsel for the parties at a considerable length and after going through the Government records, we are of the considered view that the acquisition under challenge deserves to be upheld as none of the grounds taken up by the petitioners can validly sustain. We say so for the reasons that the foremost plea taken by the petitioners revolves around 'hostile discrimination' based upon the fact that the land of the then local MLA who belonged to the political party in power, was ordered to be released through State's largess. **On going through the original records which prompted the then Hon'ble Chief Minister, Haryana, to pass the order dated 20.07.2007, there can be no manner of doubt that the said order is a glaring example of abuse of executive powers and to extend undue favour.** Had the State Government insisted on defending its action of releasing the land of family members of the then local MLA Smt.Sumita Singh, there would have been no choice escape but to either quash the entire acquisition or strike down the very root of incurable illegality, namely, the release order itself.*

[71] The location of the land of Smt.Subhash Chandrika and

others, as depicted in the lay-out plan/site plan relied upon by the authorities, clearly shows that their big chunk of land falls almost in the middle of the acquired area and it was ordered to be released just like that little realizing that it would single handedly destroy the laudable public purpose for which the acquisition was conceptualized. Such an ex-facie illegal action rightly promoted the petitioners to assert that those who were close and/or were part of corridors of powers have been illegitimately benefited by hoodwinking the law, as if they were above the law of the land.

[72] We are, however, not required to go into the minute details of the manner in which the representations made by Smt.Subhash Chandrika and others were entertained or accepted, for the reasons that having faced a volley of questions raised by this Court in the past, HSIIDC requested the State Government on 04.03.2014 to review its order dated 20.07.2007. The record further reveals that the aforesaid request was considered in detail and after obtaining opinion from the Advocate General, Haryana, the State Government recalled its previous decision on 15.02.2015. Thereafter, on 07.10.2015, an affidavit in support of the Government decision of recalling the order dated 20.07.2007 and re-acquiring the land of Smt.Subhash Chandrika and others, has been filed by the District Town Planner, HSIIDC, the relevant part whereof reads as follows:

“....the present bunch of writ petition has been filed by the land owners mainly on the ground that land belonging to Subhash Chandrika has been released by the Government after issuance of Notification under Section 6 on 26.04.2007 even though the said land was lying vacant. So far as land belonging to Subhash Chandrika is concerned, the land measuring 3 bigha 4 biswa comprising in khasra No.9307 on which residential house of Smt.Subhash Chandrika and Sh.Rajnik Singh Maan was in existence was left out at the time of issuance of Notification under Section 6 although lateron the remaining vacant land owned by these persons measuring 47 bigha 15 biswa was decided to be released vide Government's order dated 20.07.2007

after issuance of notification under Section 6 but no Notification under Section 48 was issued pertaining to this land. The Government now vide its decision taken on 16.02.2015 has withdrawn the earlier order dated 20.07.2007 whereby the vacant land belonging to above said two persons was ordered to be released. That beside the above facts approx. 13 bigha land under pucca houses, temple, samadhi, petrol pump, existing industrial unit were released while considering the recommendations of LAC, Karnal at the time of issuance of notification under Section 6.....”

[73] The very foundation of the apparent discrimination rightly alleged by the petitioners has thus been demolished.

[74] As regard to the release of other small pieces of land, the petitioners cannot be permitted to blow hot and cold, for they are the direct beneficiaries of such a decision taken on 03.01.2013 as properties/lands of some of them have also been released in part vide the said order. Further, the order dated 03.01.2013 has not been passed mechanically. There are valid reasons given for the release of each property. No fault can therefore be found with the said action of the State Government.

CONCLUSIONS:

[85] In the light of the above discussion, we hold that:-

(i) the notifications dated 27.04.2006 and 26.04.2007 issued under Sections 4 & 6, respectively, of the Act as well as subsequent proceedings including the Award dated 23.04.2009 are perfectly valid. The writ petitions challenging the said land acquisition process are hereby dismissed;

(ii) the writ petitioners who seek exchange of land with the HSIIDC, may represent to the Managing Director of HSIIDC within a period of one months from the date of receiving a certified copy of this order, alongwith a concrete proposal and such representations shall be considered by the HSIIDC in consultation with the State Government within a period of three months thereafter. The final decision shall not give rise to any fresh cause of action. These directions have been issued keeping in view the fact that the proposal regarding exchange have been

submitted by petitioners at a belated stage through miscellaneous applications and the respondents got no opportunity to give their view-point in that regard;

(iii) in some of the cases like CWP Nos.6138 of 2009 and 6279 of 2009, the released area appears to be confined to the actually constructed area, without any open space. In such like case, the Land Acquisition Collector, District Town Planner and the representative of HSIIDC are directed to re-visit the released sites and wherever it is found that no adequate open space has been provided for proper utilization of the released property, some reasonable open area shall be additionally released. The needful shall be done within a period of four months from the date of receiving a certified copy of this order.

(iv) In CWP No.3495 of 2015, the acquisition is upheld but it is held that the petitioner(s) shall be entitled to compensation of the acquired land in accordance with the provisions of 2013 Act.

(v) As regard to claim of Smt.Subhash Chandrika and her family members to the effect that the provisions of 2013 Act are attracted in her case and the withdrawal of release order dated 20.07.2007 is inconsequential, the contentions are found to be wholly misconceived and mis-directed. Section 24(2) of 2013 Act is attracted only in a case where the Award was passed under the old Act but either the possession was not taken or compensation was not paid for a period of five years from the date of passing of such Award till the new Act came into force w.e.f. 01.01.2014. That is not a situation in the case in hand. So far as the benefit of Section 24(1), namely assessment of compensation as per the new Act is concerned, the said respondent shall be at liberty to claim such benefit before the appropriate forum. She cannot be permitted to seek adjudication of her claim for compensation in accordance with 2013 Act being a respondent in these proceedings. As regard to justification of the order dated 20.07.2007, we have already held that the said decision of the State Government was a wholesome mis-use of executive powers and the said decision was in total disregard to the public interest. Respondent No.15, therefore, can draw no advantage out of such an inherently illegal action of the State.

[86] *The writ petitions are accordingly disposed of.*”

15. A bare glance at the hereinabove extracted findings and conclusion rendered by this Court makes it graphically clear that the impugned acquisition proceedings were held to be perfectly valid, besides the claim raised by the petitioner, inasmuch as, them being entitled for compensation under the Act of 2013, was considered and thereupon rejected. Moreover, the release of the land of the present petitioners, vide order dated 20.07.2007, was heavily deprecated, whereas, the act of the government, thereby withdrawing the order (*supra*), through its decision made on 16.02.2015, was also held to be valid.

16. Therefore, since the pleas, as raised herein by the petitioners, besides being already raised by them in the earlier round of litigation, have also been rejected. Therefore, the reliefs, as now reclaimed in the instant writ petition, are completely prohibited by the estopping principle of *res judicata*. Resultantly, the pleas raised in the instant writ petition, despite being denied to the present petitioner(s) in the earlier round of litigation, warrants the same being denied now too.

17. Moreover, the other trivial issue(s), which has been now agitated before this Court, could have been well agitated in the earlier round of litigation, however, the petitioner(s) opted not to raise such issue(s) then. Therefore, if such issue(s) was not raised therein and is strived to be raised now in this writ petition, the petitioner is barred to do so, by the doctrine of *constructive res judicata*.

18. Nonetheless, it has been categorically stated in the reply furnished to the instant writ petition, that the acquired petition land is essential for facilitating the public purpose(s), as carried in the layout plan

concerned. The petition land is stated to affect industrial plots, 20 meters wide road, 30 meters wide road and 18 meters wide road. Therefore, when the acquired lands is an insegregable component of the layout plan, therefore, its release would prejudicially affect the relevant public purpose. Therefore, for ensuring that the relevant public purposes is not impeded, predominance is to be assigned to public interest, than to the private interest of the petitioners.

19. The reply furnished to the instant writ petition also reveals that compensation amount of Rs.50,72,57,261/- has been deposited with the L.A.C., Karnal, however, the petitioners have not received their compensation amount of Rs.1,76,20,107/-, which is yet lying deposited with the L.A.C., Karnal.

FINAL ORDER

20. As a sequel to the hereinabove made discussion, especially the fact that the instant motion is hit by the doctrine of *res judicata/constructive res judicata*, besides the petition lands being essential and imperative for accomplishing the relevant public purpose, this Court is not inclined to make any interference. Consequently, the instant petition is dismissed, and, the impugned acquisition notifications and award are affirmed and maintained.

21. Pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

16.12.2023
devinder

(KULDEEP TIWARI)
JUDGE

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